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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) are adopting final amendments to 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:

Effective date: This rule is effective on April 1, 2024, except for amendment nos. 29, 52, and 75, which are effective April 1, 2024, through January 1, 2031, and amendment nos. 7, 11, 18, 20, 25, 35, 39, 43, 45, 49, 58, 62, 66, 68, and 72, which are delayed indefinitely. The agencies will publish a document in the **Federal Register** announcing an effective date for the delayed amendments.

Applicability date: Sections ____.12 through ____.15, ____.17 through ____.30, and ____.42(a); the data collection and maintenance requirements in § ____.42(c) through (f); and appendices A through F of the common rule text as adopted by the OCC, Board, and FDIC are applicable on January 1, 2026. Section ____.42(b) and (g) through (i) and the reporting requirements in § ____.42(c) through (f) of the common rule text as adopted by the OCC, Board, and FDIC are applicable on January 1, 2027.

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Board: Taz George, Senior Supervisory Policy Analyst; Dorian Hawkins, Counsel; S. Caroline (Carrie) Johnson, Manager; Matthew Lambert, Senior Supervisory Analyst; Eric Lum, Senior Supervisory Analyst; Cayla Matsumoto, Supervisory Policy Analyst; or Lisa Robinson, Lead Supervisory Policy Analyst; Lorna Neill, Senior Counsel; Amal Patel, Senior Counsel; or Jaydee DiGiovanni, Counsel; Division of Consumer and Community Affairs or David Alexander, Special Counsel; Cody Gaffney, Senior Attorney; or Gavin Smith, Senior Counsel; Legal Division, Board of Governors of the Federal Reserve System at (202) 452–2412 or. For users of TDD–TYY, (202) 263–4869 or dial 711 from any telephone anywhere in the United States.

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SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

The CRA [1] is a seminal piece of legislation that requires the OCC, the Board, and the FDIC (together referred to as the agencies, and each, individually, the agency) to assess a bank's [2] record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the bank's safe and sound operation. Upon completing this examination, 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.'' [3] 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.'' [4] The agencies implement

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

[4] 12 U.S.C. 2903(a)(2).

the CRA and establish the framework and criteria by which the agencies assess a bank's performance through their individual CRA regulations, which are supplemented by supervisory guidance.[5] Under the CRA regulations, the agencies apply different evaluation standards for banks of different asset sizes and types.

The agencies issued a notice of proposed rulemaking published in the **Federal Register** on June 3, 2022 (NPR, proposal, or the proposed rule),[6] seeking comment on updates to their respective CRA regulations to achieve the following objectives:

- 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
- Promote a consistent regulatory approach that applies to banks regulated by all three agencies.[7]

The agencies believe that each objective is met through the promulgation of this final rule. Additional discussion of, and commenter feedback received regarding, the agencies' objectives can be found in section III.B of this **SUPPLEMENTARY INFORMATION.**

This section provides a summary of the final rule and highlights certain key elements and changes as compared to the proposal. For a more detailed discussion, including the agencies' considerations of the comments received, see sections III and IV of this **SUPPLEMENTARY INFORMATION.**

Bank Asset Size Categories and Limited Purpose Banks

The final rule implements a revised regulatory framework for the CRA that, like the current framework, is based on bank asset size and business model. This tailoring of the framework recognizes the capacity and resource differences among banks. Under the final rule, banks are classified as either a large bank, an intermediate bank, a small bank, or a limited purpose bank. Pursuant to the final rule: large banks are those with assets of at least $2 billion as of December 31 in both of the prior two calendar years; intermediate banks are those with assets of at least $600 million as of December 31 in both of the prior two calendar years and less than $2 billion as of December 31 in either of the prior two calendar years; and small banks are those with assets of less than $600 million as of December 31 in either of the prior two calendar years. These asset-size thresholds will be adjusted annually for inflation.

The final rule revises the definition of limited purpose bank to include both those banks currently considered ''limited purpose banks'' and those currently considered ''wholesale banks,'' as those terms are defined under the current regulation and were defined under the proposal. Specifically, the final rule defines a limited purpose bank as a bank that is not in the business of extending certain loans, except on an incidental and accommodation basis, and for which a designation as a limited purpose bank is in effect. The final rule therefore does not reference ''wholesale banks'' because a separate definition is no longer necessary. The agencies have also clarified that limited purpose banks are not evaluated as small, intermediate, or large banks.

Evaluation Framework

Overview. The final rule's performance evaluation framework utilizes performance tests to evaluate a bank's performance in meeting the credit needs of its entire community. In finalizing this evaluation framework, the agencies seek to meet the objectives described above, including: strengthening the achievement of the core purpose of the statute; tailoring to account for differences in bank size, business model, and local conditions; and adapting to changes in the banking industry, including the rise of mobile and online banking. Depending on a bank's asset size or limited purpose bank designation, the agencies will evaluate banks under one or a combination of the following seven performance tests: the Retail Lending Test; the Retail Services and Products Test; the Community Development Financing Test; the Community Development Services Test; the Intermediate Bank Community Development Test; the Small Bank Lending Test; and the Community Development Financing Test for Limited Purpose Banks. The agencies have also retained the strategic plan option, with revisions, as an alternative method for evaluation under the CRA.

The agencies will evaluate large banks under four performance tests: the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test. The agencies will evaluate intermediate banks under the Retail Lending Test and either the current community development test, referred to in the final rule as the Intermediate Bank Community Development Test, or, at the bank's option, the Community Development Financing Test. The agencies will evaluate small banks under either the current small bank test, referred to in the final rule as the Small Bank Lending Test or, at the bank's option, the Retail Lending Test. Finally, the agencies will evaluate limited purpose banks, under the Community Development Financing Test for Limited Purpose Banks.

The final rule also provides that relevant activities of a bank's operations subsidiaries or operating subsidiaries are included in a bank's performance evaluation. Relevant activities of other affiliates would be considered at a bank's option.

For each applicable performance test, the agencies will assign conclusions reflecting the bank's performance in its facility-based assessment areas, and in the case of the Retail Lending Test, certain other geographic areas. In most instances, including for small banks that opt to be evaluated under the Retail Lending Test, the agencies will assign one of five conclusions to the bank: ''Outstanding''; ''High Satisfactory''; ''Low Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.'' For small banks evaluated under the Small Bank Lending Test, the agencies will assign one of four conclusions: ''Outstanding''; ''Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.''

The conclusions assigned in connection with each of the applicable performance tests are combined to develop a bank's CRA ratings. The agencies may assign a bank one of the four ratings, as indicated in the statute: ''Outstanding''; ''Satisfactory''; ''Needs

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

[6] 87 FR 33884 (June 3, 2022).

[7] The agencies have revised this objective for the final rule, to recognize that the agencies currently have common regulations.

to Improve''; or ''Substantial Noncompliance.''

For banks that are evaluated under more than one performance test, specific weights are applied to each performance test conclusion, with weighting varying by bank asset size. For large banks: the Retail Lending Test is weighted at 40 percent; the Retail Services and Products Test is weighted at 10 percent; the Community Development Financing Test is weighted at 40 percent; and the Community Development Services Test is weighted at 10 percent. Relative to the proposal, this large bank weighting reflects a decrease in the percentages assigned to the Retail Lending Test and the Retail Services and Products Test and a resulting increase in the percentage assigned to the Community Development Financing Test. For intermediate banks, each applicable performance test is weighted at 50 percent.

As noted above, banks of all sizes will maintain the option to elect to be evaluated under an approved strategic plan. Among other revisions, the final rule updates the standards for obtaining approval for such plans. The final rule clarifies the proposal to explain the circumstances in which banks must include the performance tests that would apply in the absence of a strategic plan, the modifications and additions that banks may make to those tests, and the justifications that banks must provide for their draft plans.

Retail Lending Test. The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans, as well as through automobile lending if the bank is a majority automobile lender. Specifically, the Retail Lending Test includes an evaluation of how banks are serving low- and moderate-income individuals, small businesses, small farms, and low- and moderate-income census tracts in the bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending areas. As noted above, under the final rule, intermediate and large banks are required to be evaluated under the Retail Lending Test, and small banks may opt to be evaluated under this performance test.

The Retail Lending Test includes two sets of metrics, as well as additional factors that are used to complement the use of metrics. First, the Retail Lending Volume Screen measures the volume of a bank's retail lending relative to its deposit base in a facility-based assessment area and compares that ratio to a Retail Lending Volume Threshold based on the aggregate ratio for all reporting banks with at least one branch in the same facility-based assessment area.

Second, the agencies evaluate the geographic distribution and borrower distribution of a bank's major product lines in its Retail Lending Test Areas (facility-based assessment areas, retail lending assessment areas, and outside retail lending area) using a series of metrics and benchmarks. For example, for a bank's closed-end home mortgage lending in a Retail Lending Test Area, the geographic distribution analysis evaluates the bank's percentage of lending (1) in low-income census tracts and (2) in moderate-income census tracts, while the borrower distribution analysis evaluates the bank's percentage of lending (3) to low-income borrowers and (4) to moderate-income borrowers. Under the final rule, the agencies evaluate the distribution of a large bank's major product lines in its facility-based assessment areas, any retail lending assessment areas the bank is required to delineate, and its outside retail lending area. For intermediate banks, and small banks that opt to be evaluated under the Retail Lending Test, the agencies evaluate the distribution of the bank's major product lines in its facility-based assessment areas and any outside retail lending area, if applicable. Regardless of the geographic area in which a bank is evaluated, for most major product lines, a bank's performance relative to the retail lending distribution benchmarks is translated into a recommended conclusion using performance ranges that establish the level of performance needed to achieve a particular conclusion, such as ''High Satisfactory.''

In addition, in the final rule the agencies consider a list of additional factors that are intended to account for circumstances in which the retail lending distribution metrics and benchmarks may not accurately or fully reflect a bank's retail lending performance, or in which the benchmarks may not appropriately represent the credit needs and opportunities in an area.

In response to commenter feedback, the agencies sought ways to ensure that the final rule's Retail Lending Test appropriately balances the agencies' objectives. For example, the agencies adjusted some of the multipliers utilized as part of the Retail Lending Test to make ''Outstanding'' and ''High Satisfactory'' Retail Lending Test supporting conclusions more attainable relative to the proposal, while maintaining an appropriate degree of rigor. Moreover, as compared to the proposal, the final rule reduces the number of product lines potentially evaluated under the Retail Lending Test from six to three (closed-end home mortgage loans, small business loans, and small farm loans) for most banks. In addition, the agencies will only evaluate a bank's automobile loans if automobile loans represent a majority of the bank's retail lending, or if the bank opts to have its automobile loans evaluated under the Retail Lending Test.

Retail Services and Products Test. The Retail Services and Products Test utilizes a tailored approach to evaluate the availability of a bank's retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank's entire community, including low- and moderate-income individuals, low- and moderate-income census tracts, small businesses, and small farms. Under the final rule, this performance test maintains the overall approach set out in the NPR, with certain modifications, and incorporates benchmarks to evaluate the availability of a bank's branch and remote service facilities. In addition, the agencies will evaluate the digital and other delivery systems of some banks.

Evaluation of the retail banking services of a large bank with assets greater than $10 billion includes a review of the bank's branch availability and services, remote service facilities (including automated teller machines (ATMs)), and digital delivery systems and other delivery systems. The agencies will also consider the digital delivery systems and other delivery systems of large banks with assets less than or equal to $10 billion if the bank does not operate any branches or, for banks that operate at least one branch, at the bank's option.

Evaluation of a bank's retail banking products includes a review of the responsiveness of the bank's credit products and programs, and availability and usage of responsive deposit products. Both deposit products and credit products and programs are evaluated at the institution level and, in a change from the proposal, are given only positive consideration and may not negatively impact a bank's Retail Services and Products Test conclusion. This aspect of the performance test is designed to evaluate a bank's efforts to provide products that are responsive to the needs of low- and moderate-income communities. The agencies will not evaluate the availability and usage of responsive deposit products in connection with large banks with assets less than or equal to $10 billion, unless the bank opts in.

Community Development Financing Test. The Community Development Financing Test evaluates how well large banks and intermediate banks that opt into the performance test meet the community development financing needs in each facility-based assessment area, each State or multistate metropolitan statistical area (MSA), as applicable, and for the institution. The test is not assessed in retail lending assessment areas.

The Community Development Financing Test includes the following elements: (1) a community development financing metric used to evaluate the dollar volume of a bank's community development loans and investments relative to the bank's deposit base; (2) standardized benchmarks to aid in evaluating performance; and (3) an impact and responsiveness review to ensure consideration of community development loans and investments that are particularly impactful or responsive. The final rule also includes a metric for banks with assets greater than $10 billion to measure the bank's community development investments relative to deposits. This metric is intended to ensure a focus on certain bank community development investments (including Federal Low-Income Housing Tax Credit (LIHTC) and New Market Tax Credit (NMTC) investments). This metric is applied at the institution level and may only contribute positively to a bank's Community Development Financing Test conclusion.

Community Development Services Test. The Community Development Services Test considers the importance of community development services in fostering partnerships among different stakeholders, building capacity, and creating conditions for effective community development, including in rural areas. The agencies will evaluate large banks under this performance test in facility-based assessment areas, in States, multistate MSAs, and nationwide.

Under the final rule, the evaluation includes a qualitative review of relevant community development services data, and an impact and responsiveness review to assess services that are particularly responsive to community needs. After considering commenter feedback, the performance test does not require a metric of community development service hours per full-time employee for banks with assets greater than $10 billion. Moreover, the final rule maintains the existing requirement that volunteer services considered under this performance test must be related to the provision of financial services or the expertise of bank staff and must have a community development purpose. The performance test will provide consideration for activities that promote financial literacy for low- or moderate-income individuals, households, and families, even if the activities benefit individuals, households, and families of other income levels as well.

Geographic Areas in Which a Bank's Activities Are Considered

Facility-based assessment areas. As under the current CRA regulations, the final rule maintains facility-based assessment areas as the cornerstone of the CRA evaluation framework. The final rule adopts the delineation requirements for facility-based assessment areas mostly as set out in the proposal with clarifying changes. Specifically, banks will continue to delineate facility-based assessment areas in the MSAs or nonmetropolitan areas of States in which the following facilities are located: main offices, branches, and deposit-taking remote service facilities. As under the proposal, large banks are required to delineate facility-based assessment areas composed of whole counties, while intermediate and small banks will continue to be permitted to delineate facility-based assessment areas consisting of partial counties. The final rule continues to provide that facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts.

Retail lending assessment areas. The final rule requires a large bank to delineate a new type of assessment area, referred to as retail lending assessment areas, in an MSA or the nonmetropolitan area of a State in which the large bank has a concentration of closed-end home mortgage or small business lending outside of its facility-based assessment area(s). Large banks are evaluated under the Retail Lending Test, but not the other performance tests, in retail lending assessment areas. Relative to the proposal, the final rule tailors the retail lending assessment area requirement by exempting large banks that conduct more than 80 percent of their retail lending within facility-based assessment areas.

Upon consideration of commenter feedback regarding the retail lending assessment area proposal, the final rule increases, relative to the proposal, the loan count thresholds that trigger the retail lending assessment area delineation requirement to at least 150 closed-end home mortgage loans or at least 400 small business loans in each year of the prior two calendar years. The final rule also simplifies the evaluation of a large bank's retail lending performance by reducing the number of product lines potentially evaluated in a retail lending assessment area from six to two product lines, and only evaluating a product line if the bank exceeds the relevant loan count threshold.

Outside retail lending areas. Under the final rule, the agencies will evaluate the retail lending performance of all large banks, certain intermediate banks, and certain small banks that opt to be evaluated under the Retail Lending Test in the outside retail lending area, which consists of the nationwide area outside of the bank's facility-based assessment areas and applicable retail lending assessment areas, excluding certain nonmetropolitan counties. Evaluation in these areas is designed to facilitate a comprehensive evaluation of a bank's retail lending to low- and moderate-income individuals and communities under the Retail Lending Test, and to adapt to changes in the banking industry, such as mobile and online banking. For an intermediate bank or a small bank that opts to be evaluated under the Retail Lending Test, the agencies evaluate the bank's retail lending performance in the outside retail lending area on a mandatory basis if the bank conducts a majority of its retail lending outside of its facility-based assessment areas. If the intermediate or small bank does not conduct a majority of its retail lending outside of its facility-based assessment areas, the bank may opt to have its retail lending in its outside retail lending area evaluated.

Areas for eligible community development activities. Like the proposal, the final rule provides that all banks will receive consideration for any qualified community development loans, investments, or services, regardless of location. In assessing a large bank's Community Development Financing Test performance, the final rule includes a focus on performance within facility-based assessment areas. Specifically, when developing conclusions for a State, multistate MSA, or for the institution overall, the final rule combines two components through a weighted average calculation: (1) performance within the bank's facility-based assessment areas in the State, multistate MSA, or for the institution overall; and (2) performance across the entire State, multistate MSA, and for the institution. The weights of the two components are based on the percentage of a bank's retail lending and deposits inside its facility-based assessment areas. For example, for a bank with a relatively low percentage of retail lending and deposits inside its facility-based assessment areas, the bank's performance within its facility-based assessment areas receives less weight than its performance across the entire State, multistate MSA, or nationwide area. In this way, the Community Development Financing Test recognizes differences in bank business models.

Categories of Community Development

Updated community development definition. Under the current CRA regulations, in evaluating a bank's CRA performance, banks may receive community development consideration for community development loans, investments, and services under various tests. The final rule updates the definition of community development to provide banks with additional clarity regarding the loans, investments, and services that the agencies have determined support community development. The agencies believe these activities are responsive to the needs of low- and moderate-income individuals and communities, designated distressed or underserved nonmetropolitan areas, Native Land Areas,[8] small businesses, and small farms. Specifically, the agencies have defined the following eleven community development categories in the final rule:

- Affordable housing, which has five components: (1) rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy; (2) multifamily rental housing with affordable rents; (3) one-to-four family rental housing with affordable rents in a nonmetropolitan area; (4) affordable owner-occupied housing for low- or moderate-income individuals; and (5) mortgage-backed securities.
- Economic development, which includes loans, investments, and services undertaken in conjunction or in syndication with government programs; loans, investments, and services provided to intermediaries; and other forms of assistance to small businesses and small farms. Unlike the proposal, this category includes direct loans to small businesses and small farms in conjunction or in syndication with government programs that meet a size and purpose test.
- Community supportive services, which includes activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, and replaces the current rule's "community services targeted to low- or moderate-income individuals" category.
- Six categories of place-based activities, which replace the revitalization and stabilization activities component of the current rule. Each of the final place-based categories adopts a focus on targeted geographic areas and includes common place-based eligibility criteria that must be met. The six place-based categories are:
  - Revitalization or stabilization activities;
  - Essential community facilities;
  - Essential community infrastructure;
  - Recovery activities that promote the recovery of a designated disaster area;
  - Disaster preparedness and weather resiliency activities; and
  - Qualifying activities in Native Land Areas.
- Activities with minority depository institutions (MDIs), women's depository institutions (WDIs), low-income credit unions (LICUs), and community development financial institutions (CDFIs).
- Financial literacy, which retains the proposed approach of qualifying activities assisting individuals, families, and households of all income levels, including low- or moderate-income individuals, families, and households.

Illustrative list and confirmation process. To promote clarity and consistency, the final rule also provides that the agencies will issue, maintain, and periodically update a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration. In addition, the final rule includes a process through which banks can confirm with the appropriate Federal financial supervisory agency whether a particular loan, investment, or service is eligible for community development consideration.[9]

Impact and responsiveness review. To promote clarity and consistency in the final rule, the agencies will evaluate the extent to which a bank's community development loans, investments, and services are impactful and responsive in meeting community development needs, through the application of a non-exhaustive list of review factors. Such factors were referred to as impact review factors in the agencies' proposal but are referred to as impact and responsiveness factors in the final rule.

Data Collection, Maintenance, and Reporting

Consistent with the proposal, the agencies are not imposing any new data collection and reporting requirements for small and intermediate banks. For large banks, the final rule leverages existing data where possible and introduces updated data collection, maintenance, and reporting requirements to fill gaps in the current regulation and facilitate implementation of the final rule. For example, the final rule requires certain large banks to collect, maintain, and report data that would enable the agencies both to implement the metrics and benchmarks included in the Retail Lending Test and Community Development Financing Test, and to evaluate activities under the Retail Services and Products Test. These data requirements are intended to support greater clarity and consistency in the application of the CRA regulations and are tailored by bank size, such as by introducing certain data requirements only for those large banks with assets over $10 billion dollars.

The final rule requires the agencies to publish on their respective websites certain information related to the distribution by borrower income level, race, and ethnicity of a large 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).[10]

Transition

Although the effective date of the final rule is April 1, 2024, the applicability date for the majority of the provisions is January 1, 2026. Specifically, the following provisions of the final rule will become applicable on January 1, 2026: final §§ ____.12 through ____.15; final §§ ____.17 through ____.30; final § ____.42(a); the data collection and maintenance requirements in final § ____.42(c) through (f); and appendices A through

[8] The final rule defines "Native Land Areas" in final § ____.12.

[9] The CRA defines "appropriate Federal financial supervisory agency" as (1) the Comptroller of the Currency with respect to national banks and Federal savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation); (2) the Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System, bank holding companies, and savings and loan holding companies; (3) the Federal Deposit Insurance Corporation with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the Corporation, and State savings associations (the deposits of which are insured by the Federal Deposit Insurance Corporation). 12 U.S.C. 2902(1).

[10] 12 U.S.C. 2801 *et seq.*

F. Banks will have until January 1, 2027, to comply with the reporting requirements of § ____.42(b) through (f), with data reporting requirements every April 1 beginning in 2027. In final § ____.51, the agencies have also included transition provisions relating to: applicability of the current CRA regulations; HMDA data disclosures; CRA consideration of eligible loans, investments, services, or products; strategic plans; and a particular ratings standard relating to minimum performance requirements applicable to large banks. Until the applicability dates for these provisions, banks will follow the current CRA regulations, included as appendix G to the revised CRA regulations.

Transition to Section 1071 Data

As discussed in the section-by-section analysis of §§ ____.12, ____.22, and ____.42, the agencies have included amendments to transition to the use of Consumer Financial Protection Bureau's (CFPB) final rule under section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[11] (Section 1071 Final Rule)[12] small business and small farm lending data (section 1071 data) once the data are available. The section 1071 data would replace CRA small business and small farm lending data required to be collected, maintained, and reported pursuant to final § ____.42(a)(1) and (b)(1).

With respect to the agencies' transition to using section 1071 data, as indicated in the section-by-section analysis of § ____.12, the agencies have removed proposed references to section 1071 data in the final rule's regulatory text. Instead, each agency is adopting separate agency-specific amendatory text that provides for a transition to section 1071 data. These transition amendments implement the intent of the agencies articulated in the proposal to leverage section 1071 data while accounting for the current uncertainty surrounding the availability of that data. Specifically, when effective, these transition amendments will add appropriate references to the section 1071 rulemaking, remove references to Call Report-based small business and small farm data, and make other corresponding changes to the final rule regulatory text.

The agencies are not including an effective date for these section 1071-related transition amendments in the final rule. Instead, once the availability of section 1071 data is clarified, the agencies will take steps to provide appropriate notice in the **Federal Register** of the effective date of the transition amendments. The agencies expect that the effective date will be on January 1 of the relevant year to align with the final rule's data collection and reporting, benchmark calculations, and performance analysis, which all are based on whole calendar years.

Implementation

The agencies expect to issue supervisory guidance, including examination procedures, to promote clarity and transparency regarding implementation of the final rule. In addition, the agencies will conduct outreach and training to facilitate implementation of the final rule. For instance, the agencies expect to develop data reporting guides and technical assistance materials to assist banks in understanding supervisory expectations with respect to the final rule's data reporting requirements. In addition, the agencies expect to develop templates, such as for the submission of digital and other delivery systems data as well as for responsive deposit products data, to increase consistency, and will continue to explore other tools to improve efficiency and reduce burden. The agencies are also planning to develop data tools for banks and the public that will increase familiarity with the operation of the performance tests and allow for monitoring of performance relative to benchmarks based on historical data.

Each of the topics highlighted through this *Summary of the Final Rule* are discussed in greater detail in the section-by-section analysis in section IV of this SUPPLEMENTARY INFORMATION. The agencies are setting forth in this SUPPLEMENTARY INFORMATION the final rule using common regulation text for ease of review. The agencies have also included agency-specific amendatory text[13] where necessary to account for differing agency authority and terminology.[14]

II. Background

A. General Statutory Background

The CRA was passed by Congress as part of the Housing and Community Development Act of 1977[15] and is designed to encourage regulated banks to help meet the credit needs of the 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 services as well as deposit services; and (3) regulated financial institutions have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[16]

The CRA 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.''[17] 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.''[18] 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.''[19]

Since its enactment, Congress has amended the CRA several times, including through: the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[20] (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991[21] (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (which permits the agencies to provide favorable consideration where the bank has donated, sold on favorable terms, or

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] 88 FR 35150 (May 31, 2023); *see also* 12 CFR part 1002.

[13] The OCC notes that current 12 CFR part 25 includes subpart E, Prohibition Against Use of Interstate Branches Primarily for Deposit Production. This subpart implements section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, 12 U.S.C. 1835a, which only applies to certain national banks and Federal branches of a foreign bank. As proposed, this final rule redesignates this subpart as subpart F but does not amend it.

[14] In addition to the changes described in this SUPPLEMENTARY INFORMATION, the agencies have made conforming and technical changes throughout the final rule. The agencies will evaluate at a later date other rules that cross-reference to the CRA regulations to identify conforming changes that may be appropriate.

[15] Public Law 95–128, 91 Stat. 1111 (Oct. 12, 1977).

[16] 12 U.S.C. 2901(a).

[17] 12 U.S.C. 2903(a)(1).

[18] 12 U.S.C. 2906(a).

[19] 12 U.S.C. 2903(a)(2).

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

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

made available rent-free any branch of the bank ''located in any predominantly minority neighborhood to any minority depository institution or women's depository institution''); [22] the Housing and Community Development Act of 1992 [23] (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and LICUs); the Riegle-Neal Interstate-Banking and Branching Efficiency Act of 1994 [24] (which (1) 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 (2) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999 [25] (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

Additionally, Congress directed the agencies to publish regulations to carry out the CRA's purposes.[26] In 1978, the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor as discussed further in the next section.[27] Since then, the agencies have together significantly revised and sought to clarify their CRA regulations twice—in 1995 [28] and 2005 [29]—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) [30] to provide guidance on the CRA regulations.

B. 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.[31] During this period Congress passed the Fair Housing Act [32] to prohibit discrimination in the sale or rental of housing,[33] and the Equal Credit Opportunity Act (ECOA) in 1974 [34] (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, and age, because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.[35] These fair lending, fair housing, and other similar laws provide the legal basis under Federal law for prohibiting discriminatory lending practices by creditors based on race, ethnicity, and other protected characteristics.[36]

The agencies have long recognized that CRA and fair lending are mutually reinforcing. For example, starting with the original CRA regulations issued in 1978, the agencies have taken evidence of discrimination or other illegal credit practices into account when evaluating a bank's CRA performance.[37] Other provisions in the original 1978 regulations similarly expressed the agencies' view that the exclusion of certain segments of a bank's community is ''contrary to'' and ''in conflict with'' the CRA's purpose of requiring banks to meet the credit needs of their entire communities.[38] Specifically, the agencies provided for ''assessment of an institution's lending patterns to see if the institution discriminates between geographic areas or excludes qualified borrowers from low- and moderate-income neighborhoods.'' [39] Factors identified as warranting unfavorable treatment were ''practices intended to discourage applications,'' evidence of ''violations of the Equal Credit Opportunity Act and the Fair Housing Act,'' and ''failure to provide usual services—such as not accepting mortgage applications—at certain branches.[40]

C. Overview of Current CRA Regulations and Guidance for Performance Evaluations

CRA Performance Evaluations

The current CRA regulations provide different methods to evaluate a bank's CRA performance depending on the asset size and business strategy of the bank.[41] Under the current framework:

- Small banks—currently, those with assets of less than $376 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 $376 million as of December 31 of both of the prior two calendar years and less than $1.503 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 at least $1.503 billion as of December 31 of both of the prior two calendar years—are evaluated under separate lending, investment, and

[22] Public Law 102–233, 105 Stat. 1761 (Dec. 12, 1991).

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

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

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

[26] 12 U.S.C. 2905.

[27] 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) (Dodd-Frank Act), 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.

[28] 60 FR 22190 (May 4, 1995).

[29] 70 FR 44268 (Aug. 2, 2005).

[30] *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.

[31] *See, e.g.,* Board, Gov. Lael Brainard, ''Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose'' (Jan. 8, 2020), *https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm* (''The CRA was one of several landmark pieces of legislation enacted in the wake of the civil rights movement intended to address inequities in the credit markets.''). *See also* 123 Cong. Rec. 17630 (1977) (statement of Sen. Proxmire) (discussing enactment of CRA and addressing banks taking deposits from a community without reinvesting them in that community).

[32] 42 U.S.C. 3601 *et seq.*

[33] 42 U.S.C. 3604 through 3606.

[34] 15 U.S.C. 1691 *et seq.*

[35] 15 U.S.C. 1691(a).

[36] *See* Federal Financial Institutions Examination Council (FFIEC), ''Interagency Fair Lending Examination Procedures'' (Aug. 2009), *https://www.ffiec.gov/pdf/fairlend.pdf.*

[37] *See* 43 FR 47144, 47146 (Oct. 12, 1978); current appendix A, paragraph (a)(1).

[38] *See* 43 FR 47144, 47146 (Oct. 12, 1978).

[39] *Id.*

[40] *Id.*

[41] *See generally* current 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 for Urban Wage Earners and Clerical Workers. The current bank asset-size thresholds set forth in this SUPPLEMENTARY INFORMATION are accurate through December 31, 2023.

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 purposes 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 financial supervisory agency.

The agencies also consider applicable performance context information to develop 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 communities.

Assessment Areas

The current CRA regulations require a bank to delineate one or more assessment areas in which the bank's record of meeting its CRA obligations is evaluated.[42] The regulations require a bank to delineate assessment areas generally consisting of one or more MSAs or metropolitan divisions, or one or more contiguous political subdivisions [43] in which the bank has its main office, branches, and deposit-taking ATMs, as well as the surrounding geographies (*i.e.,* census tracts) [44] in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as consumer loans on which the bank elects to have its performance assessed).

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.'' [45] The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because the agencies use assessment areas to determine what constitutes a bank's ''community'' for purposes of the evaluation of a bank's CRA performance.

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 (*e.g.,* home mortgage loans, small business loans, small farm loans, and consumer loans) [46] 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).[47]

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 must have a primary purpose of community development.[48]

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,[49] the Interagency Questions and Answers, interagency CRA examination procedures,[50] and interagency instructions for writing performance evaluations.[51]

D. Stakeholder Feedback and Recent Agency Rulemaking Efforts

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

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.[52] Stakeholders raised issues related to: assessment area definitions; incentives for banks to serve low- and moderate-income, unbanked, underbanked, and rural communities; regulatory burdens associated with recordkeeping and reporting requirements, and asset thresholds for the various CRA examination methods; the need for clarity regarding performance measures and better examiner training to ensure consistency and rigor in examinations; and refinement of CRA ratings methodology.[53]

OCC CRA Advance Notice of Proposed Rulemaking and OCC 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.[54] More than 1,500 comment letters were submitted in response. The

[42] *See* current 12 CFR ____.41.

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

[44] *See* current 12 CFR ____.12(k).

[45] 12 U.S.C. 2903(a).

[46] *See* current 12 CFR ____.12(j), (l), (v), and (w).

[47] *See generally* current 12 CFR ____.21 through ____.27; *see also* current 12 CFR ____.24(d).

[48] *See* current 12 CFR ____.12(g) through (i) and (t); *see also* current 12 CFR ____.21 through ____.27.

[49] *See, e.g.,* Board ''Search: Evaluations & Ratings (Federal Reserve Supervised Banks),'' *https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating*; FDIC, ''Community Reinvestment Act (CRA) Performance Ratings,'' *https://crapes.fdic.gov/*; OCC, ''CRA Performance Evaluations,'' *https://occ.gov/publications-and-resources/tools/index-cra-search.html.*

[50] *See, e.g.,* FFIEC, ''Community Reinvestment Act: CRA Examinations,'' *https://www.ffiec.gov/cra/examinations.htm.*

[51] *Id.*

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

[53] *See* 82 FR 15900 (Mar. 30, 2017).

[54] *See* 83 FR 45053 (Sept. 5, 2018).

OCC held more than 40 meetings and outreach events after its ANPR. To augment that input, the Board and the Federal Reserve Banks held about 30 outreach meetings with representatives of banks, community organizations, and the FDIC and OCC.[55]

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

On December 12, 2019, the FDIC and the OCC issued a joint notice of proposed rulemaking to revise and update their CRA regulations.[56] In response, the FDIC and the OCC received over 7,500 comment letters.

On May 2020, the OCC issued a CRA final rule (OCC 2020 CRA Final Rule), retaining the most fundamental elements of the joint proposal but also making adjustments to reflect stakeholder input.[57] The OCC deferred establishing the metrics-framework for evaluating banks' CRA performance until it was able to assess additional data,[58] with the final rule having an October 1, 2020, effective date and January 1, 2023, and January 1, 2024, compliance dates for certain provisions.[59]

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 the regulations to reflect the current banking landscape and better meet the core purpose of the CRA.[60] 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 in response.

Interagency Statement and Other Developments

On July 20, 2021, the agencies issued an interagency statement indicating their commitment to work collectively to, in a consistent manner, strengthen and modernize their CRA regulations.[61] On December 15, 2021, the OCC issued a final rule, effective January 1, 2022, 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. The OCC's final rule also integrated the OCC's CRA regulation for savings associations into its national bank CRA regulation at 12 CFR part 25.[62]

E. The Agencies' Proposal

Community development definitions. The NPR included a proposal to revise the community development definitions to clarify eligibility criteria for a broad range of community development activities and incorporate certain guidance currently provided through the Interagency Questions and Answers. The agencies also proposed using a *primary purpose* standard for determining eligibility of community development activities, with *pro rata* consideration for certain affordable housing activities.

Qualifying activities confirmation and illustrative list of community development activities. The agencies proposed to maintain a publicly available illustrative, non-exhaustive list of community development activities eligible for CRA consideration, which the agencies would periodically update. In addition, the agencies proposed a process, open to banks, for confirming eligibility of community development activities in advance.

Impact review of community development activities. To promote clearer and more consistent evaluation procedures, the agencies proposed to include impact and responsiveness factors (referred to in the NPR as impact review factors) in the regulation. The impact review factors would inform the agencies' evaluation of the impact and responsiveness of a bank's activities under the proposed community development tests.

Assessment areas and areas for eligible community development activity. The agencies offered a series of proposals on delineating facility-based assessment areas for main offices, branches, and deposit-taking remote service facilities (to include ATMs). The NPR sought to maintain facility-based assessment areas as the cornerstone of the CRA evaluation framework. 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 agencies also proposed that large banks would delineate retail lending assessment areas where the bank has concentrations of home mortgage and/or small business lending outside of its facility-based assessment areas. Under that aspect of the proposal, a large bank would delineate retail lending assessment areas where it had 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 agencies also proposed 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. The agencies proposed an evaluation framework that would include a Retail Lending Test, a Retail Services and Products Test, a Community Development Financing Test, and a Community Development Services Test. Under the proposal, large banks would be evaluated under all four tests. Intermediate banks would be evaluated under the Retail Lending Test and the status quo community development test, unless they opted into the Community Development Financing Test. Small banks would be evaluated under the status quo small bank lending test, unless they opted 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 proposed 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.[63] The agencies also

[55] 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*.

[56] 85 FR 1204 (Jan. 9, 2020).

[57] 85 FR 34734 (June 5, 2020).

[58] *See* OCC, News Release 2020–63, ''OCC Finalizes Rule to strengthen and Modernize Community Reinvestment Act Regulations'' (May 20, 2020), *https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-63.html*; *see also* 85 FR 34736.

[59] 85 FR 34784.

[60] 85 FR 66410 (Oct. 19, 2020).

[61] *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).

[62] 86 FR 71328 (Dec. 15, 2021).

[63] Of particular relevance to the agencies' CRA regulations, the SBA revised the size standards applicable to small commercial banks and savings

proposed adding a new definition of ''operations subsidiary'' to the Board's CRA regulation and ''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 (together, bank subsidiaries). The agencies proposed 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 NPR also discussed performance context, and the requirement for activity in accordance with safe and sound operations.

Retail Lending Test product categories and major product lines. The agencies proposed categories and standards for determining when a bank's retail lending product lines are evaluated under the proposed Retail Lending Test. The agencies proposed the following retail lending product line categories: closed-end home mortgage, open-end home mortgage, multifamily, small business, and small farm lending. The agencies also proposed including automobile lending as an eligible retail lending product line. In addition, the agencies proposed a 15 percent major product line standard to determine when a retail lending product line would be evaluated.

Retail Services and Products Test. The agencies proposed to evaluate large banks under the Retail Services and Products Test, which would use a predominantly qualitative approach, incorporating quantitative measures as guidelines, as applicable. The agencies proposed that the evaluation of digital and other delivery systems 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.

Furthermore, the credit products and deposit products part of the proposed Retail Services and Products Test aimed to evaluate a bank's efforts to offer products that are responsive to the needs of low- and moderate-income communities. The agencies proposed 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. The agencies proposed to evaluate large banks as well as intermediate banks that opt into the test under the proposed Community Development Financing Test. As proposed, 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. The agencies proposed 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 proposed 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 proposed 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. The agencies proposed a 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 facility-based assessment area and an institution level-metric measuring a bank's volume of activities relative to its capacity. The agencies also proposed 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. The agencies proposed to maintain a strategic plan option as an alternative method for evaluation. Banks that elect to be evaluated under a strategic plan would continue to request approval for the plan from their appropriate Federal financial supervisory agency. The agencies proposed more specific criteria to ensure that all banks meet their CRA obligation to serve low- and moderate-income individuals and communities. As proposed, banks approved to be evaluated under a 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 bank is substantially engaged in activities outside the scope of these performance 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 different standards would be more appropriate in meeting the credit needs of the bank's communities.

Assigned conclusions and ratings. The agencies proposed 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 would be mapped to conclusion categories to assign test-specific conclusions at each level. The agencies further proposed to combine these performance scores across tests to assign ratings at each level.

The agencies proposed to determine a bank's overall rating by taking a weighted average of the applicable performance test scores. For large banks, the agencies proposed 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 proposed to weight the Retail Lending test at 50 percent and the community development test, or if the bank opted into the Community Development Financing Test, at 50 percent.

The agencies also proposed 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. The agencies proposed to continue evaluating small banks under the small bank performance standards in the current CRA framework. However, under the proposal, small banks could opt into the

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 had a May 2, 2022, effective date. *See* 87 FR 18627, 18830 (Mar. 31, 2022).

Retail Lending Test and could continue to request additional consideration for other qualifying CRA activities. The agencies would evaluate intermediate banks under the proposed Retail Lending Test, and would 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. The agencies proposed no substantive changes to the regulatory provisions concerning the effect of CRA performance on bank applications, such as those for mergers, acquisitions, or consolidation of assets, deposit insurance requests, and the establishment of domestic branches.

Data collection, reporting, and disclosure. The agencies proposed 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 recognized the importance of using existing data sources where possible, and tailoring data requirements, where appropriate.

In addition to leveraging existing data, however, the proposal would have required large banks to collect, maintain, and report additional data. The data requirements under the proposal for intermediate banks and small banks would remain the same as the current requirements. All large banks under the proposal would have new requirements for certain categories of data, (including community development financing data, branch location data, and remote service facility location data); however, some new data requirements would only apply to large banks with assets of over $10 billion. The agencies also proposed updated standards for all large banks to report the delineation of their assessment areas.

Content and availability of public file, public notice by banks, publication of planned examination schedule, and public engagement. The agencies proposed to provide more transparent information to the public on CRA examinations and encourage communication between members of the public and banks. The agencies proposed 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 proposed 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 proposed to establish a way for the public to provide feedback on community needs and opportunities in specific geographies.

Transition. The agencies proposed a phased-in timeline that would facilitate the transition from the current regulatory and supervisory framework to the updated CRA regulatory and supervisory framework.

III. General Comments Received

The agencies received approximately 950 unique comment letters regarding the proposal from a wide range of commenters, including: financial institutions; non-financial institution and financial institution trade associations; CDFIs; financial and non-financial businesses; community development organizations; consumer advocacy groups; civil rights groups; other nonprofit organizations; Federal, State, local, and tribal government commenters; tribal organizations; academics; individuals; and other interested parties. The agencies have carefully considered all the commenter feedback in developing the final rule.

Comments received by the agencies cover a wide-ranging set of topics across the entire proposal. General public comments on the NPR are summarized below. Comments relating to specific regulatory provisions of the agencies' proposal and the final rule are discussed in detail in the section-by-section analyses of the specific provisions on which commenters shared their views.

A. General Comments Regarding the NPR

Modernizing the CRA performance evaluation framework. Many commenters expressed appreciation for the agencies' unified efforts to modernize the CRA framework. Some commenters noted support for the objective of providing transparency and consistency for banks covered by CRA and the communities they serve. In addition, several commenters, expressed support for various aspects of the NPR, including the proposal's metrics-driven approach and attention to climate resiliency.

Some commenters stated that while the agencies' proposal is a step in the right direction, more could be done to improve the CRA regulations, such as requiring the agencies to consult with a diverse set of community representatives when evaluating an institution's CRA performance. A few commenters also suggested that the final rule should encourage both meaningful action to help low- and moderate-income communities and collaboration between banks and financial technology (fintech) companies. Another commenter recommended that the agencies view the military community as a community deserving of CRA support. The commenter further stated that bank activities that serve the military community should generally receive CRA credit.

Other commenters opposed or expressed concerns about the proposal for various reasons, asserting that aspects of the NPR could result in, for example: decreased bank competition; undue burden and costs; less credit availability; gentrification of urban Black neighborhoods; and fewer services in low- and moderate-income communities.

Complexity of the proposed rule. Numerous commenters expressed concern that the agencies' proposal was too complex and difficult to understand—primarily related to the proposed performance test measures and ratings methodology requiring significant resources and costs to implement—and recommended that the agencies develop a simpler final rule to avoid unintended negative consequences. Some commenters recommended the agencies develop tools, guidance, and training for examiners and allow banks to consult with the agencies as needed.

Coordination of the CRA regulations with State and Federal agencies. A few commenters expressed concerns regarding the lack of coordination between the agencies, the CFPB, and the States and suggested the agencies work together with these other entities to improve consistency and further the mission of CRA. Other commenters noted that given shifts in the banking industry, the agencies should extend CRA regulations to nonbank lenders and, some commenters recommended, work with the CFPB to do so.

Length of the comment period and other rulemakings. Several commenters objected to the length of the comment period stating that it was too short and did not provide sufficient time for analysis and comment, with some commenters recommending that the agencies withdraw the proposal, issue a revised set of proposed rules, or open a new comment period. A few commenters suggested that the agencies should delay issuance of a final rule given uncertainty in the industry and the status of other rulemakings such as the CFPB's Section 1071 Final Rule and the agencies' separate rulemaking on capital requirements for certain banks.

Application of the proposed regulations to different business models. Some commenters expressed concern that the agencies' proposal did not address the needs of different business models and could create a one-size-fits-all approach that favors particular business models, which would not reflect the ever-changing banking landscape. These commenters indicated that the final rule should do more to recognize the inherently diffuse nature of digital banking and that more flexibility is necessary to account for different business models.

Promoting activities in local communities, including rural and underserved areas. Some commenters asserted that the NPR would be more effective in boosting reinvestment activity in underserved areas if the evaluations and ratings were more rigorous. Other commenters expressed concerns regarding the proposed use of metrics and certain data, suggesting that they could lead to disinvestment in hard to serve areas and overinvestment in urban areas due to the use of census data.

The agencies also received comments outlining different methods of promoting activities and investments at the local level, including specific recommendations: on how to promote investments in underserved rural and native communities; that the agencies should incentivize affordable small dollar loans and other products; and that the agencies should seek to end ''rent-a-bank'' partnerships.

A few other commenters suggested that the final rule should address the issue of appraisal bias to ensure lenders are fulfilling the needs of the communities they serve, and recommended that bank lenders should complete additional due diligence on the appraisers they work with.

The agencies also received several comments regarding the importance of performance context, suggesting that performance context and examiner discretion is necessary to understand the metrics embedded in the CRA exam.

Legal issues. Some commenters provided general comments raising legal concerns with the proposal. For example, some commenters stated that if the proposal is finalized as proposed, the final rule could be challenged as arbitrary and capricious because it was not supported by a reasoned analysis. Several commenters expressed the view that the agencies lack the authority to adopt the proposal. Finally, a commenter questioned the FDIC Board's authority to issue the NPR and to adopt a final rule based on certain aspects of the FDIC's organic statute and the FDIC Board's composition at the time the NPR was issued.

Other comments. The agencies also received suggestions about how the agencies could evaluate the impact of the final rule, including five-year lookback reviews and an impact study. Commenter feedback also included noting that performance evaluations should be published as soon as reasonably possible. Some commenters urged the agencies to expand the coverage of CRA to credit unions to ensure low- and moderate-income communities are adequately served.

Final Rule

The agencies have carefully considered the general commenter feedback regarding ways in which the NPR could be improved and believe the final rule strikes the proper balance between the stated objectives, including to update the CRA regulations to strengthen the achievement of the core purpose of the statute and adapt to changes in the banking industry. For additional discussion regarding the agencies' objectives, see section III.B of this **SUPPLEMENTARY INFORMATION**. The agencies also carefully considered commenters' concerns regarding the complexity of the proposed rule and have made modifications to various aspects of the final rule to reduce complexity as explained in more detail in section IV of this **SUPPLEMENTARY INFORMATION**. In addition, with respect to the Retail Lending Test, the agencies believe that the final rule ensures that CRA evaluations of retail lending are appropriately robust and comprehensive, provides greater consistency and transparency, and reduces overall complexity relative to the approach set out in the NPR. The agencies note that any evaluation approach leveraging metrics and benchmarks that captures the different ways that banks may serve the credit needs of an area will necessarily entail a degree of complexity.

The agencies appreciate commenter feedback that the military community should be considered a community deserving of CRA support. The agencies believe that the final rule encourages banks to meet the credit needs of military communities. For example, the final rule codifies ''military bank'' as a defined term in final § ____.12, and clarifies the assessment area and evaluation approach to military banks in final §§ ____.16(d) and ____.21(a)(5), respectively.[64] In addition, the agencies are specifying in final § ____.28(d) that violations of the Military Lending Act and Servicemembers Civil Relief Act may constitute discriminatory or other illegal credit practices that may adversely affect a bank's CRA performance. More generally, the agencies believe that many bank activities that serve the military community may receive community development consideration under the final rule. For further discussion of these provisions, see the section-by-section analyses of §§ ____.12, ____.16(d), ____.21(a)(5), and ____.28(d).

The agencies appreciate comments encouraging the agencies to coordinate with States, the CFPB, and other Federal regulators to improve consistency and efficiency of CRA examinations, and the agencies note that they currently, and will continue to, coordinate with other regulators when appropriate on CRA examinations. Further, the agencies are not able to extend the CRA regulations to cover nonbank lenders and credit unions. Such an expansion is outside the scope of this rulemaking and the agencies' current authority.

In response to comments regarding the length of the comment period, the agencies note that the NPR's comment period was 90 days, which is consistent with the requirements of the Administrative Procedure Act and provided sufficient time for public consideration and comment, as demonstrated by the number of detailed and thoughtful comments the agencies received on the proposal.

One of the objectives of the CRA proposal was to tailor performance standards to account for differences in bank size, business models, and local conditions. The agencies have carefully considered commenter feedback, and while the agencies believe the proposal provided flexibility to accommodate institutions with different business models, the agencies have made various changes in response to commenter feedback to provide additional flexibility in the final rule as outlined in the section-by-section analyses in section IV of this **SUPPLEMENTARY INFORMATION**. The agencies also note the final rule retains the strategic plan option for banks to adjust the performance tests or weighting based on their business model.

After carefully considering commenter suggestions on how to encourage reinvestment activity through rigorous evaluations and standards, the agencies are declining to adopt these specific commenter recommendations. The agencies believe the final rule's evaluation framework is appropriately rigorous and encourages reinvestment activity, while maintaining flexibility and allowing room for consideration of

[64] *See also* 12 U.S.C. 2902(4).

performance context. The agencies have considered the views from some commenters raising concerns on the potential negative impacts of the use of metrics and data in the proposal. As discussed further in section IV of this **SUPPLEMENTARY INFORMATION**, the agencies believe the use of metrics and data in the final rule is appropriately tailored to encourage, rather than deter, reinvestment in hard to serve areas. While the agencies appreciate commenters' suggestions on additional methods to encourage activities and investments at the local level, the agencies are declining to adopt these recommendations and believe the final rule adequately evaluates activities and investments in underserved and native communities. The agencies appreciate the comments highlighting the importance of performance context in CRA examinations, and the agencies are retaining the use of performance context in the final rule, as explained in the section-by-section analysis of § ____.21(d).

The agencies appreciate commenters' suggestions to address appraisal bias, and the agencies note that if such bias were found to evidence discrimination by an institution evaluated under CRA, the agencies may consider this as the basis for a downgrade as discussed in the section-by-section analysis of § ____.28.

The agencies believe that the NPR adequately explained the agencies' rationale for the proposed changes. The NPR contains detailed analysis of the current CRA regulations, the need for modernization, and an in-depth review of the proposed rule and alternatives the agencies considered, which are all supported by extensive data.

The agencies acknowledge that commenters provided general comments raising legal concerns with the proposal. The agencies note that the CRA authorizes the agencies to adopt regulations to carry out the purposes of the statute,[65] and 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 the bank.[66] The final rule furthers the purposes of the CRA and is consistent with the agencies' rulemaking authority. The agencies also considered the points raised by the commenter questioning the FDIC Board's authority but find no such impediment to adoption of the final rule. Legal issues concerning particular aspects of the proposal are discussed in the section-by-section analysis in section IV of this **SUPPLEMENTARY INFORMATION**.

In response to comments regarding lookback reviews, the agencies often do reviews of their examinations after implementation of revised or new rules. While the agencies will keep these recommendations in mind, the agencies are not committing to adopt such recommendations in a specific timeframe or through a specified method. Regarding the development of tools, including for small banks, as noted in section I of this **SUPPLEMENTARY INFORMATION**, the agencies expect to develop various materials for banks including data reporting guides, data reporting templates, and technical assistance to assist banks in understanding supervisory expectations with respect to the final rule's performance evaluation standards and data reporting requirements. The agencies will continue to explore other tools to provide transparent information to the public, improve efficiency, and reduce burden.

B. General Comments Regarding the Agencies' CRA Modernization Objectives

As noted in section I of this **SUPPLEMENTARY INFORMATION**, the agencies' updates to their CRA regulations in this final rule are guided by eight objectives. These objectives were set out in the NPR, and some general comments received on the objectives are summarized below. Throughout this **SUPPLEMENTARY INFORMATION**, the agencies provide additional information and discussion regarding the ways in which this final rule accomplishes the objectives, including in the section-by-section analysis in section IV.

The Agencies' Proposal, Comments Received, and the Final Rule

Strengthen the achievement of the core purpose of the statute. As provided for in the statute, the CRA states that ''[i]t is the purpose of this chapter to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.''[67] The CRA 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.''[68]

Commenter feedback on this objective included: support for updating the CRA regulations to achieve this purpose; that CRA modernization should result in a net increase in the quantity and quality of financial products and services available in low- and moderate-income areas; and, that the burden is on the agencies to demonstrate that modernization efforts would meet these baseline goals for reform. Additional commenter feedback included: that the sole criterion for extending CRA consideration to a business activity should be its direct, significant, and exclusive benefit to low- and moderate-income individuals; that by ignoring race during CRA exams, the agencies' proposal falls far short of this objective; and that to achieve the goal of serving communities with the greatest needs, the agencies must maintain a balance between the qualitative and quantitative aspects of the tests and, specifically, to align the twin tracks of CRA compliance and CDFI certification.

The agencies believe that the final rule updates the CRA regulations to strengthen the achievement of the core purpose of the statute. The agencies believe the final rule accomplishes this in various ways, for example, by: establishing a tailored and rigorous approach for the performance tests used to assess a bank's record of meeting the credit needs of its entire community; evaluating the responsiveness of certain bank's credit products and deposit products, including an impact and responsiveness review for community development activities; and including community development definitions that reflect an emphasis on activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities. With respect to a commenter's assertion that the agencies should not ignore race during CRA examinations, the agencies note that the final rule retains the conditions that facility-based assessment areas are prohibited from reflecting illegal discrimination and must not arbitrarily exclude low- or moderate-income census tracts. Additionally, banks' performance under the CRA can be adversely affected by evidence of discriminatory or other illegal credit practices, including violations of ECOA and the Fair Housing Act. The agencies also believe the final rule appropriately balances the qualitative and quantitative aspects of the performance tests by

[65] *See* 12 U.S.C. 2905.

[66] 12 U.S.C. 2903(a)(1).

[67] 12 U.S.C. 2901(b).

[68] 12 U.S.C. 2903(a)(1).

incorporating standardized metrics and benchmarks in several of the performance tests, and retaining the ability for the agencies to consider performance context.

Adapt to changes in the banking industry, including the expanded role of mobile and online banking. Many commenters expressed general support for this objective with several of these commenters noting that now is the time to update the CRA regulations, given advances in banking technology. A few of these commenters also stated that the CRA has not kept up with the way consumers expect to use technology to access financial products and services and that the current CRA regulations and guidance do not recognize the wide diversity in business practices of banks or the changes in the financial services industry that have occurred since the CRA was enacted in 1977.

While some commenters believed the agencies met this objective, particularly in response to the expanded role of mobile and online banking, other commenters did not believe the proposal sufficiently met the objective, noting: efforts to modernize the CRA regulations should account for current and future ranges of banking and financial service business models; the NPR emphasizes physical bank branches, which the commenter asserted will require the agencies to update the CRA rule once digital banking becomes more common; the proposal may adversely impact how banks are able to respond to innovations in the marketplace, explaining that banks should have the ability to comply with the letter and spirit of the CRA within their chosen business models; the agencies should request additional authority from Congress to maintain the integrity and vibrancy of the CRA; and, CRA modernization must recognize and address the critical importance of digital equity for creating opportunities and upward mobility for low- and moderate-income, minority, and rural communities. Also, a commenter stated that adapting to advances in banking technology should be the one and only objective of CRA reform, and that the other seven objectives can be accomplished within the current regulatory framework and through more effective examinations.

The agencies believe that the final rule takes into account changes in the banking industry. For example, evaluating retail lending outside of facility-based assessment areas accounts for current and future ranges of banking business models. The agencies also believe that the final rule strikes the appropriate balance by maintaining the importance of physical branches, while including consideration of digital and other delivery systems for large banks in recognition of the trend toward greater use of online and mobile banking. The section-by-section analysis provides additional discussion regarding the agencies' decision to maintain the importance of physical branches in this final rule. *See* section IV of this **SUPPLEMENTARY INFORMATION**.

Provide greater clarity and consistency in the application of the CRA regulations. Some commenters expressed general support for this objective, with a commenter stating, for example, that the CRA regulations and supervision have become overly complex and unpredictable. Another commenter asserted that the proposal promotes this objective by establishing a framework that would lead to many positive changes but asserted that certain revisions to the proposal are required to effectively meet the objective.

The agencies believe that the final rule meets this objective in several ways, including, for example, by clarifying eligibility requirements for community development activities, providing that the agencies will maintain a publicly available illustrative list of non-exhaustive examples of qualifying activities, and updating certain performance tests to incorporate standardized metrics, benchmarks, and thresholds and performance ranges, as applicable.

Better tailor performance standards to account for differences in bank size, business models, and local conditions, and better tailor data collection and reporting requirements and use existing data whenever possible. Commenter sentiments on this objective included support for tailoring the performance standards and data requirements of the final rule, as well as concerns that the agencies' proposal failed to meet these objectives. The agencies believe the final rule tailors the performance standards based on bank size, business models, and local conditions in multiple ways. For example, small banks may continue to be evaluated under the Small Bank Lending Test, unless they opt into the Retail Lending Test; and intermediate and large banks, which have more resources than small banks, will be evaluated under the Retail Lending Test. The final rule also tailors data collection and reporting requirements because, as further explained in the section-by-section analysis of § ____.42, the new data collection and maintenance requirements in the final rule do not apply to small and intermediate banks, and certain new requirements apply only to large banks with more than $10 billion in assets.

Promote transparency and public engagement. Commenter feedback on this objective included statements that the CRA regulations must enhance community participation so that CRA activity is tied to community needs, and concerns that the proposal may not expand community participation. The agencies believe the final rule advances this objective. For example, as explained in more detail in the section-by-section analysis of § ____.46, the final rule specifically provides a process whereby the public can provide input on community credit needs and opportunities in connection with a bank's next scheduled CRA examination. Further, the strategic plan provision provides an opportunity for the public to provide input on a bank's strategic plan. *See* the section-by-section analysis of § ____.27.

Confirm that the CRA and fair lending responsibilities of banks are mutually reinforcing. The agencies received an array of comments on this objective. Some commenters, for example, asserted that robustly enforcing current and future CRA requirements relating to race and ethnicity, in addition to other relevant Federal, State, and local laws and regulations, is essential to addressing racial and ethnic inequality. Many commenters asserted that greater coordination between CRA examinations and fair lending examinations is needed, including, for example, through development of a CRA examination racial discrimination assessment that would identify disparate trends, such as in marketing, originations, pricing and terms, default rates, and collections. In turn, these commenters indicated that any adverse findings from this assessment should trigger and support fair lending examinations. A few commenters indicated that such CRA discrimination assessments should include an affordability analysis and an analysis of the quality of lending for all major product lines that includes, for example, a review of delinquency and default rates. Other commenters asserted that, in CRA examinations, the agencies should assess whether banks employ discriminatory algorithm-driven models or other assessment criteria that disproportionately screen out low- and moderate-income and minority consumers. Additional commenters indicated that, likewise, when a fair lending examination is pending, appropriate CRA follow-up activity and corrective action must ensue once it has concluded.

Several commenters suggested incorporating additional information related to discrimination into banks' CRA examinations. In this regard, a few commenters noted that public information about fair lending examinations included in CRA performance evaluations has typically been cursory. Several commenters specified that the agencies should use race-based HMDA data and, once available, race-based section 1071 data as a screen in CRA examinations for fair lending reviews. Some commenters suggested that the agencies should consider evidence of discrimination obtained by State and local agencies.

On fair lending examinations specifically, commenter feedback included: that the agencies should bolster fair lending reviews accompanying CRA exams for banks that perform poorly in the HMDA data analysis of lending by race; that fair lending examinations should solicit and rely on feedback from all relevant Federal and State agencies, as well as community group stakeholders; that both section 1071 data and HMDA data by race should be utilized in bank fair lending examinations; that fair lending examinations should include a quantitative analysis of lending to minority individuals and communities and incorporate an analysis of access to services; and that disparate impact related to climate change should be incorporated into the existing fair lending supervisory framework.

The agencies reiterate their view that CRA and fair lending requirements are mutually reinforcing. Both regimes recognize the importance of ensuring that the credit markets are inclusive. Accordingly, and as noted above and discussed further in the section-by-section analysis of § ____.16, the final rule retains the provisions that delineations of a bank's facility-based assessment areas are prohibited from reflecting illegal discrimination and must not arbitrarily exclude low- and moderate-income census tracts. As discussed further in the section-by-section analysis of § ____.23, the agencies are specifying in the final rule that all special purpose credit programs under ECOA can be a type of responsive credit program. As discussed further in the section-by-section analysis of § ____.28, the agencies are also retaining the provision that allows downgrading a bank for discriminatory or other illegal credit practices. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in the final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.** Moreover, although the agencies appreciate suggestions to enhance the rigor of fair lending examinations, such examinations are outside the scope of this rulemaking. The agencies are nevertheless committed to upholding their regulatory responsibilities for both fair lending and CRA examinations, and the agencies will seek to coordinate those examinations where practicable.

Additionally, and in furtherance of the agencies' objective to promote transparency, as discussed in the section-by-section analysis of § ____.42(j), the final rule requires the agencies to provide additional information to the public for large banks related to the distribution by borrower income, 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 HMDA. As discussed in the section-by-section analysis of § ____.42(j), providing data about borrower and applicant race and ethnicity 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 provision of the final rule is intended to enhance the transparency of information available to the public.

Promote a consistent regulatory approach that applies to banks regulated by all three agencies. Commenter feedback on this objective included support for a coordinated interagency approach to CRA modernization and a unified CRA rule, with a commenter stating that the CRA's purpose is more fully realized when the agencies work in concert. Some commenters expressed support for coordination between Federal and State CRA regulatory requirements and between Federal and State agencies for CRA exams.

The agencies appreciate these comments, believe the final rule meets this objective, and will continue to coordinate their implementation of the final rule as appropriate.

C. General Comments Regarding the Consideration of Race and Ethnicity in the CRA Regulatory Framework

Comments Received

The agencies received many comments regarding consideration of race and ethnicity in the CRA regulatory and supervisory framework from a wide range of commenters. General comments on this topic are summarized below, in this section of the **SUPPLEMENTARY INFORMATION.** Furthermore, the agencies received comments regarding the consideration of race and ethnicity with respect to the agencies' proposed approach to an array of specific topics, such as: bank size categories;[69] assessment areas;[70] the Retail Lending Test;[71] the Retail Services and Products Test, including the consideration of special purpose credit programs;[72] affordable housing;[73] economic development;[74] activities with MDIs and CDFIs;[75] disaster preparedness and climate resiliency;[76] impact factors;[77] data on race and ethnicity in the CRA regulatory framework;[78] discriminatory or other illegal practices;[79] bank applications;[80] public files;[81] and public engagement.[82] The agencies have carefully considered this commenter feedback in developing the final rule.

Comments relating to specific regulatory provisions of the agencies' proposal and the final rule, referenced above, are discussed in detail in the section-by-section analyses of the specific provisions on which commenters shared their views. Those discussions cross-reference this section of the **SUPPLEMENTARY INFORMATION** where appropriate.

General comments. Many commenters providing input on the consideration of race and ethnicity under the CRA asserted that the agencies' proposal represented a missed opportunity to make racial equity a central focus of the CRA and to maximize what some commenters viewed as the statute's potential impact on advancing minority

[69] *See* the section-by-section analysis of final § ____.12 (asset size).

[70] *See, e.g.,* the section-by-section analysis of final § ____.16 (facility-based assessment areas).

[71] *See* the section-by-section analysis of final § ____.22 (Retail Lending Test), including the section-by-section analyses of final § ____.22(d)(1)(ii)(A)(*1*), (d)(4), and (e).

[72] *See* the section-by-section analysis of final § ____.23 (Retail Services and Products Test).

[73] *See* the section-by-section analysis of final § ____.13(b) (affordable housing).

[74] *See* the section-by-section analysis of final § ____.13(c) (economic development)

[75] *See* the section-by-section analysis of final § ____.13(j) (activities with MDIs, WDIs, LICUs, or CDFIs).

[76] *See* the section-by-section analysis of final § ____.13(i) (disaster preparedness/weather resiliency).

[77] *See* the section-by-section analysis of final § ____.15 (impact and responsiveness review).

[78] *See* the section-by-section analysis of final § ____.42(j) (HMDA disclosure).

[79] *See* the section-by-section analysis of final § ____.28(d) (conclusions and ratings).

[80] *See* the section-by-section analysis of final § ____.31 (effect of CRA performance on applications).

[81] *See* the section-by-section analysis of final § ____.43 (public file).

[82] *See* the section-by-section analysis of final § ____.46 (public engagement).

access to lending, investment, and services through the mainstream financial system. Most of these commenters stated that the CRA was enacted as a response to the history of redlining, other systemic discrimination, and structural racism, and that the agencies' current and proposed CRA regulations do not adequately address the need to advance racial equality, reduce racial wealth and homeownership gaps, and address intergenerational poverty in minority communities. In this regard, commenter feedback included that there has been little progress in closing the racial wealth gap since the enactment of the CRA, and that the racial wealth gap has actually worsened since that time. Commenter feedback also included that approximately 98 percent of banks pass their CRA examinations and that expanded consideration of race and ethnicity would be appropriate to increase the rigor of CRA examinations. Additional views included that the agencies should use the CRA to broaden access to credit for racial and ethnic minorities in much the same way that the statute has broadened access to credit for low- and moderate-income individuals and communities.

Some of these commenters also urged greater consideration of race in a modernized CRA evaluation framework due to racial inequality related to land use policies, and unjust and inequitable lending practices, all of which, these commenters indicated, have contributed to persistent disparities in home ownership rates, wealth accumulation, and educational and health outcomes for racial and ethnic minorities. In this regard, some commenters drew attention particularly to the lack of affordable housing opportunities for racial and ethnic minorities in metropolitan and rural communities alike. For instance, one commenter asserted that racial and ethnic minorities who are more likely to live in low-cost neighborhoods as part of the legacy of historical residential segregation and decades of discriminatory real estate practices are not adequately served due to unmet demand for low-cost housing, including but not limited to small-dollar home mortgage loans. In addition to the housing concerns, another commenter asserted that low-income minority communities disproportionately do not have access to the banking services and products that they need to build wealth, and further stated that not requiring banks to better address these needs leads to increased potential for predatory lending and reduced wealth in these communities. Some commenters also asserted that robustly enforcing current and future CRA requirements relating to race and ethnicity, in addition to other relevant Federal, State, and local laws and regulations, is essential to addressing racial and ethnic inequality.

A few commenters asserted that explicit consideration of race and ethnicity in the CRA evaluation framework would provide a buffer against displacement of minority consumers, which these commenters indicated leads to the loss of important local resources, such as healthcare and social services. In this regard, commenter feedback included: advocating for a greater focus on loans to minority consumers and not simply loans in minority communities, where the loans might be made largely to white consumers; an assertion that banks' lending practices in connection with minority consumers and minority communities were impacted by the lack of diversity among bank employees, particularly at senior and executive levels; an assertion that all banks should be positioned to work with non-English speaking consumers; and a recommendation that banks be given consideration for offering linguistically and culturally appropriate services and resources to consumers with limited English proficiency so that such consumers may access safe and affordable credit.

Some commenters suggested that the agencies adopt forms of quantitative analyses to consider race and ethnicity as part of CRA evaluations. For example, a commenter recommended that the agencies conduct periodic statistical analyses to identify areas where discrimination or ethnic and racial disparities in credit access exist. This commenter further recommended that in areas where significant disparities exist, the agencies should incorporate performance measures based on race and ethnicity into bank performance evaluations, with separate race- and ethnicity-based performance measures contributing to bank ratings on individual performance tests and overall.

On the subject of terminology, a commenter urged the agencies not to use the term ''minority'' in the CRA regulations but rather to use the term BIPOC (Black, Indigenous, and People of Color), which the commenter asserted better acknowledges different types of prejudice and discrimination.[83]

Comments on legal basis for express consideration of race and ethnicity in the CRA regulatory framework. Several commenters provided input supporting the permissibility of express consideration of race and ethnicity under the statute. Some of these commenters asserted that the CRA is a civil rights law and that, accordingly, the agencies have authority to expressly consider race and ethnicity in their CRA regulations to address redlining and other racial discrimination in banking. Moreover, several commenters stated that addressing racial inequities is a core ''remedial'' purpose of the CRA as part of a ''suite'' of laws enacted to address racial inequities in housing and credit. A few commenters pointed to the CRA's focus on encouraging banks to serve their ''entire community'' [84] suggesting that the agencies should therefore focus specifically on the minority constituencies who are part of the entire community in evaluating each bank's CRA performance. Another commenter provided legal analysis arguing that the agencies could incorporate express consideration of race and ethnicity in CRA regulations in various ways that the commenter stated were consistent with requirements applicable to race-based government action under the Equal Protection Clause of the U.S. Constitution. Relatedly, the commenter indicated that, to satisfy constitutional requirements and appropriately target the effects of discrimination, the agencies should conduct and periodically update a study to determine with specificity where, and regarding which financial products, discrimination continues to have an impact. Other commenters asserted that express references to race in the statute, such as the provision allowing investments with MDIs to count for CRA,[85] indicate that an explicit focus on race is within the purview of the CRA.

Conversely, a few commenters cautioned against expanding consideration of race and ethnicity in the CRA regulatory framework due to legal concerns. Some of these commenters expressed their perspective that the law is limited in its capacity to address racial equity, even though they view the CRA as a civil rights law and acknowledge that racial equity is central to equal opportunity, social cohesion, and prosperity. Another commenter

[83] The agencies acknowledge the commenter suggestion to use the term ''BIPOC'' throughout the final rule but are electing to use the term ''minority,'' which is used expressly in the CRA statute, and to clarify, where practicable, when the agencies intend to refer specifically to racial and ethnic minorities. *See* 12 U.S.C. 2907(b)(3).

[84] *See* 12 U.S.C. 2903 and 2906.

[85] *See, e.g.,* 12 U.S.C. 2903(b).

suggested that the CRA is a race-neutral law designed to combat race-based discriminatory policies and practices. Additionally, commenter feedback included that, although structural racism is a reality, incorporating racial equity into the CRA evaluation process could lead to both legal and practical issues and undermine the valuable contribution that CRA can make to low- and moderate-income consumers and communities.

Low-and moderate-income status and race. Many commenters advocating for greater consideration of race and ethnicity under the CRA indicated that, in addition to focusing on low- and moderate-income consumers and communities, the agencies should explicitly focus on minority consumers and communities. For example, a commenter asserted that racial discrimination will persist if income categorizations continue to be used to rate bank performance without considering race. Some commenters also noted that low- and moderate-income communities and minority communities are not the same, so closing racial wealth gaps requires express consideration of race. To illustrate this point, a commenter stated that about two-thirds of low-income communities are predominantly minority, but only about one-third of moderate-income neighborhoods are predominantly minority. Another commenter similarly indicated that nearly two-thirds of low- and moderate-income households are White, while nearly 40 percent of Black households and more than half of Hispanic households are not low- or moderate-income.

Consequently, many commenters urged that racial equity should be incorporated comprehensively into the agencies' CRA regulations, including through both incentives and affirmative obligations for banks to serve racial and ethnic minority consumers, businesses, and communities. Many of these commenters asserted that doing so would have a direct, positive impact on such minorities' economic inclusion, quality of life, and health outcomes. Closing the racial wealth gap, a commenter stated, would also make the U.S. economy substantially stronger. To facilitate the incorporation of racial equity into the CRA regulations, a commenter asserted that the agencies could employ the ''other targeted population'' framework already provided for in the Riegle Community Development and Regulatory Improvement Act's definition of ''targeted populations,'' which the commenter explained can include either individuals who are low-income or others who ''lack adequate access to Financial Products or Financial Services in the entity's Target Market,'' to include certain minority groups.

Final Rule

The agencies have considered and appreciate the many comments asserting that the agencies should incorporate additional regulatory provisions regarding race and ethnicity into the CRA regulatory and supervisory framework. These comments raise important and significant considerations about financial inclusion, discrimination, and broader economic issues. The agencies have carefully considered these comments, including those summarized in this section and in the section-by-section analysis of the final rule (*see* section IV of this **SUPPLEMENTARY INFORMATION**), as well as the statutory purposes and text of the CRA. The agencies have also assessed other relevant legal and supervisory considerations, including, in particular, the constitutional considerations and implementation challenges associated with adopting regulatory provisions that expressly address race and ethnicity when implementing statutory text that does not expressly address race or ethnicity. Based upon these considerations, the agencies have determined not to include additional race- and ethnicity-related provisions other than what is adopted in this final rule and discussed in more detail throughout this Introduction and section IV of the **SUPPLEMENTARY INFORMATION.**

The agencies believe that the final rule strengthens the CRA's emphasis on encouraging banks to engage in activities that better achieve the core purpose of the CRA, and thereby meet the credit needs of their entire communities, including low- and moderate-income individuals and communities. Relatedly, the agencies continue to recognize that the CRA and fair lending requirements are mutually reinforcing, including by specifying in the final rule that special purpose credit programs under ECOA can be a type of responsive credit program, and by reaffirming that violations of the Fair Housing Act and ECOA can be the basis of a CRA rating downgrade. As noted, for example, in section III.B of this **SUPPLEMENTARY INFORMATION**, the final rule also retains the current rule's prohibition against banks delineating facility-based assessment areas in a manner that reflects illegal discrimination or arbitrarily excludes low- and moderate-income census tracts, and provides that the CRA performance of banks that engage in discriminatory or other illegal credit practices can be adversely affected by such practices. For more information and discussion regarding how the final rule strengthens the achievement of the core purpose of the statute, and confirms that CRA and fair lending responsibilities are mutually reinforcing (*see* sections III.B and IV of this **SUPPLEMENTARY INFORMATION**).

IV. Section-by-Section Analysis

Section ____.11 Authority, Purposes, and Scope

Current Approach and the Agencies' Proposal

Current § ____.11 sets forth the authority, purposes, and scope of the CRA regulations. Paragraphs (a) and (c) of the section are agency-specific regulatory text, with paragraph (a) outlining the legal authority for each agency to implement the CRA and paragraph (c) providing the scope of each agency's CRA regulations. Common rule text in § ____.11(b) provides that this part implements the CRA by establishing the framework and criteria by which the agencies assess a 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; and providing that the agencies take that record into account in considering certain applications.

Consistent with the current rule, proposed § ____.11 sets forth the authority, purposes, and scope of the CRA regulations, with the authority and scope paragraphs (proposed § ____.11(a) and (c)) including agency-specific regulatory text. Proposed § ____.11(b) included technical, non-substantive edits to the current regulatory text, such as adding CRA's legal citation.

The OCC proposed to amend its authority section, § 25.11(a) by referencing part 25 in its entirety instead of each subpart, and by removing paragraph (a)(2), Office of Management and Budget (OMB) control number, as such information is unnecessary for regulatory text. The OCC also proposed technical edits to its scope section, § 25.11(c), to reflect the organization of the proposed common rule text.

The Board did not propose any amendments to its authority section, § 228.11(a), and proposed to amend its scope section, proposed § 228.11(c), to replace references to ''special purpose banks'' with ''exempt banks'' to avoid any potential confusion with the OCC's special purpose bank charter.

The FDIC proposed to amend its authority section, § 345.11(a), by removing paragraph (a)(2), OMB control number, as such information is unnecessary for regulatory text. The FDIC did not propose any amendments to its scope section in § 345.11(c).

Comments Received and Final Rule

The agencies did not receive comments specific to the language in proposed § ____.11(b) or the agency-specific language in proposed § ____.11(a) and (c). Therefore, the agencies are adopting § ____.11(b) as proposed, and the Board is adopting its agency-only provisions, paragraphs (a) and (c), as proposed.

The OCC adopts paragraph (a) as proposed, and paragraph (c) as proposed with technical edits. Specifically, the OCC has moved the definition of ''appropriate Federal banking agency'' in proposed § 25.11(c)(1)(iii) to final § 25.12 (Definitions), where it more appropriately belongs. As in the current rule and as proposed, ''appropriate Federal banking agency'' in the final rule means, with respect to subparts A (except in the definition of minority depository institution in § 25.12) through E and appendices A through G, the OCC with respect to a national bank or Federal savings association and the FDIC with respect to a State savings association.[86] In addition, the OCC has added Federal branches of foreign banks to paragraph (c)(1)(i), which lists the types of entities for which the OCC has authority to prescribe CRA regulations, to more accurately describe this authority. The OCC has also made minor technical edits to the listing of part 25 subparts in final paragraph (c).

The FDIC is adopting paragraph (a) as proposed and paragraph (c) with technical edits. In the proposed rule, the FDIC's paragraph (c)(2) maintained references to current § 345.41. The FDIC is adopting paragraph (c)(2) to reflect the final rule's new assessment area provisions. Thus, final paragraph (c)(2) provides that, for insured State branches of a foreign bank established and operating under the laws of any State, their facility-based assessment area and, as applicable, retail lending assessment areas and outside retail lending assessment area, are the community or communities located within the United States, served by the branch as described in § 345.16 and, applicable, §§ 345.17 and 345.18.

[86] Final subpart F of part 25, Prohibition Against Use of Interstate Branches Primarily for Deposit Production, applies only to certain national banks and Federal branches of a foreign bank and includes ''OCC'' instead of ''appropriate Federal banking agency.''

Section ____.12 Definitions

In proposed § ____.12 (Definitions), the agencies proposed many terms defined in the current CRA regulations, some with substantive or technical revisions. The agencies also proposed new definitions that the agencies considered necessary to clarify and implement proposed revisions to the CRA evaluation framework, some of which reflect understandings of terms long used in the CRA evaluation framework or that are consistent with the Interagency Questions and Answers.

The agencies received numerous comments on some of these definitions. These comments and the definitions as included in the final rule are discussed below.

Affiliate

Under the current CRA regulations, the term ''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 section 2 of the Bank Holding Company Act, 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.[87] The agencies proposed to retain their current definitions of ''affiliate,'' with the Board including one technical change to the definition in its regulation to add a reference to its bank holding company regulations, Regulation Y, 12 CFR part 225. Specifically, the Board proposed to define *affiliate* as 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. The FDIC and the OCC did not propose any revisions to the definition of ''affiliate'' in the agencies' respective CRA regulations.[88]

The agencies did not receive any comments on the proposed definitions of ''affiliate'' and adopt the definitions as proposed in the final rule. Accordingly, the Board is adopting the proposed definition of ''affiliate'' in the final rule, which will be contained solely in its CRA regulations. The FDIC and the OCC are retaining the current definition of ''affiliate'' in their respective CRA regulations, which define *affiliate* as 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.[89]

[87] *See* current 12 CFR ____.12(a).

[88] *See* current 12 CFR 25.12(a) (OCC) and 345.12(a) (FDIC).

Affordable Housing

The agencies proposed to add a definition of ''affordable housing'' to mean activities described in proposed § ____.13(b). *See* the section-by-section analysis of § ____.13(b) for a detailed discussion of affordable housing. The agencies did not receive any comments on the proposed ''affordable housing'' definition and adopt it as proposed in the final rule.

Area Median Income

The agencies proposed to retain the current definition of ''area median income,''[90] with one conforming change to replace the term ''geography'' with ''census tract,'' but keep the same meaning (see the discussion of ''census tract'' in § ____.12 of this section-by-section analysis).[91] Under the proposal, ''area median income'' would mean: (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.

The agencies did not receive any comments on the proposed ''area median income'' definition. However, the agencies are adopting the definition in the final rule as proposed with conforming and clarifying edits. First, in paragraph (1), the agencies have made a minor conforming change by replacing ''metropolitan statistical area (MSA)'' with ''MSA.'' Second, in paragraphs (1) and (2), the agencies have replaced the phrase ''if a person'' with ''if an individual, family, household.'' Third, in paragraph (1), the agencies have added the phrase ''that has not been subdivided into metropolitan divisions'' after ''located in an MSA'' to differentiate the first and second prongs of this paragraph. Fourth, in paragraph (2), as a conforming change, the

[89] *See id.*

[90] *See* current 12 CFR ____.12(b).

[91] *See* current 12 CFR ____.12(k) (defining ''geography'' to mean ''a census tract delineated by the United States Bureau of the Census in the most recent decennial census'').

agencies have replaced the phrase ''outside an MSA'' with ''in a nonmetropolitan area.'' Final § ____.12 defines ''nonmetropolitan area'' to mean any area that is not located in an MSA.

Accordingly, the final rule defines ''area median income'' to mean: (1) the median family income for the MSA, if an individual, family, household, or census tract is located in an MSA that has not been subdivided into metropolitan divisions, or for the metropolitan division, if an individual, family, household, or census tract is located in an MSA that has been subdivided into metropolitan divisions; or (2) the statewide nonmetropolitan median family income, if an individual, family, household, or census tract is located in a nonmetropolitan area.

Assets

The final rule includes a new definition for ''assets,'' not included in the proposal. This term means total assets as reported in Schedule RC of the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161, 324, 1464, or 1817, as applicable (Call Report), or as reported in Schedule RAL of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (Report of Assets and Liabilities), as filed under 12 U.S.C. 1817(a), 3102(b), or 3105(c)(2), as applicable. Although the agencies did not propose this definition, they have added it to the final rule to clarify the intended meaning of this term in the CRA regulations.

Assessment Area

The current CRA regulations define ''assessment area'' to mean a geographic area delineated in accordance with 12 CFR ____.41.[92] Current § ____.41 sets out the criteria for banks to delineate assessment areas. The agencies proposed to replace ''assessment area'' with three new terms in proposed § ____.12: ''facility-based assessment area,'' ''retail lending assessment area,'' and ''outside retail lending area,'' as these new terms are used in the proposal. These new definitions are discussed below. The agencies did not receive any comments concerning the removal of the ''assessment area'' definition and have removed this term in the final rule.

Bank

Under the current CRA regulations, the Board and FDIC have separate definitions for the term ''bank.'' Each agency defines ''bank'' to refer to the entities regulated by the agency for which the agency evaluates CRA performance. The FDIC and Board did not propose changes to the current definitions of ''bank'' in their respective CRA regulations and received no comments on their proposed definitions of ''bank.'' Accordingly, the final rule retains the current definitions of ''bank'' in the FDIC's and the Board's regulations.[93]

As such, for the FDIC, the term ''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 final § 345.11(c). The term ''bank'' also includes an insured State branch as defined in final § 345.11(c).

For the Board, the term ''bank'' means a State member bank as that term is defined in section 3(d)(2) of the FDIA (12 U.S.C. 1813(d)(2)), except as provided in final § 228.11(c)(3) and includes an uninsured State branch (other than a limited branch) of a foreign bank described in final § 228.11(c)(2). Accordingly, consistent with the Board's current CRA regulations, the term ''bank'' in final § 228.12 includes 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)). Also, generally consistent with the current CRA regulations, ''bank'' in final § 228.12 does not include 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.[94] This exception for banks that do not perform commercial or retail banking services aligns with the current CRA regulations, including that performing commercial and retail banking services solely ''on an accommodation basis'' will not qualify an entity as a ''bank.''

The OCC's current CRA regulation provides that ''bank or savings association'' means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28) with federally insured deposits or a savings association. Further, the OCC regulation provides that ''bank and savings association'' means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28) with federally insured deposits and a savings association.[95]

For clarity and conciseness, the OCC proposed separate definitions of ''bank'' and ''savings association,'' without changing the substance of the current definitions. The OCC received no comments on this technical change and adopts the definitions as proposed in the final rule. As a result, in the final rule, ''bank'' means a national bank (including a Federal branch as defined in part 28) with federally insured deposits, except as provided in § 25.11(c); and ''savings association'' means a Federal savings association or a State savings association.

Bank Asset-Size Definitions

Current Approach

Under the current CRA regulations, the agencies 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 $1.503 billion.''[96] The agencies defined ''intermediate small bank'' to mean ''a small bank with assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years.''[97] The agencies adjust these terms annually for inflation based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.[98] The current CRA regulations do not define the term ''large bank,'' but any bank with assets exceeding those defining an ''intermediate small bank'' is understood to be a large bank (otherwise referred to as a ''large institution'').

The Agencies' Proposal

The agencies proposed raising the asset-size threshold for the ''small bank'' definition to provide more clarity, consistency, and transparency in the

[92] *See* current 12 CFR ____.12(c).

[93] The agencies' definitions of ''bank'' are included in the agency-specific amendatory text, outside of the common rule text.

[94] *See* final § 228.12 (defining ''bank'' to exclude institutions described in final § 228.11(c)(3)). These institutions 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.

[95] *See* current 12 CFR 25.12(e). Pursuant to title III of the Dodd-Frank Act, and as described in footnote 2 of this **SUPPLEMENTARY INFORMATION**, the OCC's CRA regulation applies to both State and Federal savings associations, in addition to national banks. The FDIC enforces the OCC's CRA regulations with respect to State savings associations.

[96] The current asset-size threshold for a ''small bank'' reflects the annual dollar adjustment to the figures contained in current 12 CFR ____.12(u)(1). *See* current 12 CFR ____.12(u)(2).

[97] *See* current 12 CFR ____.12(u)(1).

[98] *See* current 12 CFR ____.12(u)(2).

evaluation process, and in recognition of the potential challenges associated with regulatory changes and data collection requirements for banks with more limited capacity. Under the proposal, a small bank would be 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 agencies also proposed to add a new definition for ''intermediate bank'' that would replace the current ''intermediate small bank'' definition. Under the proposal, intermediate bank would mean 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 agencies intended the proposed ''intermediate bank'' definition to comprise a category of banks that have meaningful capacity to engage in CRA-related activities under the proposed Retail Lending Test and conduct community development activities, but that might have more limited capacity regarding data collection and reporting requirements than large banks.

Finally, the agencies proposed to add a new ''large bank'' definition that would mean 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. This proposed definition reflects the agencies' view that banks of this size generally have the capacity to conduct the range of activities that would be evaluated under each of the four performance tests proposed to apply to large banks.

The agencies proposed to make annual adjustments to the asset-size thresholds for all three categories of banks based on the same CPI–W inflation measure used in the current CRA regulations for small and intermediate banks.[99]

As under the current CRA regulations, asset-size classification is relevant because it determines a bank's CRA evaluation framework. Consistent with the proposal, under the final rule, large banks are evaluated under the Retail Lending Test in final § ____.22, the Retail Services and Products Test in final § ____.23, the Community Development Financing Test in final § ____.24, and the Community Development Services Test in final § ____.25. Intermediate banks are evaluated under the Retail Lending Test in § ____.22, and either the current Intermediate Bank Community Development Test, in final § ____.30(a)(2),[100] or, at the bank's option, the Community Development Financing Test in final § ____.24.[101] Small banks are evaluated under the small bank lending test, in final § ____.29(a)(2),[102] or, at the bank's option, the Retail Lending Test in final § ____.22.

Comments Received

The agencies received numerous comments on the proposed ''small bank,'' ''intermediate bank,'' and ''large bank'' definitions. Given that the current and proposed definitions are interconnected, the agencies believe it is appropriate to discuss the comments collectively.

Many commenters expressed general support for the proposal to increase the asset-size thresholds for small, intermediate, and large banks. Many of these commenters indicated that the proposed thresholds are reasonable and would represent appropriate burden relief for banks that would qualify as small or intermediate banks under the proposed definitions. Several commenters stated that the proposed asset-size thresholds are appropriate to ensure that smaller banks with more limited staff and other resources are not subjected to the same performance expectations or data collection and reporting requirements as larger banks. Several other commenters supported the proposed asset-size thresholds based not only on other regulatory burden they anticipate under the proposal but also on the principle that community banks already experience significant regulatory burden unrelated to the CRA. Another commenter approved of the increased asset-size thresholds on the basis that they would permit smaller banks to expand to meet the needs of their communities without necessarily subjecting themselves to new CRA requirements that the commenter stated were likely to have onerous costs.

Many commenters specifically expressed support for increasing the asset-size threshold for a small bank to $600 million. These commenters noted that the asset-size threshold would apply to approximately the same percentage of banks as were classified as small banks when the agencies' amended their CRA regulations in 2005. Several other commenters explained that the asset-size threshold increases would be a timely and welcome adjustment because of changes in the banking industry and the unprecedented growth of bank balance sheets and excess liquidity that has resulted from Federal Government stimulus in response to the COVID–19 pandemic. Another commenter indicated that raising the asset-size threshold as proposed was a timely action on the part of the agencies due to recent trends in inflation that are beyond banks' control. One commenter stated that the current asset-size thresholds are too low and reflected prior conditions.

Many other commenters expressed opposition to the proposed asset-size threshold increases and advocated for the agencies to maintain the current thresholds. Some of these commenters stated that the proposed changes were inappropriate because reclassified banks would be subject to less rigorous performance standards and diminished agency oversight, which would minimize transparency and accountability and reduce those banks' CRA obligations and reinvestment. Other commenters noted that raising the asset-size thresholds would result in missed opportunities for reclassified banks to expand and improve their CRA activity under more rigorous performance standards. These commenters also asserted that the proposed changes to the asset-size thresholds are not justified because banks already perform successfully under the current, lower thresholds for small, intermediate small, and large banks.

Many commenters focused on the number of banks that would be reclassified into a smaller asset-size category and the adverse effect this reclassification could have on community development financing, with a few commenters stating that increasing the small bank asset-size threshold would reduce the amount of community development activity, especially in smaller and more rural communities. Some commenters highlighted the agencies' statement in the proposal that approximately 778 current intermediate small banks would be reclassified as small banks and 216 current large banks would be reclassified as intermediate banks.[103] These commenters expressed their belief that the reclassified banks would no longer be held accountable (or would

[99] *See* current 12 CFR ____.12(u)(2).

[100] In the proposal, the Intermediate Bank Community Development Test, referred to as the ''intermediate bank community development evaluation,'' is in proposed § ____.29(b).

[101] *See* final § ____.30(a)(1).

[102] In the proposal, the Small Bank Lending Test, referred to as the ''status quo small bank lending test,'' is in proposed § ____.29(a).

[103] *See* 87 FR 33884, 33924 (June 3, 2022).

be held accountable to a lesser degree) for community development financing activity. Many of these commenters suggested that this loss of accountability would cause significant reductions in community development financing, with some commenters citing estimated annual losses of $1 billion to $1.2 billion. These commenters argued that, if these forecasted losses in community development financing are remotely accurate, the change in asset-size thresholds would amount to a significant failure on the part of the agencies. Many commenters indicated that although the impact of reduced community development financing would be experienced in low- and moderate-income communities nationwide, the losses are likely to be most acute in less populated communities, such as rural, micropolitan, and small-town areas, where a substantial number of the reclassified banks are located. A few commenters specified that any loss of community development financing could adversely affect the availability of affordable housing and bank responsiveness to other important community needs.

Several commenters explained that reductions in community development financing as a result of asset-size threshold changes could adversely affect CDFIs by diminishing bank-CDFI relationships, and the flow of capital from banks to CDFIs—especially CDFIs located in smaller or rural communities. Noting that the agencies stated in the proposal that raising the asset-size thresholds would impact only two percent of bank assets in the banking system, some commenters indicated that a reclassified bank may be the only lender or one of a small number of banks with any presence in a geographic area.

Some commenters stated that reclassifying some current large banks as intermediate banks could negatively impact the availability of banking services in low- and moderate-income and rural communities because the proposed Retail Services and Products Test and Community Development Services Test would only apply to large banks. Several other commenters stated that reclassifying a large bank as an intermediate bank would effectively eliminate agency evaluation of applicable service considerations such as the operation of bank branches in their communities.

A few commenters expressed concerns about the impact of the agencies' proposal to revise asset-size thresholds on racial or ethnic minority communities. A commenter stated that a number of Black communities would be significantly adversely impacted by the reclassification of certain large banks as intermediate banks and certain intermediate small banks as small banks. The commenter asserted that these changes would reduce these banks' incentives to engage with Black communities, given the specific performance tests that would be applicable to small banks and intermediate banks under the agencies' proposal. Another commenter raised concerns that small banks and intermediate banks would not be subject to a retail services test. In the commenter's view, an evaluation of retail services is critical to ensure that bank branches are located in both low- and moderate-income communities and minority communities.

A few commenters stated that raising the large bank asset-size threshold could result in diminished bank investment in New Markets Tax Credits (NMTC) and other community tax credit investments given that, under the proposal, intermediate and small banks would not have corresponding community development requirements. These commenters also indicated that relieving banks of these requirements could negatively impact overall demand for community tax credit investments, for which the majority of investors are CRA-motivated banks.

Many of the commenters opposing the proposed asset-size threshold increases asserted that regulatory relief for banks was not a sufficient justification for changes that would adversely impact local communities. Several commenters argued that the potential burden on banks from being classified as a larger institution would not outweigh the need for accountability and equity. Another commenter indicated that the agencies did not produce estimates or data indicating that the proposed regulatory approach would be so prohibitively burdensome that significant increases in asset-size thresholds were necessary.

Several other commenters stated that the agencies' proposal should, at a minimum, provide for the same range of community development financing activity for all current intermediate small banks and large banks as under the current CRA regulations. A commenter asserted that the proposal goes backwards with no justification for how the reduction in compliance burden for banks reclassified as smaller banks would offset the loss of reinvestment activity from a public benefits perspective. Some commenters added that the impacted banks are engaging in community development under the current asset-size thresholds without any apparent deleterious impacts. Other commenters asserted that maintaining the current asset-size thresholds would be more consistent with the agencies' goal of strengthening the CRA framework.

A few commenters suggested that the current asset-size thresholds could remain in place and continue to be adjusted for inflation. A commenter indicated that, based on the application of inflation adjustments to the current asset-size thresholds, the proposed small bank asset-size threshold was too large in comparison. The commenter explained that if the agencies' proposed asset-size thresholds for small, intermediate, and large banks were adjusted for inflation, the asset-size thresholds would be approximately $375 million for small banks and approximately $1.5 billion for large banks.

A commenter opposed the proposed asset-size threshold changes on the grounds that the thresholds for intermediate and large banks are arbitrary and not based on any relevant data or analysis. The commenter also asserted that the proposed intermediate bank threshold is similarly unsupported and would subject reclassified intermediate banks to considerably increased compliance costs without commensurate benefit. Another commenter stated that the agencies did not provide documentation supporting the increase in the proposed asset-size thresholds.

Alternate asset-size thresholds. Many commenters recommended that the agencies adopt asset-size thresholds for small, intermediate, and large banks that are higher than those proposed. These commenters suggested asset-size thresholds of $750 million to $5 billion for intermediate banks and from $2.5 billion to $20 billion for large banks. Commenters asserted that higher asset-size thresholds are necessary to provide regulatory relief and limit the significant compliance burdens that the agencies' proposal would otherwise impose on smaller banks. A commenter stated that increasing the small bank asset-size threshold to $750 million would avoid placing unnecessary regulatory burden on smaller mission-driven institutions. Another commenter stated that regulatory burden considerations justified a variety of small bank asset-size thresholds of up to $3 billion. Another commenter stated that it lacked the financial and human resources to monitor performance under the proposed Retail Lending Test and requested a significantly higher asset-size threshold for large banks. Other commenters suggested asset-size thresholds for large banks ranging from $3.3 billion to $20 billion, based on compliance burden as well as inflation adjustments.

A few commenters specifically drew attention to smaller banks' resource capacities in advocating for higher asset-size thresholds. A commenter suggested an asset-size threshold of $750 million for small banks and an asset-size threshold of $3 billion for large banks based on resource capacity. Another commenter expressed support for a large bank asset-size threshold of $3 billion. Several other commenters recommended an asset-size threshold of $1 billion for small banks and an asset-size threshold of $5 billion for large banks to better reflect resource capacity and the ability to comply with the proposed performance test requirements. A commenter suggested that a $1 billion asset-size threshold for small banks would prove beneficial to many community banks located in rural areas with few low- and moderate-income census tracts. A few commenters suggested that asset-size thresholds of $1 billion and $10 billion for small and large banks, respectively, would better reflect bank capacity and compliance resource availability. Another commenter stated that an asset-size threshold cap on intermediate banks of $3 billion would be a better representation of the median large bank in its State and region. One commenter argued that setting the asset-size thresholds for small banks and intermediate banks at $1 billion and $3 billion, respectively, would provide significant regulatory relief for smaller banks and free up resources for the agencies to focus on the largest banks and banks with poor CRA performance. Similarly, another commenter stated that any bank with assets between $1 billion and $15 billion should be classified as an intermediate bank to reduce regulatory burden.

A commenter cited rapid growth in bank balance sheets due to bank consolidation and monetary and fiscal policy as reasons to further raise the small and intermediate bank asset-size thresholds, to a small bank threshold of $750 million and a large bank threshold of $2.5 billion. Another commenter cited similar reasons in support of a $1 billion asset-size threshold for small banks. Another commenter suggested a small bank asset-size threshold ranging anywhere between $2 billion and $5 billion and a large bank asset-size threshold of $10 billion due to the growth in bank balance sheets.

Further, some commenters stated that the asset-size thresholds should better reflect the distribution of small, intermediate, and large banks when these categories were originally established. Many commenters stated that, to maintain a similar percentage distribution of banks in the intermediate bank category to the distribution of intermediate small banks when that category was established in 2005, an intermediate bank should be any bank with assets between $600 million and $3.3 billion. Another commenter agreed that the agencies should attempt to maintain a similar percentage distribution of intermediate-sized institutions as in 2005. The commenter also indicated that a large bank threshold of $5 billion would likewise achieve this outcome. A different commenter suggested that any bank with assets between $1 billion and $5 billion should be categorized as an intermediate bank to adjust for inflation since the asset-size thresholds were originally set.

Some commenters noted that setting the intermediate bank asset-size threshold at $10 billion would serve to eliminate the proposal's distinction between two tiers of large banks.[104] For example, a commenter stated that a $10 billion asset-size threshold for large banks would eliminate the confusion associated with the agencies' proposal to designate two tiers of large banks in which only the largest large banks would have comprehensive data collection and reporting requirements. Another commenter suggested that the agencies create an additional ''large community bank'' evaluation tier for banks with $2 billion to $10 billion in assets; alternatively, the commenter suggested that the agencies expand the intermediate bank tier to banks with assets of $10 billion or less.

Similarly, several commenters stated that the agencies should consider raising the asset-size threshold for large banks because the proposal is based on an incorrect perception that a bank with assets slightly over $2 billion is the peer of a significantly larger regional bank with $50 billion in assets—or an even larger institution with a nationwide presence. A few commenters also noted that financial regulators often consider a bank with less than $10 billion in assets a ''community bank'' for supervisory purposes. A few other commenters concurred that banks with assets between $2 billion and $10 billion are typically considered to be community banks. Another commenter, recommending a large bank asset-size threshold of $5 billion, asserted that raising the asset-size threshold for large banks would minimize unfair comparison of larger intermediate-size institutions with significantly larger banks. One other commenter suggested raising the intermediate bank asset-size threshold so that more banks would have the option of being evaluated under the status quo community development test, as the agencies proposed for intermediate banks (referred to in the proposal as the intermediate bank community development evaluation).

A few commenters suggested that the agencies conform increased asset-size thresholds with other existing thresholds. A commenter stated that the agencies should set the asset-size threshold for small banks at $750 million to conform with the U.S. Small Business Administration's (SBA) size standard for small banks.[105] The commenter also stated that the asset-size threshold for intermediate banks should be increased to $2.5 billion, an amount that would more closely approximate the Board's threshold of $3 billion to distinguish between small and large bank holding companies. Several commenters stated that the small bank asset-size threshold should be $1 billion, to be consistent with the proposed definition of ''community bank'' in the 2012 FDIC Community Banking Study.[106] A few other commenters suggested that large banks should have assets of $10 billion or more to maintain consistency with regulatory definitions in the Dodd-Frank Act. Another commenter suggested that the agencies follow the National Credit Union Administration's (NCUA) position that institutions that it supervises are ''large'' when they have greater than $15 billion in assets.

Final Rule

The agencies considered commenters' concerns and recommendations related to the proposed asset-size thresholds. As a part of that process, the agencies observed that commenters did not coalesce around a particular asset-size framework that would address their respective concerns related to the proposed asset-size framework. In fact, the opposite was true, as commenters' recommendations as to how to structure the asset-size framework were varied and frequently unique. The agencies conclude that the myriad comments and recommendations reflect an absence of

[104] The proposed and final rule apply certain aspects of the final rule to large banks with assets greater than $10 billion. *See* the section-by-section analysis discussion of §§ ____.22 and ____.42.

[105] *See infra* note 113.

[106] *See* FDIC, ''Community Banking Study'' (Dec. 2012), *https://www.fdic.gov/resources/community-banking/report/2012/2012-cbi-study-full.pdf.*

consensus around an asset-size framework that would address all, or a majority of, the commenters' concerns. The agencies continue to believe that the proposed framework strikes the appropriate balance between recognizing the capacity differences between banks of varying size and maintaining a strong CRA evaluation framework that benefits communities served by banks of all sizes and capacities.

The agencies also considered commenter input that the proposed asset-size thresholds are arbitrary and not based on relevant data analysis. The agencies believe increasing the asset-size threshold for small banks to $600 million is appropriate based on an analysis of industry asset data, current CRA asset-size thresholds, supervisory experience with those thresholds, and bank asset-size standards employed by other agencies. First, as discussed in the proposal, the agencies analyzed Call Report and the FDIC's Summary of Deposits data to estimate how the proposed asset-size thresholds would redistribute banks throughout the proposed categories. The agencies estimated that the proposed change to the small bank asset threshold would result in approximately 778 banks, representing two percent of all deposits, transitioning from the current intermediate-small bank category to the proposed small bank category. The agencies further estimated that the proposed increase in the large bank asset-size threshold would result in approximately 216 banks representing approximately two percent of all deposits transitioning from the current large bank category to the proposed intermediate bank category.[107] The agencies communicated the findings of this analysis as a part of the proposal to ensure that the public was apprised of the potential redistribution of banks across the proposed framework.[108] Second, the agencies, over the multi-decade period since the CRA was enacted, have developed supervisory experience related to the asset-size thresholds and an understanding of the capacity of banks in each class of bank to engage in CRA activity, and incorporated that understanding into the consideration of the proposed asset-size thresholds. Based on this supervisory experience, the agencies calibrated the level of CRA requirements to bank size, consistent with the statutory purpose and the agencies' objective of encouraging banks to meet the credit needs of their communities. Third, the agencies considered adopting the SBA's ''small bank'' definition, but ultimately elected to adopt the $600 million asset-size threshold because it is better aligned with the CRA's policy goals, and the agencies believe that banks with assets between $600 and $850 million have the capacity to engage in community development activity.

The agencies believe that the asset-size framework in the final rule strengthens the agencies' implementation of the CRA statute and furthers the CRA statute's emphasis on assessing the records of banks of all asset sizes in meeting the credit needs of their entire communities, including low- and moderate-income neighborhoods. The final rule also implements the CRA statutory provisions that focus specifically on MDIs, WDIs, and LICUs.[109] As discussed above, CRA and fair lending laws such as ECOA and the Fair Housing Act are mutually reinforcing. Specifically, under the CRA, the agencies assess banks' records of helping meet the credit needs of the entire community,[110] while fair lending laws serve to identify and address lending discrimination for protected classes, such as race and ethnicity.

Under the final rule, intermediate banks and small banks may receive additional consideration at the institution level for activities with MDIs, WDIs, and LICUs, which, as noted, reflects CRA statutory provisions. For example, under the final rule a small or intermediate bank can receive consideration for a capital investment, loan participation or other venture with an MDI. An intermediate bank or small bank that opts into the Retail Services and Products Test may receive CRA consideration for bank credit products and programs that are conducted in cooperation with MDIs and Special Purpose Credit Programs as examples of credit products and programs that are responsive to the needs of the communities in which the bank operates, including the needs of low- and moderate-income individuals, families, and households; small businesses; and small farms. The final rule also retains the current prohibition against banks, including intermediate banks and small banks, delineating facility-based assessment areas in a manner that reflects illegal discrimination or that arbitrarily excludes low- and moderate-income census tracts; and retains the current provision regarding discriminatory or other illegal credit practices that can adversely affect a bank's CRA performance.

Further, both intermediate banks and small banks continue to have retail lending requirements. Under the final rule, intermediate banks are evaluated under the Retail Lending Test in final § ____.22, and either the Intermediate Bank Community Development Test in final § ____.30(a)(2) or, at the bank's option, the Community Development Financing Test in final § ____.24.[111] Likewise, under the final rule, small banks are evaluated under the Small Bank Lending Test, in final § ____.29(a)(2) or, at the bank's option, the Retail Lending Test in final § ____.22.[112]

Additional bank asset-size categories. A few commenters suggested that the agencies create a new category for banks with assets much higher than the proposed $2 billion large bank asset-size threshold and apply the most demanding performance tests or data reporting and collection requirements solely to those banks. According to commenters, including a category for the largest banks would help the agencies to better tailor CRA requirements for smaller large banks. A commenter explained that the agencies could impose the most demanding requirements on ''super large'' banks with greater than $50 billion in assets. Similarly, another commenter suggested the creation of a ''mega bank'' category for banks with assets greater than $100 billion on which the agencies could impose unique performance test structures and standards. Another commenter questioned why the agencies did not apply the large bank requirements exclusively to banks with greater than $100 billion in assets, a decision that according to the commenter, would capture 75 percent of total industry assets. One other commenter recommended that the agencies combine the proposed intermediate bank and large bank categories, so that there would only be categories for small and large banks in the final rule.

The agencies considered the commenters' concerns but are not adopting additional asset-size categories

[107] The agencies based these estimates on average assets from 2020 and 2021 Call Report data and the FDIC's 2021 Summary of Deposits data. These statistics included some banks with no CRA obligations, such as banker's banks.

[108] *See* 87 FR 33884, 33924 n. 162 (June 3, 2022).

[109] *See* 12 U.S.C. 2903(b) and 2907(a).

[110] For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION**.

[111] *See* the section-by-section analysis of final § ____.30.

[112] *See* the section-by-section analysis of final § ____.29.

for banks with assets significantly greater than the proposed asset-size threshold for large banks—*e.g.,* ''super large'' or ''mega bank'' categories for institutions with assets over $50 billion and $100 billion, respectively. Applying certain aspects of the large bank performance test only to very large banks in the manner suggested by commenters would reduce the number of banks subject to certain aspects of the performance tests and could thereby discourage CRA activity by some banks. Similarly, the agencies did not adopt commenters' suggestion to eliminate the intermediate bank category in the final rule. The agencies believe that the three size categories of banks in the final rule effectively balance bank capacity with the obligation of a bank to meet the needs of its community. Removing an asset-size category would reduce tailoring of the CRA performance tests based on bank capacity. Depending on which asset-size category were removed, for example, more banks might be classified as small banks, potentially countering the agencies' goal of encouraging banks with a meaningful capacity to engage in community development activities, or more performance tests would apply to banks that potentially lack the capacity to meet those tests' parameters, increasing regulatory burden.

SBA size standards for small banks. The agencies specifically requested feedback on whether they should adopt an asset-size threshold for small banks that differs from the SBA's then small bank asset-size standard of $750 million.[113] Several commenters supported the agencies conforming to the SBA's small bank asset-size standard, with some specifically stating that consistency across Federal agencies should be maintained wherever possible. In contrast, some commenters found the SBA's small bank asset-size standard of $750 million too high, for the same reasons provided by commenters who found the proposed size standards of $600 million too high, as discussed above.

The agencies recognize that consistency across Federal agencies is generally desirable, but the agencies believe that deviating from the SBA's small bank asset-size standard is appropriate to meet the CRA's statutory purpose. In particular, applying the SBA's $850 million small bank asset-size standard in the CRA framework would significantly increase the number of banks that would be classified as small banks. This might, in turn, result in less community development activity relative to the current CRA regulations or proposal because fewer banks would be evaluated under the status quo community development test.[114] Such a development would be counter to the CRA statute's purposes and the agencies' CRA modernization objectives.

Inflation adjustments to asset-size thresholds. Several commenters expressed support for the agencies' proposal to adjust the asset-size thresholds for small, intermediate, and large banks annually for inflation. However, a few commenters expressed concerns. A commenter stated that, although the proposed inflation adjustments may seem reasonable, they could have the unintended consequence of decreasing investments in low- and moderate-income communities when banks are reclassified to a smaller asset-size category. A few other commenters stated that inflation adjustments tied to the CPI–W do not take into account major changes, including consolidation, that have occurred in the banking industry over the past decade.

The agencies considered the commenters' feedback and elected to maintain the proposed annual inflation adjustment methodology in the final rule. The agencies believe the proposed methodology, whereby asset-size thresholds would be adjusted annually for inflation based on the annual percentage change in the CPI–W, is preferable due to its alignment with the current CRA regulations' annual inflation adjustments to the asset-size thresholds. With respect to commenters' concerns about unintended consequences associated with banks moving into lower asset-size categories, the agencies recognize that this is a potential outcome associated with employing an annual inflation adjustment to the asset-size thresholds. However, the agencies believe the benefits of employing an annual inflation adjustment mechanism outweigh this concern, because it mitigates the risk of needing to employ large or unpredictable increases to realign the asset-size thresholds with conditions in the banking industry. Further, utilizing *ad hoc* adjustments to the asset-size thresholds, which would be less predictable and less stable, could mean more movement of banks from one size category to another from year-to-year, which inherently creates uncertainty for banks and stakeholders. Moreover, if the agencies declined to include an annual inflation adjustment mechanism, a scenario could develop where institutions would graduate into higher size categories due to inflation regardless of whether their financial condition or capabilities to engage in CRA activity have changed. Finally, the agencies note that the annual asset-size threshold adjustment methodology is not designed to account for industry changes such as consolidation. Rather, the methodology is designed to ensure that the asset-size thresholds evolve with economic conditions.

Asset-size threshold alternatives. A few commenters cautioned against the agencies placing too much reliance on asset-size thresholds to determine which performance tests apply to a particular bank. These commenters stated that the agencies should consider various factors such as a bank's business model, risk profile, areas of specialization, communities served, assessment area sizes, presence in an assessment area, staffing levels, and technology limitations. A few other commenters suggested that, under an ''alternate prong'' in the large bank definition, the agencies should designate a bank as a large bank if it makes a certain amount of loans in an evaluation period, even if its asset size would otherwise qualify it as a small or intermediate bank. These commenters asserted that this alternate prong would account for situations where a bank claims to be the ''true lender'' for loans that it makes with support from a third party.

The agencies considered commenter feedback that the final rule should include alternative formulations to determine which performance tests apply to a bank. The agencies believe that alternative formulations for the baseline determination of which performance tests apply to a bank, including adding factors such as risk

[113] The SBA's applicable asset-size standards are set forth in 13 CFR 121.201, Sector 52—Finance and Insurance, Subsector 522—Credit Intermediation and Related Activities (specifically, North American Industry Classification System (NAICS) codes 522110 and 522180). At the time of the proposed rule's publication date, the SBA's small bank asset-size threshold was $750 million. The SBA revised this asset-size standard, as of December 19, 2022, from $750 million to $850 million in assets, determined by averaging the assets reported on the depository institution's four quarterly financial statements for the preceding year. *See* 87 FR 69118, 69128 (Nov. 17, 2022).

[114] Based on an analysis of current bank size characteristics, the agencies estimate that the $600 million small bank asset-size threshold would result in approximately 609 banks that are required to comply with the CRA rule—representing approximately 13 percent of all banks—transitioning to the small bank category. However, if the agencies were to incorporate an $850 million asset-size standard in the CRA regulations, the agencies estimate that this would lead to approximately 957 current intermediate small banks that are required to comply with the CRA rule, representing approximately 21 percent of all banks, transitioning from the current intermediate small bank category to the small bank category. Estimates are based on year-end assets from 2021 and 2022 Call Report data.

profile, areas of specialization, technology limitations, and others, would increase the complexity of the final rule and its administration without meaningfully furthering the agencies' CRA objectives. Therefore, the agencies are maintaining asset size as the sole factor for purposes of categorizing most institutions in the final rule. However, as discussed throughout this **SUPPLEMENTARY INFORMATION**, the agencies have incorporated performance context information into performance test metrics and benchmarks, as well as express consideration of qualitative factors in evaluating a bank's performance, which include, among others, business model.[115] In addition, the agencies have retained a distinct evaluation approach for limited purpose banks,[116] as well as the option for banks to be evaluated under a strategic plan.[117]

Asset-size threshold calculations. A commenter requested clarification regarding how the agencies propose to determine a bank's asset size. The commenter noted that the proposal defines a small bank as 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 commenter requested that the agencies clarify whether a bank must have average assets of less than $600 million at each quarter-end versus the current method that considers year-end values.

After considering this comment, the agencies have decided to retain the asset-size calculation methodology in the current CRA regulations, which provides that asset size is calculated as of the end of a calendar year without reference to quarterly Call Report figures.[118] This methodology is simpler than the proposed formula, it is widely understood,[119] and retaining it will minimize complexity in the final rule.

For the reasons discussed above, the agencies are adopting the proposed definitions of ''small bank,'' ''intermediate bank,'' and ''large bank'' in the final rule, with two substantive changes. First, the agencies are adding the clause, ''excluding a bank designated as a limited purpose bank[120] pursuant to § ____.26,'' to each of the three definitions to clarify that a bank designated as a limited purpose bank that also falls into one of the asset-size categories is evaluated as a limited purpose bank and not a small, intermediate, or large bank, with the attendant requirements of the performance tests that would otherwise be applicable to such a bank.[121] Second, the agencies have changed the asset-size calculation methodology to reflect assets held at year-end, instead of at each quarter-end, as proposed. The agencies have also made minor technical wording changes.

Accordingly, in the final rule, ''small bank'' means a bank, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of less than $600 million as of December 31 in either of the prior two calendar years. ''Intermediate bank'' means a bank, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of at least $600 million as of December 31 in both of the prior two calendar years and less than $2 billion as of December 31 in either of the prior two calendar years. ''Large bank'' means a bank, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of at least $2 billion as of December 31 in both of the prior two calendar years. For all three definitions, the agencies adjust and publish the asset-size thresholds annually, based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

As indicated above, and in the proposal, the agencies believe that these asset-size thresholds appropriately balance the agencies' objectives of meeting the CRA's purpose of encouraging banks to meet the credit needs of their communities and recognizing differences in bank capacity based on asset size.

In accordance with the Small Business Act[122] and its implementing regulations,[123] the agencies sought and received approval from the SBA to deviate from the SBA's asset-size standard applicable to small depository institutions—*i.e.,* small banks.

Branch

Current Approach and the Agencies' Proposal

The agencies proposed to update the current definition of ''branch'' without materially changing the substantive meaning of this term. The current CRA regulations define ''branch'' to mean a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.[124] Under the proposal, ''branch'' would mean a staffed banking facility, whether shared or unshared, that is approved or authorized as a branch by the appropriate Federal financial supervisory agency and that is open to, and accepts deposits from, the general public.

As noted in the proposal, the agencies did not intend for the removal of the list of examples from the definition to change or narrow the meaning of the term ''branch'' and believed that these examples did not fully reflect the breadth of shared space locations that might exist, particularly as new bank business models emerge in the future. In addition, the agencies proposed to add the language ''open to, and accepts deposits from, the general public'' to the definition of ''branch'' to underscore that this definition would capture new bank business models, with different types of staffed physical locations, when those locations are open to the public and collect deposits from customers. Similarly, the agencies added that a branch must be approved or authorized as a branch by the agency to clarify that the agencies have varying processes for branch designation and that the name that a bank assigns to a facility is not determinative of whether an agency considers it a ''branch'' for CRA purposes. The agencies did not view these revisions as a change from the current standards.

For the reasons stated below, the agencies are adopting the proposed definition of ''branch'' in the final rule.

Comments Received

The agencies received several comments concerning the proposed definition of ''branch.'' A commenter recommended that the agencies adopt a

[115] *See, e.g.,* final §§ ____.21(d) and ____.22(g) and the accompanying section-by-section analyses.

[116] *See* final §§ ____.12 (definition of ''limited purpose bank'') and ____.26 and the accompanying section-by-section analyses.

[117] *See* final § ____.27 and the accompanying section-by-section analysis.

[118] As a result of retaining the current year-end asset-size calculation, the agencies estimate that the number of small banks will decrease from 3252 (NPR asset-size calculation methodology) to 3219 banks, the number of intermediate banks will increase from 883 (NPR asset-size calculation methodology) to 889, and the number of large banks will increase from 492 (NPR asset-size calculation methodology) to 519. Numbers are for banks that are required to comply with the CRA regulation; estimates are based on year-end assets from 2021 and 2022 Call Report data.

[119] *See* current 12 CFR ____.12(u)(1).

[120] As discussed below, in the definition of ''limited purpose bank,'' the agencies have combined limited purpose banks and wholesale banks into one category, ''limited purpose banks.''

[121] For limited purpose bank evaluations, see final §§ ____.21(a)(4) and ____.26 and the accompanying section-by-section analyses.

[122] 15 U.S.C. 632(a)(2)(C).

[123] 13 CFR 121.903.

[124] *See* current 12 CFR ____.12(f).

flexible definition of ''branch'' that can adjust with changes in the industry. Other commenters offered views on what the agencies should and should not consider a branch for purposes of delineating a facility-based assessment area. A commenter requested that the agencies clarify whether the proposed definition of ''branch'' (and ''remote service facility,'' discussed below) would include a financial institution taking deposits at a school or community organization facility. Another commenter recommended stating explicitly, either in the regulation or in guidance, that a staffed physical location in a shared space in which a financial institution has partnered with a nonprofit organization is a branch. This commenter also suggested that the agencies specify that any examples of shared physical locations in the regulation are illustrative and not exhaustive. Another commenter requested that a trust office be specifically excluded from the definition of ''branch'' if the office is not open to or does not accept deposits from the general public.

Final Rule

After reviewing the comments received on this definition, the agencies are adopting the definition of ''branch'' as proposed. Accordingly, ''branch'' means a staffed banking facility, whether shared or unshared, that the appropriate Federal financial supervisory agency approved or authorized as a branch and that is open to, and accepts deposits from, the general public. The agencies believe the proposed definition of ''branch'' provides adequate flexibility to adapt to the continuous evolution of the banking industry by relying on the agencies' authority to approve and authorize branches. As the banking industry evolves, the agencies have the authority to adjust their rules, regulations, and guidance to accommodate industry developments.

The agencies decline to opine on whether the scenarios presented by the commenters would qualify as a branch under the definition, because branching decisions are analyzed on a case-by-case basis and subject to the agencies' respective statutory authority, regulations, and guidance, which may be modified in the future and render some or all of the examples contained in the list inaccurate.

The agencies do not believe that trust offices that are not open to the public or do not accept deposits from the general public need to be explicitly excluded from the definition of ''branch,'' because a trust office exhibiting those characteristics would likely not satisfy the elements of the definition of ''branch'' in the final rule. However, as discussed above, branching decisions are fact-specific inquiries, so the agencies are not opining on whether trust offices are generally excluded under the definition of ''branch'' in the final rule.

Census Tract

The current rule defines ''geography'' to mean a census tract delineated by the U.S. Bureau of the Census in the most recent decennial census.[125] To simplify and clarify the CRA regulations, the agencies proposed to use the term ''census tract'' in place of the term ''geography,'' without changing the substantive meaning. As proposed, ''census tract'' would mean a census tract delineated by the U.S. Census Bureau in the most recent decennial census. In addition, the agencies proposed to substitute the word ''census tract'' for the word ''geography'' wherever ''geography'' appears in the regulatory text.

The agencies did not receive any comments concerning the proposed ''census tract'' definition and are adopting the definition as proposed with one change. The agencies are removing the phrase ''in the most recent decennial census'' from the definition in the final rule to conform this definition to current agency practice. The U.S. Census Bureau periodically updates census tract boundaries and numbering during the years between decennial censuses, and the Federal Financial Institutions Examination Council (FFIEC) compiles these changes to provide one update between decennial censuses, after five years. Under current practice, the agencies have been using the census tract boundaries and numbering posted on the FFIEC website. This practice balances between the benefit of using updated census tract definitions between decennial censuses and the benefit of having a substantial period of stability (five years) between adjustments to census tract delineations and numbering. The agencies believe that the revised definition would allow for the current practice of using inter-decennial changes to census tract delineations, which would not be possible under the proposed language because the definition would be confined to the census tract delineations included in the decennial census.

Accordingly, the final rule defines ''census tract'' to mean a census tract delineated by the U.S. Census Bureau.

The U.S. Census Bureau publishes census tract data and information at *census.gov.*[126]

Closed-End Home Mortgage Loan

For a discussion of the definition of ''closed-end home mortgage loan,'' see the discussion below for *Mortgage-Related Definitions.*

Combination of Loan Dollars and Loan Count

To provide clarity and consistency, and to simplify the text of the CRA regulations, the agencies are adopting a new definition for ''combination of loan dollars and loan count,'' not included in the proposal, that means, when applied to a particular ratio, the average of: (1) the ratio calculated using loans measured in dollar volume; and (2) the ratio calculated using loans measured in number of loans. This term is employed in calculations for the Retail Lending Test in final § ____.22, as provided in final appendix A; the calculations for the Community Development Financing Test in final § ____.24, as provided in final sections II and IV of appendix B, and the Community Development Services Test in final § ____.25, as provided in final section IV of appendix B; and the Retail Services and Products Test in final § ____.23, as provided in final appendix C. These calculations are discussed in more detail in the section-by-section analysis of §§ ____.22 through ____.25.

For the Retail Lending Test in particular, the combined loan dollars and loan count approach for various calculations better tailors the Retail Lending Test to accommodate individual bank business models. The agencies determined that use of this combination helps to account for differences across product lines, bank strategies, and geographic areas, relative to an approach that uses only loan dollars or only loan count. Loan size can vary among different product lines (*e.g.,* home mortgage loans versus automobile loans), and this approach seeks to balance the value of dollars invested in a community with the number of borrowers served. In particular, the agencies believe that both loan dollars and loan count reflect different aspects of how a bank has served the credit needs of a community. For example, in the agencies' supervisory experience, employing a combination of loan dollars

[125] *See* current 12 CFR ____.12(k) (''*Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.'').

[126] *See* U.S. Census Bureau, ''TIGER/Line Shapefiles,'' *https://www.census.gov/cgi-bin/geo/shapefiles/index.php.*

and loan count recognizes the continued importance of home mortgage lending to low-income and moderate-income communities, which has been a focus of the CRA, while also accounting for the importance of typically smaller dollar small business, small farm, and automobile lending to low- and moderate-income communities. The loan dollars represent the total amount of credit provided, while the loan count represents the number of borrowers served. The agencies believe this is a balanced approach that ensures consideration of lending that would be significant to the bank by either dollar or number.

Specifically, the agencies believe that use of this term will improve understanding and readability of the following calculations in the Retail Lending Test: (1) the retail lending assessment area 80 percent exemption threshold, as provided in final paragraph II.a.1 of appendix A; (2) the outside retail lending area 50 percent exemption threshold for intermediate banks, as provided in final paragraph II.a.2 of appendix A; (3) the 15 percent major product line threshold for facility-based assessment areas and outside retail lending areas, as provided in final paragraph II.b.1 of appendix A; (4) the standard for determining whether a bank is a majority automobile lender, as provided in final paragraph II.b.3 of appendix A; (5) weighted performance conclusions for major product lines in facility-based assessment areas, retail lending assessment areas, and outside retail lending areas to develop corresponding area performance conclusions, as provided in final paragraph VII.b of appendix A; and (6) weighted average performance scores for different areas in which banks are evaluated to develop performance test conclusions for States, multistate MSAs, and the institution, as provided in final paragraph VIII.b.2 of appendix A.

Similarly, the agencies believe that, for purposes of consistency throughout the final rule and to provide clarity, it is appropriate to incorporate the term into the calculations related to the Community Development Financing Test in final § ____.24 and the Community Development Services Test in final § ____.25, as provided in final appendix B, as well as the Retail Services and Products Test in final § ____.23, as provided in final appendix C. As with the Retail Lending Test in final § ____.22, this definition helps to improve understanding and readability in the calculations for the: (1) weighting of benchmarks in final paragraph II.o of appendix B; (2) combined score for facility-based assessment area conclusions and the metrics and benchmarks analyses and the impact and responsiveness reviews in final paragraph II.p of appendix B; (3) the weighting of conclusions in final section IV of appendix B; and (4) the weighting of conclusions in final paragraph c of appendix C.

Community Development

The current CRA regulations include a detailed definition of ''community development.''[127] The agencies proposed to move this definition, with substantive additions and clarifications, to a separate new section, proposed § ____.13, Community Development Definitions, and to define this term in § ____.12 by cross-referencing to proposed § ____.13. The agencies did not receive any comments on the proposed definition of ''community development'' and adopt it as proposed in the final rule. Final § ____.13, as discussed in the section-by-section analysis of § ____.13, describes activities that constitute community development, as proposed, but is retitled ''Consideration of community development loans, community development investments, and community development services.''

Community Development Financial Institution

The agencies proposed to add the definition of ''Community Development Financial Institution (CDFI)'' to the CRA regulations. This term would have the same meaning given to that term in section 103(5)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4701 *et seq.*).[128] The agencies proposed this definition to promote clarity in the CRA regulations and consistency across Federal programs addressing CDFIs, particularly the CDFI Fund established by RCDRIA.[129]

The agencies did not receive any comments concerning the proposed definition of ''Community Development Financial Institution'' and are adopting the definition as proposed in the final rule with several technical and clarifying edits. First, the agencies are replacing the phrase ''has the same meaning given to that term'' with ''means an entity that satisfies the definition.'' Second, the agencies are changing the cross-reference to the RCDRIA to the more specific ''Community Development Banking and Financial Institutions Act of 1994,'' which is title I, subtitle A of RCDRIA. Third, in conjunction with the revised cross-reference to the Community Development Banking and Financial Institutions Act of 1994, the agencies have revised the citation from ''12 U.S.C. 4701 *et seq.*'' to ''12 U.S.C. 4702(5).'' Finally, in order to clarify that references to CDFIs in the final rule pertain to those entities that are determined to be CDFIs by the U.S. Department of the Treasury's CDFI Fund, the definition has been amended by adding the clause ''and is certified by the U.S. Department of the Treasury's Community Development Financial Institutions Fund as meeting the requirements set forth in 12 CFR 1805.201(b).'' This definitional change affirms the agencies' intent to ensure that, beyond MDIs, WDIs, and LICUs, the entities with which a bank may engage for automatic consideration of loans, investments, and services have undergone the U.S. Department of the Treasury's CDFI certification process and meet requirements for maintaining that certification. The agencies consider this a critical guardrail to ensuring that community development on an inclusive community basis is the focus of bank loans, investments, and services in cooperation with these CDFIs. *See* discussion of CDFIs in the section-by-section analysis of § ____.13.

Accordingly, the final rule defines ''Community Development Financial Institution (CDFI)'' to mean an entity that satisfies the definition in section 103(5)(A) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) and is certified by the U.S. Department of the Treasury's Community Development Financial Institutions Fund as meeting the requirements set forth in 12 CFR 1805.201(b).

Community Development Investment

The agencies proposed to replace the term ''qualified investment'' in the current CRA regulations[130] with the term ''community development

[127] *See* current 12 CFR ____.12(g).

[128] Section 103(5)(A) of RCDRIA defines ''CDFI'' to mean a person (other than an individual) that: (1) has a primary mission of promoting community development; (2) serves an investment area or targeted population; (3) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (4) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (5) is not an agency or instrumentality of the United States, or of any State or political subdivision of a State. *See* 12 U.S.C. 4702(5)(A).

[129] *See* U.S. Dept. of the Treasury, ''Community Development Financial Institutions Fund,'' *https://www.cdfifund.gov/about*; *see also* 12 U.S.C. 4703.

[130] *See* current 12 CFR ____.12(t).

investment.'' [131] The current CRA regulations define ''qualified investment'' to mean ''a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.'' [132] The agencies believe the term ''community development investment'' is better aligned with the other types of community development activities discussed in the proposal—*i.e.,* community development loans and community development services. (The definitions for these terms are discussed below). The agencies based the proposed ''community development investment'' definition on the current ''qualified investment'' definition and incorporated several additions. First, the proposed ''community development investment'' definition clarified that a lawful investment includes a legally binding commitment to invest that is reported on Schedule RC–L of the Call Report if its primary purpose is community development. Second, the proposed definition expressly included a ''monetary or in-kind donation'' if its primary purpose is community development in order to increase certainty and clarity as to what activities would qualify under the definition. Finally, the agencies added a cross-reference to proposed § ____.13(a), Community Development Definitions.

The agencies did not receive any comments concerning the proposed definition of ''community development investment'' and are adopting the definition as proposed, with technical edits to conform to the changes made to § ____.13 in the final rule and adjust punctuation. Specifically, the agencies are changing ''has a primary purpose of community development'' to ''supports community development'' and revising the cross-reference to ''§ ____.13(a)'' to ''§ ____.13.'' A payment to a third party that is not an affiliate to perform community development service hours qualifies as a ''monetary or in-kind donation'' under the definition of ''community development investment'' in § ____.12.

Community Development Loan

The current CRA regulations define ''community development loan'' to mean a loan that: (1) has as its primary purpose community development; and (2) except in the case of a wholesale or limited purpose bank, has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and benefits the bank's assessment area(s) or a broader statewide or regional area(s) that includes the bank's assessment area(s).[133]

The agencies proposed several revisions to this definition to add greater specificity and to reflect consideration of community development loans and retail loans under the proposed CRA evaluation framework. First, the proposed definition included the clause, ''a legally binding commitment to extend credit, such as a standby letter of credit,'' to clarify that these types of commitments could be considered ''community development loans'' if their primary purpose is community development pursuant to proposed § ____.13(a). Second, the agencies removed the reference to assessment areas because this part of the current definition caused uncertainty as to whether an otherwise eligible activity would qualify. Finally, the proposed definition reflected the proposed CRA framework's consideration of certain loans solely under the proposed Retail Lending Test, with an option for certain intermediate banks to have a home mortgage loan, a small business loan, or a small farm loan considered as either a retail loan or a community development loan.

Specifically, the agencies proposed to define ''community development loan'' to mean 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 (1) the loan is for a multifamily dwelling (as defined in 12 CFR 1003.2(n)); or (2) 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.[134]

The agencies did not receive any comments concerning the proposed ''community development loan'' definition and are adopting the definition in the final rule with changes to reflect revisions to the final rule regarding consideration of certain home mortgage loans, small business loans, and small farm loans as community development loans. First, the agencies are changing ''has a primary purpose of community development'' to ''supports community development'' and revising the cross-reference from ''§ ____.13(a)'' to ''§ ____.13'' to conform to the changes made to § ____.13 in the final rule. Next, the agencies removed proposed paragraph (2) and added text intended to clarify that a one-to-four family home mortgage loan for rental housing with affordable rents in nonmetropolitan areas under § ____.13(b)(3) (as discussed in the section-by-section analysis of final § ____.13(b)(3)) may be considered in a bank's CRA evaluation under both the Retail Lending Test in § ____.22, if applicable, and under the applicable community development tests in the final rule. Under the final definition of ''community development loan,'' a small business loan or a small farm loan that has a community development purpose, as described in § ____.13, may also be considered in a bank's CRA evaluation under both the Retail Lending Test in § ____.22, if applicable, and under the applicable community development test in the final rule. For example, as discussed in the section-by-section analysis of final § ____.13(c)(3), certain loans to small businesses and small farms may fall within the economic development category of community development.

The changes regarding consideration of certain home mortgage loans, small business loans, and small farm loans as community developments loans are discussed in more detail in the section-by-section analyses of § ____.13(b) and (c).

Accordingly, the final rule defines ''community development loan'' as a loan, including a legally binding commitment to extend credit, such as a standby letter of credit, that supports community development, as described in § ____.13. A community development loan does not include any home mortgage loan considered under the Retail Lending Test in § ____.22, with the exception of one-to-four family

[131] As discussed, the change in the final rule from ''qualified investment'' to ''community development investment'' is a change in nomenclature only; for purposes of simplifying the discussion, this **SUPPLEMENTARY INFORMATION** hereafter refers to ''qualified investments'' under the current rule as ''community development investments.''

[132] *Id.*

[133] *See* current 12 CFR ____.12(h).

[134] *See* proposed § ____.12.

home mortgage loans for rental housing with affordable rents in nonmetropolitan areas under § ____.13(b)(3).

Community Development Services

Current Approach and the Agencies' Proposal

The agencies proposed to replace the current term ''community development service,'' with the term, ''community development services,'' and revise the definition. The current CRA regulations define ''community development service'' to mean a service that: (1) has as its primary purpose community development; (2) is related to the provision of financial services; and (3) has not been considered in the evaluation of the bank's retail banking services under § ____.24(d).[135] Under current guidance, activities related to the provision of financial services include services of the type generally provided by the financial services industry, which often involves informing community members about obtaining or using credit.[136] Further, community development service includes, but is not limited to, serving on the board of directors for a community development organization, serving on a loan committee, developing or teaching financial literacy curricula for low- and moderate-income individuals, providing technical assistance on financial matters to a small business, and providing services reflecting a bank employee's professional expertise at the bank (*e.g.,* human resources, information technology, legal).[137] Personal charitable activities provided by an employee or director outside the ordinary course of their employment do not qualify for community development consideration.[138] Instead, services must be performed in the capacity of a representative of the bank.[139]

The agencies proposed to replace the current term ''community development service,'' with the term, ''community development services'' and revise the definition. Specifically, the agencies proposed to define ''community development services'' to mean ''activities described in § ____.25(d).'' The agencies, generally, proposed in § ____.25(d) to incorporate the existing definition of community development services while codifying existing guidance on the meaning of ''related to the provision of financial services.'' Proposed § ____.25(d) defined community development services as: (1) activities that have a primary purpose of community development, as defined in proposed § ____.13(a)(1); (2) volunteer activities performed by bank board members or employees; and (3) activities related to the provision of financial services as described in proposed § ____.25(d)(3), unless otherwise indicated in proposed § ____.25(d)(4).[140] Proposed § ____.25(d)(2) excluded volunteer services performed by bank board members or employees of the bank who are not acting in their capacity as representatives of the bank. Proposed § ____.25(d)(3) provided that activities related to the provision of financial services are generally activities that relate to credit, deposit, and other personal and business financial services, and included a non-exhaustive list of examples. Proposed § ____.25(d)(4) provided that 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. The agencies reasoned that banks operating in nonmetropolitan areas may have fewer opportunities to provide community development services related to the provision of financial services. Proposed § ____.25(d)(4) provided that examples of qualifying activities not related to financial services include, but are not limited, to assisting an affordable housing organization to construct homes; 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 organizing or otherwise assisting with a clothing drive or a food drive for a community service organization.

Comments Received

The agencies received numerous comments concerning the proposed definition of ''community development services'' that are discussed below.

Community development purpose for community development services. A few commenters stressed that the final rule should require community development services to have or be related to a community development purpose.

Related to the provision of financial services. As described above, proposed § ____.25(d)(3) provided that ''[a]ctivities related to the provision of financial services'' are those that relate to credit, deposit, and other personal and business financial services and included the following non-exhaustive list of examples: serving on the board of directors of an organization that has a primary purpose of community development; providing technical assistance on financial matters to nonprofit, government, or tribal organizations or agencies supporting community development activities; providing support for fundraising to organizations that have a primary purpose of community development; providing financial literacy education as described in proposed § ____.13(k); or providing services reflecting other areas of expertise at the bank, such as human resources, information technology, and legal services.

A few commenters supported the inclusion of volunteer activities reflecting expertise of the employee, such as human resources, legal services, and information technology. A few other commenters specifically noted that activities related to the provision of financial services should include financial literacy or financial education. One of these commenters also suggested the provision of financial services should include volunteering at Volunteer Income Tax Assistance sites managed by nonprofit organizations.

Performed on behalf of the bank. Regarding the proposed exclusion of volunteer activities by bank board members or employees of the bank who are not acting in their capacity as representatives of the bank, a commenter requested clarification that the proposed exclusion would not require the volunteer to act as an agent of the bank when serving on a community organization's board of directors. This commenter believed that if the volunteer must act as an agent, it could create a conflict of interest. Another commenter stated that banks should only receive CRA credit for volunteer activities performed during bank business hours.

Volunteer activities in nonmetropolitan areas. The agencies received many comments on the proposed expansion to allow CRA consideration for volunteer service hours in nonmetropolitan areas that are unrelated to the provision of financial services. Only a few commenters supported the provision as proposed. A majority of commenters on this topic opposed the inclusion of volunteer activities unrelated to the provision of

[135] Under current 12 CFR ____.24(d), the agencies evaluate ''the availability and effectiveness of a bank's systems for delivering retail banking services. . . .'' *See also* Q&A § ____.24(d)—1 and —2; Q&A § ____.24(d)(3)—1 and —2; and Q&A § ____.24(d)(4)—1.

[136] *See* Q&A § ____.12(i)—1.

[137] *See* Q&A § ____.12(i)—3.

[138] *See* Q&A § ____.12(i)—2.

[139] *Id.*

[140] *See* proposed § ____.25(d).

financial services in any location. A few commenters disputed the premise stated in the proposal that there are insufficient volunteer opportunities in nonmetropolitan areas, and one commenter urged the agencies to collect data to verify the premise before expanding to include services unrelated to the provision of financial services in nonmetropolitan areas. Several other commenters stated that although nonfinancial volunteer activities benefit communities, the inclusion of such services loses sight of the CRA's intent to provide financial services to underserved communities. These commenters believed that the CRA should increase services related to the provision of financial services and should not include all types of volunteer activities.

A few commenters supported the provision to include volunteer activities unrelated to the provision of financial services in all areas, not just nonmetropolitan areas. These commenters highlighted the benefit general volunteerism provides to low- and moderate-income communities and stressed that there is need in both metropolitan and nonmetropolitan areas. A few commenters said that limiting the provision of services unrelated to financial services to only nonmetropolitan areas would restrict community organizations from directing the service hours where needed. Another commenter believed the restriction would be inappropriate at this time because community organizations continue to experience challenges in recruiting volunteers as a result of the COVID–19 pandemic. Other commenters said the expansion to consider volunteer activities unrelated to the provision of financial services in all communities could help reduce the number of CRA ''hot spots.'' A commenter conveyed that some bank employees are not well positioned for or comfortable providing services related to the provision of financial services. Another commenter questioned the delineation of nonmetropolitan versus metropolitan areas because the delineation would exclude certain rural areas that are on the outskirts of metropolitan areas.

A commenter stated bank employees volunteering services unrelated to financial services be given CRA consideration in all communities, at least in instances when it involves helping an affordable housing organization build homes for homeownership. In support of this position, the commenter highlighted the connection between the creation of affordable housing built for homeownership and expanding credit and homeownership opportunities for low- and moderate-income communities.

If the agencies allow CRA consideration for volunteer service hours in nonmetropolitan areas that are unrelated to the provision of financial services, a few commenters offered other requirements or limitations to the evaluation of these service hours, such as weighting the provision of financial services more heavily than those unrelated to financial services; granting pro rata consideration for services unrelated to the provision of financial services based on the percent of low- and moderate-income recipients; establishing a limit for receiving CRA consideration for services unrelated to financial services; establishing a separate metric; limiting the expansion to those community development services that satisfy basic needs like shelter, safety, and food; or requiring the bank to show it made a demonstrated effort to provide the provision of financial services before it may receive credit for services unrelated to financial services.

Final Rule

In response to commenter feedback and for the reasons described below, the agencies are adopting a definition of ''community development services'' in § ____.12 that includes substantive changes as well as technical and conforming edits. Specifically, the final rule defines ''community development services'' to mean the performance of volunteer services by a bank's or affiliate's board members or employees, performed on behalf of the bank, where those services: (1) support community development, as described in § ____.13; and (2) are related to the provision of financial services, which include credit, deposit, and other personal and business financial services, or services that reflect a board member's or employee's expertise at the bank or affiliate, such as human resources, information technology, and legal services. The agencies agree with commenters that a community development purpose is fundamental to eligibility as a community development service. Thus, with non-substantive conforming edits, the agencies are adopting the proposed requirement that a community development service must support community development as described in § ____.13.

The agencies removed the examples of what qualifies as ''related to the provision of financial services'' from the final definition. Instead, the agencies believe the examples are more appropriate for future agency guidance. In addition, the agencies will consider these examples as they develop the illustrative list described in final § ____.14. The agencies note that the removal of examples of community development services from the ''community development services'' definition in the final rule should not be interpreted as a statement on what qualifies or does not qualify as relating to the provision of financial services. The examples provided in the proposal and restated in the preceding discussion would still be considered ''related to the provision of financial services.''

Further, the agencies determined that references to specific programs, like the suggestion to identify Volunteer Income Tax Assistance sites as related to the provision of financial services, in the text of the regulation could be overly limiting and possibly inconsistent with the durability of the rule over time. Free tax preparation is likely to qualify as ''related to the provision of financial services'' and may receive community development service consideration if it otherwise meets the definition of community development services.

In response to commenter feedback that the proposed exclusion—excluding volunteer services performed by bank board members or employees of the bank who are not acting in their capacity as representatives of the bank—could be misinterpreted to require or establish an agency relationship, the agencies removed the exclusion. Instead, the agencies require that the services must be ''performed on behalf of the bank.'' The agencies do not intend to require that an employee or director must be acting as a bank's agent in the legal sense of the term, nor do the agencies intend to suggest that volunteering on behalf of the bank necessarily creates an agency relationship.

The agencies also considered the comment that banks should only receive CRA credit for volunteer activities performed during bank business hours. The agencies believe that the nature of community development services may vary depending on community needs and seek to give banks flexibility to address those needs regardless of the timing of projects and other community development-related activities. Thus, consistent with the proposal, the final rule provides that a service may still qualify as ''volunteer'' where the service is performed during an employee's off-duty hours if that service otherwise meets the ''community development services'' definition. Conversely, volunteer activities conducted by an employee or board member in their personal capacity are generally not considered performed on behalf of the bank if the activity is not sponsored or organized by the bank.

A service can also be considered ''volunteer'' for purposes of the ''community development services'' definition even if an employee is paid in the normal course of employment. For example, volunteer hours could include those hours associated with a bank employee performing an economic development service activity, such as completing tax returns for small businesses, during the employee's work hours. Even though the bank pays the employee in the regular course of employment, the bank essentially donates those hours because the bank employee is performing economic development for the small business, rather than performing that employee's regular bank duties.

The agencies have not adopted the proposal to include volunteer activities unrelated to the provision of financial services in nonmetropolitan areas. The agencies believe that volunteer service hours, even if unrelated to financial services, can provide a meaningful benefit in nonmetropolitan areas, but have determined that, by focusing on activities related to the provision of financial services, this provision is more consistent with the CRA's statutory focus and also emphasizes activities that examiners have competency and expertise to evaluate. The removal of this proposed expansion in nonmetropolitan areas also is intended more generally to address commenter requests that the agencies reduce the final rule's complexity.

Finally, the agencies made conforming edits to clarify that service hours performed by the employees or board members of a bank's affiliate may qualify as community development services, as provided for in final § ____.21(b).

Consumer Loan

Current Approach

The current CRA regulations define ''consumer loan'' to mean a loan to one or more individuals for household, family, or other personal expenditures, but does not include a home mortgage, small business, or small farm loan. Further, ''consumer loan'' includes the following categories of loans: (1) a motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle; (2) a credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a credit card, as this term is defined in 12 CFR 1026.2; (3) an other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and (4) an other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.[141]

The Agencies' Proposal

The agencies proposed to modify the ''consumer loan'' definition to refine its scope, simplify and clarify it, and align it with revisions to related Call Report definitions as well as proposed revisions to the CRA regulations. Specifically, the proposed definition replaced the term ''home mortgage'' with ''home mortgage loan'' (both a closed-end home mortgage loan, and an open-end home mortgage loan) and a ''multifamily loan'' to use terms included in the proposal, discussed below. The proposal also modified the reference to ''motor vehicle loan'' to ''automobile loan,'' and specified that an automobile loan includes new or used passenger cars or other vehicles, providing examples, 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. The agencies proposed this change to conform with the proposal to add a definition for ''automobile loan'' to the CRA regulations, discussed above, and to align the term with the definition of ''automobile loan'' in Schedule RC–C of the Call Report. The proposed ''consumer loan'' definition also added ''other revolving credit plan,'' to mean a revolving credit plan that is not accessed by credit card. This change conforms to Call Report revisions, which now distinguishes between revolving and non-revolving credit rather than secured and unsecured credit. The proposal also combined the ''other secured consumer loan'' and ''other unsecured consumer loan'' categories into the ''other consumer loan'' category to simplify the definition.

Comments Received

The agencies received several comments related to the proposed ''consumer loan'' definition. A commenter supported the agencies' inclusion of an automobile loan as a consumer loan. The commenter believed that including automobile loans as a type of consumer loan is important for areas where employment and economic opportunities are significant distances from where individuals reside, and public transportation may not be available or reliable. Another commenter supported the proposed definition of ''automobile loan,'' likewise in the definition of ''consumer loan,'' because it eliminates uncertainty around direct versus indirect loan inclusion.

A commenter suggested that the agencies define ''unsecured personal loans,'' as they do with credit cards, separately from the general category of ''other secured and unsecured loans,'' because unsecured personal loans are a fairly uniform credit class.

Final Rule

The agencies are adopting the proposed definition of ''consumer loan'' in the final rule with several edits designed to simplify the definition and avoid the possibility of future misalignment of the definition with the Call Report. Specifically, ''consumer loan'' in the final rule means a loan to one or more individuals for household, family, or other personal expenditures and that is one of the following types of loans: (1) automobile loan as reported in Schedule RC–C of the Call Report; (2) credit card loan, as reported as ''credit card'' in Schedule RC–C of the Call Report; (3) other revolving credit plan, as reported in Schedule RC–C of the Call Report; and (4) other consumer loan, as reported in Schedule RC–C of the Call Report.

For clarity, the agencies have elected to refer only to these loans as reported in Schedule RC–C of the Call Report for each category of loan covered in the definition. Referring only to loans reported in schedule RC–C of the Call Report better aligns the categories of loans with how banks report those classes of loans on the Call Report. As a result, ''automobile loan,'' ''credit card loan,'' ''other revolving credit plan,'' and ''other consumer loan'' are now described as those loans reported in Schedule RC–C of the Call Report and do not include specific examples.[142] The agencies appreciate commenter concerns about any generality associated with the term ''other secured and unsecured loans,'' labeled ''other consumer loans'' in the proposal. The final definition of ''consumer loan'' is designed to address those concerns not only with the addition of the new category of ''other revolving credit plan,'' but also with references to the loans reported in Schedule RC–C. To provide additional clarity about the scope of the term ''consumer loan,'' the agencies also revised the definition to

[141] *See* current 12 CFR ____.12(j).

[142] The agencies note that the Call Report uses the term ''credit card'' and not ''credit card loan.''

make the list of categories of loans considered consumer loans exhaustive. With this change, the agencies made a technical edit to no longer exclude home mortgage loans, multifamily loans, small business loans, and small farm loans because these loans would not otherwise fall within the final definition of ''consumer loan.''

County

The agencies proposed adding a definition for ''county'' and defining it to mean any county or statistically equivalent entity as defined by the U.S. Census Bureau. The agencies proposed this definition to increase clarity and consistency in the CRA regulations by aligning the term with the scope of the applicable U.S. Census Bureau definition.[143]

The agencies did not receive any comments concerning this proposed definition and are adopting the definition with one conforming change and one technical change. The agencies are revising the definition to include the phrase, ''county equivalent,'' to provide additional clarity and further align the definition of ''county'' in the CRA regulations with the applicable terms used by the U.S. Census Bureau. The U.S. Census Bureau utilizes the term ''county equivalents'' to refer to those geographic areas comparable to counties—*i.e.,* parishes in Louisiana, boroughs, independent cities in certain States, Census Areas, cities in Alaska; municipios in Puerto Rico, districts and islands in American Samoa, municipalities in the Commonwealth of the Northern Mariana Islands, islands in the U.S. Virgin Islands, the District of Columbia, and Election Districts in Guam.[144] The agencies believe the addition of ''county equivalent'' clarifies that the definition of ''county'' captures those areas that are geographically comparable to counties, but are not identified as such, and that these areas will receive the same treatment under the CRA regulations.

The agencies are also referring to these terms as used by the U.S. Census Bureau, instead of as defined, and including a cross-reference to the authority of the U.S. Census Bureau to more accurately provide a source for these terms.

Accordingly, the definition of ''county'' in the final rule means any county, county equivalent, or statistically equivalent entity as used by the U.S. Census Bureau pursuant to title 13 of the U.S. Code. The agencies have made conforming changes throughout the final rule to remove references to ''county equivalent'' that are now unnecessary.

Deposit Location

The agencies proposed to add a definition of ''deposit location'' to the CRA regulations as a clarifying corollary to the proposed definition of ''deposits.'' Specifically, the agencies proposed to define ''deposit location'' to mean: (1) for banks that collect and maintain deposits data as provided in proposed § ____.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 proposed § ____.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 data; and (3) for banks that do not collect and maintain deposits data as provided in proposed § ____.42, the county of the bank branch to which the deposits are assigned in the Summary of Deposits.

Some commenters stated that the definition of ''deposit location'' for banks that collect and maintain deposits data under the proposal is vague. A commenter noted that the proposed definition would leave significant questions unresolved, including what it means for a business to be ''located'' in a place and whether a business can be ''located'' in multiple places.

The agencies are adopting the definition of ''deposit location'' with revisions consistent with the revisions to the definition of ''deposits,'' discussed below, as well as revisions to address commenter concerns. Specifically, the definition in the final rule removes the category of banks that collect and maintain, but do not report, deposits data. As explained in the discussion of the ''deposits'' definition, this category is no longer necessary. The agencies also agree with commenters' suggestions that the proposed definition could be clarified, and does not clearly indicate where deposits are located. Therefore, the agencies are removing the references to census tracts and counties from the part of the definition that applies to banks that collect, maintain, and report deposits data as provided in § ____.42, and replacing them with ''the address on file with the bank for purposes of the Customer Identification Program required by 31 CFR 1020.220 or another documented address at which the depositor resides or is located.'' The agencies also made a clarifying change to replace the terms ''consumer'' and ''business'' used in the proposal with ''depositor'' and a technical change to replace ''branch'' with ''facility'' to refer to the term used in the FDIC's Summary of Deposits.

Accordingly, the final rule provides that ''deposit location'' means: (1) for banks that collect, maintain, and report deposits data as provided in § ____.42, the address on file with the bank for purposes of the Customer Identification Program required by 31 CFR 1020.220 or another documented address at which the depositor resides or is located; and (2) for banks that do not collect, maintain, and report deposits data as provided in § ____.42, the county of the bank facility to which the deposits are assigned in the FDIC's Summary of Deposits data.

Depository Institution

The final rule includes a new definition for ''depository institution,'' not included in the proposal, to mean any institution subject to CRA, as described in 12 CFR 25.11, 228.11, and 345.11. The agencies are adopting this definition as a technical clarification to effectuate their intent that ''bank'' or ''banks'' in certain provisions of the proposal was meant to include institutions evaluated by any of the agencies under part 25, 228, or 345.[145] For example, in the Community Development Financing Test, the

[143] *See* U.S. Census Bureau, ''Glossary,'' *https://www.census.gov/glossary/?term=County%20and%20equivalent%20entity* (defining ''county and equivalent entity'').

[144] *See* U.S. Census Bureau, ''Geographic Levels,'' *https://www.census.gov/programs-surveys/economic-census/guidance-geographies/levels.html.*

[145] The agencies integrated the term ''depository institution'' or ''large depository institution'' into the final rule in final §§ ____.21(b)(1) (consideration of affiliate activities); ____.22(g)(1) (Retail Lending Test additional factors); ____.23(b)(2)(i)(B) (Retail Services and Products Test benchmark); ____.24(b)(2)(i) and (ii), (c)(2)(ii); (d)(2)(ii); and (e)(2)(ii) and (iv) (benchmarks related to the Community Development Financing Test); ____.26(f)(2)(ii) and (iv) (benchmarks related to the Community Development Financing Test for Limited Purpose Banks); ____.27(c)(4) (consideration of affiliate activities for strategic plans); ____.42(h) (aggregate disclosure statements); ____.44 (public notice by banks); the Market Volume Benchmark in appendix A, paragraph I.b; appendix B, paragraph I.a (numerator and denominator for final § ____.24 and final § ____.26 calculations); and the benchmarks in appendix B, as applicable. Throughout the remainder of this **SUPPLEMENTARY INFORMATION** the agencies use the terms ''banks'' and ''large banks'' to simplify the discussion. When discussing the above provisions, certain references to ''banks'' or ''large banks'' are references to all ''depository institutions'' or ''large depository institutions,'' as applicable.

benchmarks would include the lending, investments, and deposits of all banks in the applicable geographic area regardless of regulator. The final rule replaces those references to the term ''bank'' with the term ''depository institution'' or ''large depository institution,'' discussed below. The agencies also made other conforming edits to integrate these terms into the final rule.[146]

Deposits

The Agencies' Proposal

The agencies proposed to add a definition of ''deposits'' to the CRA regulations to support and clarify the proposal to use deposits data for several evaluation metrics, benchmarks, and weights under the proposed performance tests. This definition would be based on whether a bank had to collect, maintain, or report deposits data. As discussed further in the section-by-section analysis of § ____.42, the agencies proposed to require large banks with assets greater than $10 billion to collect, maintain, and report county-level deposits data based on the county in which the depositor's address is located to allow for more precise measurement of a bank's local deposits by county.[147] For these banks, the agencies proposed a definition of ''deposits'' based on deposits in domestic offices of individuals, partnerships, and corporations, and of commercial banks and other depository institutions in the United States as defined in Schedule RC–E of the Call Report, which constitute the majority of deposit dollars captured overall in the Call Report categories of Deposits in Domestic Offices. The proposed definition excluded 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.

For banks that collect and maintain, but that do not report, deposits data as provided in proposed § ____.42, the proposal provided that ''deposits'' would have the same meaning as for banks that must report deposits data except that, for purposes of the Retail Lending Test's Market Volume Benchmark and for all community development financing benchmarks, ''deposits'' would have the same meaning as in the FDIC's Summary of Deposits Reporting Instructions.

For banks that do not collect and maintain deposits data as provided in proposed § ____.42, the proposal provided that ''deposits'' would have the same meaning as in the FDIC's Summary of Deposits Reporting Instructions.

Comments Received

Several commenters stated that the agencies should exclude corporate deposits from the definition of ''deposits'' and recommended defining ''deposits'' as the sum of total deposits intended primarily for personal, household, or family use, as reported on Schedule RC–E of the Call Report, items 6.a, 6.b, 7.a(1), and 7.b(1). One of the commenters made the same comment with specific reference to large banks. Another commenter explained that including corporate deposits in the proposed definition of ''deposits'' could reduce incentives for banks to address the community development needs of underserved communities, particularly rural communities, where few corporate deposits are attributed. This commenter also expressed concern that including corporate deposits could lead to distorted or inconsistent results due to fluctuations in corporate deposits that could in turn lead to CRA focus and resource challenges for banks. Another commenter explained that using the suggested items in the Call Report would more accurately reflect a bank's capacity to engage in qualifying activities for individuals, small businesses, and small farms, because the items collect information on deposits maintained primarily for personal, household, or family use. The commenter further explained that use of these suggested items would also eliminate the potential for large corporate deposits to skew the allocation of deposits across different geographies, thereby better capturing the amount of deposits collected from specific assessment areas. Another commenter supported this position, referencing the proposal's potential to exacerbate CRA hot spots in urban centers where deposits are concentrated, fluctuations in the working capital needs of corporate depositors, and the potential challenges of assigning a location for corporate deposits in locations spanning multiple geographies. If not removed, the commenter warned that corporate deposits could distort the calculation of the retail lending volume screen, the calculation of the Community Development Financing Metric, and the weighting of banks' performance conclusions across assessment areas.

Other commenters stated that the agencies should broaden the definition of ''deposits'' to include deposits from limited liability companies (LLCs) and trusts, and not just individuals, partnerships, and corporations. One of these commenters noted that LLC deposits are domestic deposits in substance and another commenter suggested that the definition be broadened to include deposits from all entities. The commenters stated that the agencies should specifically include these deposits in the final rule for clarification.

One of these commenters also requested the agencies clarify that the ''deposits'' definition does not include deposits from foreign persons or entities that are made in U.S. branches. The commenter explained that these deposits do not come from a bank's assessment area and are not related to the CRA's purpose of returning money to the community. The commenter also expressed concern that including these types of deposits in the definition may incentivize some banks to keep the funds outside of the United States entirely.

Another commenter indicated that the agencies should include State and local government deposits in the definition because banks can lend against these deposits and some State and local jurisdictions have developed public policies designed to promote reinvestment goals by tying their deposits to bank community performance. The organization stated that CRA rules should not undermine these local efforts by lowering the reinvestment bar for banks with which State and local governments do business.

Final Rule

The agencies are adopting the proposed definition of ''deposits'' in the final rule with substantive revisions and technical changes. Specifically, the agencies are collapsing the three categories of institutions under the proposed definition—(1) banks that collect, maintain, and report deposits data; (2) banks that collect and maintain, but do not report, deposits data; and (3) banks that do not collect and maintain deposits data—into two categories. Thus, under the final rule, the definition would address: (1) banks that collect, maintain, and report deposits data; and (2) banks that do not collect, maintain, and report that data. The agencies elected to simplify the definition of ''deposits'' in response to comments about both the overall

[146] For example, the agencies replaced references to the common rule text sections with specific pin cites to all three agencies final regulations as appropriate.

[147] *See* proposed § ____.42(a)(7) and (b)(5); *see also* final § ____.42(a)(7) and (b)(3) and the accompanying section-by-section analysis.

complexity of the proposal and the complexity of the provisions related to deposits data collection and reporting. Further, because the final rule provides that institutions that collect and maintain deposits data, whether required or opting to do so, must also report deposits data, the category for banks that collect and maintain but do not report is unnecessary. By removing this category, the agencies believe the final rule provides a less complex and more workable definition. The agencies are also making a technical change to refer to deposits as reported in the FDIC's Summary of Deposits as required under 12 CFR 304.3(c), instead of referring to the instructions, to more accurately provide a source for this term. The agencies have also replaced ''U.S.'' with ''United States.''

The agencies have declined to remove corporate deposits from the ''deposits'' definition because the agencies believe that utilizing both personal and corporate deposits results in a more comprehensive representation of the community that an institution serves. The agencies understand concerns that including corporate deposits in the proposed ''deposits'' definition could reduce incentives for banks to address the community development needs of underserved communities, because, for example, reporting banks could have higher proportions of their deposits in other areas and, under the Community Development Financing Test, commensurately higher expectations for activity in those areas. However, the agencies believe that other aspects of the rule will encourage banks to focus more on these areas. Specifically, under § ____.15, the agencies consider whether an institution serves geographic areas with low levels of community development financing. Further, ''targeted census tracts'' are used in the final rule to consider whether certain place-based community development activities qualify, and the definition of this term, discussed below, includes underserved communities. Lastly, the agencies are addressing the concern related to CRA hot spots where deposits are concentrated by evaluating bank community development financing and retail lending outside of facility-based assessment areas.[148]

The agencies also declined to modify the ''deposits'' definition to include deposits from LLCs and trusts. The agencies note that because LLCs are a form of corporation, they are captured under corporate deposits on the Call Report.[149] Further, institutions holding trust account deposits have a fiduciary obligation to invest those deposits in accordance with the trust's instructions. As a result, those deposits are generally not available to be reinvested into the community and should not be included in ''deposits.''

The agencies also decided not to exclude deposits from foreign persons or entities that are made in U.S. branches. The exclusions in the deposit definition are limited to whole categories in the Call Report definition of deposit. Excluding foreign individuals or companies would exclude only a partial category in the Call Report. This partial exclusion would increase burden because these categories are known and understood by the industry and, the agencies believe, would not offer significant benefit. Second, as explained in the proposal, the agencies elected to exclude State and local government deposits, along with foreign 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.[150] These government entities make up one whole category under the Call Report definition. This determination is based on the agencies' supervisory experience, which also considered that restricted funds may also misrepresent a bank's ability to reinvest funds in the local community.

The agencies have elected to maintain deposits data collection from banks with assets greater than $10 billion and decline to expand this collection requirement to other banks. The agencies believe the collection of deposits data is important, but that data collection should be limited to large banks with assets greater than $10 billion due to the burden associated with this requirement.[151] Further, the agencies have declined to expand the use of the FDIC's Summary of Deposits data to all banks because of the limitations of Summary of Deposits data. In particular, Summary of Deposits data is tied to a bank's branches. As banks' business models continue to evolve, there is the possibility that branches will be less representative of the communities that banks serve. As a result, Summary of Deposits data may also be less representative of the communities a bank serves. The agencies note, however, that banks that opt into deposits data collection and maintenance must report these data.[152]

Accordingly, the definition of ''deposits'' in the final rule provides that: (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 United States 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; and (2) for banks that do not collect, maintain, and report deposits data as provided in § ____.42, ''deposits'' means a bank's deposits as reported in the FDIC's Summary of Deposits as required under 12 CFR 304.3(c).

Digital Delivery System

The final rule includes a new definition for ''digital delivery systems,'' not included in the proposal, to mean a channel through which banks offer retail banking services electronically, such as online banking or mobile banking. The agencies are adopting this definition to clarify the agencies' intended meaning of this term, which is to reflect the common understanding of this term. This term is used in § ____.23, Retail Services and Products Test. For additional discussion of digital delivery systems, see the section-by-section analysis of § ____.23.

Dispersion of Retail Lending

The agencies proposed to add a definition of ''dispersion of retail lending'' to § ____.12 in support of the proposal to assess a bank's retail lending performance in a facility-based assessment area based not only on a bank's Retail Lending Volume Screen (*see* proposed § ____.22(c)) and geographic and borrower distribution metrics (*see* proposed § ____.22(d)), but also in consideration of several other factors, including the dispersion of retail lending in 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. Specifically, the agencies proposed to define ''dispersion of retail lending'' to mean how geographically diffuse or widely spread such lending is across

[148] *See* final §§ ____.17 through ____.19 and the accompanying section-by section analyses.

[149] *See* Call Report, Schedule RC–E.

[150] *See* 87 FR 33884, 33995 (June 3, 2022).

[151] For additional discussion of this issue, see the discussion on deposits in the section-by-section analysis of § ____.42.

[152] *See* final rule § ____.42(b)(3)(i) and the section-by-section analysis of § ____.42.

census tracts of different income levels within a facility-based assessment area, retail lending assessment area, or outside retail lending area.

The agencies did not receive any comments on this definition. However, after further review, the agencies have elected not to adopt a definition of ''dispersion of retail lending'' in § ____.12 because this term is used only once, in § ____.22. Instead, the agencies have incorporated this concept into § ____.22(g) of the final rule.

Distressed or Underserved Nonmetropolitan Middle-Income Census Tract

In the current CRA regulations, the definition of ''community development'' includes activities that revitalize or stabilize ''distressed or underserved nonmetropolitan middle-income geographies'' as designated by the agencies based on: (1) rates of poverty, unemployment, and population loss; or (2) population size, density, and dispersion. Further, this provision states that activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including the needs of low- and moderate-income individuals.[153]

The agencies proposed to include a definition of ''distressed or underserved nonmetropolitan middle-income census tract'' in § ____.12, based on the language in the current definition of ''community development,'' with certain edits. Specifically, the agencies proposed to add clarity and consistency by incorporating additional detail from the Interagency Questions and Answers into the proposed definition.[154] The agencies also proposed technical and conforming changes, such as replacing the term ''geography'' with the term ''census tract,'' reflecting the change to this term discussed above, and restructuring the definition. As proposed, ''distressed or underserved nonmetropolitan middle-income census tract'' would mean a census tract publicly designated as such by the agencies and compiled in a list published annually by the FFIEC. The agencies would designate a nonmetropolitan middle-income census tract as distressed if it is in a county that has: (1) an unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; or (3) 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. The agencies would designate a nonmetropolitan middle-income census tract 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, based on the Urban Influence Codes established by the U.S. Department of Agriculture's (USDA) Economic Research Service numbered ''7,'' ''10,'' ''11,'' or ''12.''[155]

The agencies did not receive any comments on the proposed definition of ''distressed or underserved nonmetropolitan middle-income census tract,'' and are adopting the definition as proposed with two technical changes, referencing the official name of the Board, and replacing the word ''migration'' with ''population.''

Distribution of Retail Lending

The agencies proposed to add a definition of ''distribution of retail lending'' to § ____.12 to increase clarity and consistency regarding the evaluation of a bank's retail lending under the proposed Retail Lending Test. As proposed, ''distribution of retail lending'' would refer to how retail lending is apportioned among borrowers of different income levels, businesses or farms of different sizes, or census tracts of different income levels. The agencies did not receive any comments on this definition. However, after further review, the agencies have elected not to adopt this definition in the final rule because the distribution analysis is explained extensively in the Retail Lending Test in the final rule.[156]

Evaluation Period

The agencies proposed to add a definition of ''evaluation period'' to increase clarity and consistency in the CRA regulations. Specifically, proposed § ____.12 defined ''evaluation period'' to mean the period of time between CRA examinations, generally in calendar years, in accordance with the agency's guidelines and procedures. The agencies received no comments concerning the proposed definition of ''evaluation period.'' Accordingly, the agencies are adopting this term in the final rule with several technical changes designed to enhance the clarity and accuracy of the definition. Specifically, the agencies revised the phrase ''period of time'' to ''the period'' and moved the clause ''generally in calendar years'' so that it now follows ''the period,'' and replaced the phrase ''time between CRA examinations'' with ''during which a bank conducted the activities that the [Agency] evaluates in a CRA examination.'' Accordingly, ''evaluation period,'' in the final rule means the period, generally in calendar years, during which a bank conducted the activities that the agency evaluates in a CRA examination, in accordance with the agency's guidelines and procedures.

Facility-Based Assessment Area

As discussed above, the agencies proposed to replace the term ''assessment area'' in § ____.12 with the terms ''facility-based assessment area,'' ''retail lending assessment area,'' and ''outside retail lending area.'' The agencies proposed to define ''facility-based assessment area'' to mean a geographic area delineated in accordance with § ____.16.[157] Section ____.16 describes the bases for delineating this type of assessment area. For information regarding facility-based assessment area delineation requirements in the final rule, see the section-by-section analysis of § ____.16.

A commenter suggested clarifying that an ATM not owned and operated exclusively by a bank would not trigger a new facility-based assessment area, consistent with the current regulation. The agencies agree that a non-proprietary remote service facility, such as a network ATM, does not constitute a bank facility because such ATMs are owned and operated by a third party and are not operated exclusively for the bank. Further, a bank participating in such an ATM network may have limited control over where an ATM is located. Therefore, such ATMs would not by themselves trigger a new facility-based assessment area.

For the reasons stated above, the agencies are adopting the ''facility-based assessment area'' definition as proposed in the final rule with a minor wording change. Specifically, the agencies replaced the phrase ''in accordance with'' with ''pursuant to'' in the final rule.

[153] *See* current 12 CFR ____.12(g)(4)(iii).

[154] *See* Q&A § ____.12(g)(4)(iii)—1.

[155] *See* U.S. Dept. of Agriculture, ''Urban Influence Codes,''*https://www.ers.usda.gov/data-products/urban-influence-codes/*.

[156] *See* final § ____.22 and appendix A and accompanying section-by-section analysis.

[157] Similarly, as discussed above, the current CRA regulations define ''assessment area'' to mean ''a geographic area delineated in accordance with § ____.41''—the section of the current CRA regulations that describes the bases for delineating an assessment area. *See* current 12 CFR ____.12(c).

High Opportunity Area

The Agencies' Proposal

The agencies proposed to add a definition of ''High Opportunity Area'' to mean: (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).

As discussed further in the section-by-section analysis of § ____.15, the agencies proposed to define ''High Opportunity Area'' in relation to the proposal to conduct an impact review of community development activities.[158] One of the proposed factors that the agencies would consider in assessing the impact and responsiveness of a community development activity would be whether the activity ''[d]irectly facilitate[s] the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas.'' [159] The proposed definition would align with the Federal Housing Finance Agency's (FHFA) definition of ''High Opportunity Areas,'' [160] and was intended to demarcate areas where efforts to increase affordable housing could be especially beneficial for low- and moderate-income individuals.

The agencies solicited comment on whether the proposed approach to use the FHFA's definition of ''High Opportunity Areas'' is appropriate, and whether there are other options for defining High Opportunity Areas.

Comments Received

Most commenters that provided input on this definition supported the proposal to align the ''High Opportunity Areas'' definition with the FHFA's definition, for example, because the high cost of housing in otherwise low poverty areas can absorb significant resources from large portions of the population. A commenter observed that low poverty rates are an important component of identifying high opportunity areas. This commenter supported limiting the variability of definitions promulgated in State Qualified Allocation Plans but suggested there may also be other relevant opportunity or social vulnerability indices. Another commenter suggested the agencies clarify the definition to allow for variation in terminology used from State to State.

Some commenters offered various suggestions for expanding the ''High Opportunity Areas'' definition, such as to include Qualified Census Tracts to allow communities concerned about displacement of low- and moderate-income residents the ability to access CRA-motivated financing. Another commenter recommended expanding the definition to include Empowerment Zone and Enterprise Communities, transit-oriented areas, and census tracts where 40 percent or more of the homes meet the definition of affordable housing, and a different commenter suggested the definition should be expanded to include certain climate resilience factors. Another commenter stated that, in addition to aligning with the FHFA definition, the agencies should permit flexibility in how financial institutions identify affordable housing needs, gaps, and opportunities, utilizing data analytics tools.

A few commenters opposed the proposed ''High Opportunity Areas'' definition. Some of these commenters opposed using the FHFA's definition because it would include DDAs, which these commenters asserted were created to permit higher levels of housing tax credit subsidies in areas with high construction, land, and utility costs and are not directly related to higher income areas with low rates of poverty. Another commenter expressed some concern about including DDAs and suggested that the agencies consider eliminating DDAs or adding criteria to ensure that in-scope DDAs include features supporting economic mobility, such as strong transit connectivity of the housing to schools and childcare facilities, health facilities, employment centers, and green space. Similarly, another commenter stated that the proposed FHFA definition is limited to quantifiable poverty measures and State Qualification Allocation Plan definitions but may not address a more holistic view of ''opportunity,'' and suggested that incorporating service-enriched housing could be a good counterbalance. A commenter also stated that the FHFA definition may be too restrictive for some communities and recommended that the agencies be open to other options where high cost of living relative to local wages and income demonstrates a need.

Final Rule

The agencies are adopting the definition of ''High Opportunity Areas'' in the final rule with substantive revisions. As discussed above, the agencies intended the proposed definition of ''High Opportunity Area'' to align with the FHFA's definition of ''High Opportunity Area.'' However, the FHFA maintains a ''High Opportunity Areas File'' that designates the specific census tracts that qualify as high opportunity areas for purposes of residential economic diversity activities.[161] In consideration of the fact that the FHFA maintains a ''High Opportunity Areas File,'' the agencies believe it is prudent to defer to the FHFA's interpretation of its regulation and guidance in the identification of ''High Opportunity Areas.'' [162] Further, the agencies believe reliance on the FHFA's identification of ''High Opportunity Areas'' will eliminate any potential ambiguity in the definition.

For these reasons, the agencies have modified the proposed definition of ''High Opportunity Area'' to mean an area identified by the FHFA for purposes of the Duty to Serve Underserved Markets regulation in 12 CFR part 1282, subpart C. This definition generally includes geographic areas where the cost of residential development is high [163] and affordable housing opportunities can be limited.

While the agencies considered commenters' concerns about the definition and suggestions for alternatives, the agencies continue to believe the ''High Opportunity Area'' definition included in the final rule provides the best option for the purposes of the impact and responsiveness factor in § ____.15(b)(7) because, as defined by FHFA, these areas are intended to capture areas that provide strong opportunities for low- and moderate-income individuals, families, and households. The definition captures both DDAs and also areas designated as High Opportunity Areas where the poverty rate is low. The agencies agree that increasing affordable housing opportunities in these areas helps to provide low- or moderate-income individuals, families, and households with more choices to live in neighborhoods with economic

[158] *See* proposed § ____.15.

[159] *See* proposed § ____.15(b)(6).

[160] *See* FHFA, ''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.*

[161] *See* FHFA, ''Overview of the 2023 High Opportunity Areas File,'' *https://www.fhfa.gov/DataTools/Downloads/Documents/Enterprise-PUDB/DTS_Residential-Economic-Diversity-Areas/DTS_High_Opportunity_Areas_2023.pdf.*

[162] *See* 12 CFR 1282.1, 1282.36(c)(3).

[163] *See, e.g.,* HUD, Office of Policy Development and Research, ''Qualified Census Tracts and Difficult Development Areas'' (2022), *https://www.huduser.gov/portal/datasets/qct.html.*

opportunities. The agencies considered various alternative options, including commenter suggestions to expand the definition to other types of geographic areas or exclude DDAs from the definition but continue to believe the definition provides a clear set of standards related to where additional affordable housing may be both needed and hard to develop and is in alignment with an already in-use Federal agency definition with readily available geographic classifications.

Home Mortgage Loan

For a discussion of the definition of ''home mortgage loan,'' *see* the discussion for *Mortgage-Related Definitions* in this section-by-section analysis of § ____.12.

Income Level

To increase clarity, the agencies proposed non-substantive and minor structural revisions to the current definition of ''income level'' [164] and, as in other definitions, to replace the term ''geography'' with the more precise term ''census tract.'' Specifically, the agencies proposed that ''income level'' include the following definitions:

- *Low-income* would mean: (1) for individuals within a census tract, an individual income that is less than 50 percent of the area median income; or (2) for a census tract, a median family income that is less than 50 percent of the area median income.
- *Moderate-income* would mean: (1) 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 (2) for a census tract, a median family income that is at least 50 percent and less than 80 percent of the area median income.
- *Middle-income* would mean: (1) 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 (2) for a census tract, a median family income that is at least 80 percent and less than 120 percent of the area median income.
- *Upper-income* would mean: (1) for individuals within a census tract, an individual income that is 120 percent or more of the area median income; or (2) for a census tract, a median family income that is 120 percent or more of the area median income.

Comments Received

The agencies received several comments on the proposed definition of ''income level.'' A commenter requested that the agencies include persons with vision loss—and persons with disabilities in general—in the CRA regulation's ''low-income'' population, explaining that persons with vision loss or other disabilities often experience high unemployment, average income that is lower than the general population, less access to technology and the internet, and are more likely to be persons of color. Another commenter suggested the agencies include persons with disabilities in the low- and moderate-income designation even if their incomes exceed that designation because of the financial vulnerabilities and high costs associated with living with a disability, such as the expenses of accessible van conversions, assistive technology, and home renovations.

Another commenter suggested that the agencies revise the income levels in an upward direction so that ''low-income'' is less than 60 percent of area median income, ''moderate-income'' is between 60 percent and 100 percent of area median income, ''middle-income'' is between 100 percent and 125 percent of area median income, and ''upper-income'' is more than 125 percent of area median income. The commenter stated that this upward revision of the income levels could provide additional support for middle-class home ownership and assist more middle-income households that have lost ground after the COVID–19 pandemic and due to high inflation and would be consistent with the change in the agencies' special designation of distressed or underserved nonmetropolitan middle-income census tracts (a designation referencing between 80 percent and 120 percent of area median income) and in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which defines low-income as 80 percent of area median income and moderate-income as income ''not in excess of area median income.''

Another commenter stated that it welcomes the agencies providing more examples on how to identify low- and moderate-income individuals and families, and requested that the agencies consider a broader, more flexible framework that uses enrollment status in the USDA National School Lunch Program and Medicaid as part of the definition of low- and moderate-income.

Final Rule

The agencies are adopting the proposed definition of ''income levels'' in the final rule with several revisions to the first prong of each income level. Specifically, the agencies removed the reference to ''census tracts'' because inclusion of the term is unnecessary. The agencies also expanded the definition so that it applies to individuals, families, and households, instead of only individuals, as proposed. The agencies added families and households in recognition of the fact that the measurement of income would be incomplete if each income levels excluded families or households.

Accordingly, the agencies are adopting the following definition of ''income levels'':

- ''Low-income,'' which means: (1) for individuals, families, or households, income that is less than 50 percent of the area median income; or (2) for a census tract, a median family income that is less than 50 percent of the area median income.
- ''Moderate-income,'' which means: (1) for individuals, families, or households, an income that is at least 50 percent and less than 80 percent of the area median income; or (2) for a census tract, a median family income that is at least 50 percent and less than 80 percent of the area median income.
- ''Middle-income,'' which means: (1) for individuals, families, or households, an income that is at least 80 percent and less than 120 percent of the area median income; or (2) for a census tract, a median family income that is at least 80 percent and less than 120 percent of the area median income.
- ''Upper-income,'' which means: (1) for individuals, families, or households, an income that is 120 percent or more of the area median income; or (2) for a census tract, a median family income that is 120 percent or more of the area median income.

The agencies considered the commenters' recommendations and suggestions to consider a broader and more flexible framework and to revise the income levels upwards but have elected to maintain the income levels as proposed in the final rule. The income levels in the proposed definition mirror the income levels in the current definition, so the income levels standards are well known and understood within the banking industry. Further, the agencies believe a framework that relies on quantitative income factors provides for the most workable definition and minimizes complexity.

Intermediate Bank

For a discussion of the definition of ''intermediate bank,'' *see* the discussion above for *Bank Asset-Size Definitions.*

Large Bank

For a discussion of the definition of ''large bank,'' *see* the discussion above for *Bank Asset-Size Definitions.*

[164] *See* current 12 CFR ____.12(m).

Large Depository Institution

The final rule includes a new definition for ''large depository institution,'' not included in the proposal, to mean any depository institution, excluding depository institutions designated as limited purpose banks or savings associations [165] pursuant to 12 CFR 25.26(a), or designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a), that meets the asset size threshold of a large bank. The agencies are adopting this definition as a technical clarification to effectuate their intent that ''large bank'' in certain proposed benchmarks in the Community Development Financing Test includes all large banks and savings associations evaluated under 12 CFR parts 25, 228, and 345. The agencies also made other conforming edits to integrate these terms into the final rule.[166]

Limited Purpose Bank

The current CRA regulations define ''limited purpose bank'' to mean a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § ____.25(b).[167] The agencies proposed to revise the illustrative list of loan types from ''credit card or motor vehicle loans'' to ''credit cards, other revolving consumer credit plans, other consumer loans, or other non-reported commercial and farm loans'' and to change the cross-reference. The agencies proposed this change to more specifically identify the types of product lines that might be offered by a bank eligible for a ''limited purpose bank'' designation. Additionally, the agencies proposed to remove the reference to ''motor vehicle loans'' (replaced in the proposal by the proposed term ''automobile loans,'' as discussed above) as an illustrative type of a narrow retail product line, because the agencies proposed to evaluate automobile lending under the proposed Retail Lending Test.

In addition, the current CRA regulations define ''wholesale bank'' to mean 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 § ____.25(b).[168] To determine whether a bank meets this definition, the agencies consider whether a bank holds itself out to the retail public as providing such loans; and may consider the bank's revenues from extending such loans compared to its total revenue, including off-balance sheet activities.[169] The proposal included the same definition as the current rule, with a technical change to the cross-reference.

Comments Received

The agencies received a number of comments concerning the proposed definitions of ''limited purpose bank'' and ''wholesale bank.'' A few commenters stated that these definitions should be reevaluated so that a bank without a material amount of its balance sheet loan originations or loan volume subject to the proposed major product line standard could qualify for the designation. A group of commenters supported maintaining existing guidance for wholesale and limited purpose banks from the Interagency Questions and Answers, with a commenter specifically identifying guidance addressing the amount of unrelated lending in which a bank may engage while retaining its designation. Other commenters expressed concern with designating banks that engage in extensive credit card lending as wholesale or limited purpose banks. These commenters asserted that the proposal to apply the Community Development Financing Test for Wholesale or Limited Purpose Banks to wholesale or limited purpose banks (discussed in greater detail in the section-by-section analysis of § ____.26) would eliminate the possibility of these banks' credit card lending being evaluated; this raised concerns for these commenters, who noted that credit card lending is an important source of credit to individuals and small businesses. Instead, most of these commenters urged the agencies to exclude credit card banks from the option to seek a wholesale or limited purpose bank designation or otherwise ensure the distribution of credit card loans is evaluated pursuant to the proposed Retail Lending Test.

Final Rule

The agencies are adopting a revised ''limited purpose bank'' definition and eliminating the ''wholesale bank'' definition in the final rule. Specifically, the agencies have revised the ''limited purpose bank'' definition to be similar in structure to the current ''wholesale bank'' definition. To that end, the agencies are changing the definition of ''limited purpose bank'' from indicating that these banks offer only a narrow product line to indicating that these banks do not extend to retail customers the loan types evaluated under the final Retail Lending Test. Further, the agencies no longer believe it is necessary to impose the limitation that limited purpose banks may only operate in a ''regional or broader market.'' The removal of this language equips the definition with the ability to accommodate new or future market participants, such as fintech banks. Finally, the agencies are also adding language to indicate that these banks may extend to retail customers—*i.e.,* the retail public, including, but not limited to, individuals and businesses [170]—those loan types evaluated under the final Retail Lending Test on an incidental and an accommodation basis without losing the limited purpose bank designation, as requested by some commenters.

Therefore, the final rule defines a ''limited purpose bank'' as a bank that is not in the business of extending closed-end home mortgage loans, small business loans, small farm loans, or automobile loans evaluated under § ____.22 to retail customers, except on an incidental and accommodation basis, and for which a designation as a limited purpose bank is in effect, in accordance with § ____.26. Because this definition, generally, includes banks considered either ''limited purpose banks'' or ''wholesale banks'' under the current or proposed regulations, a separate definition of ''wholesale bank'' is not necessary. Overall, the changes to ''limited purpose bank'' in the final rule and the removal of the term ''wholesale bank'' in the CRA regulations, are intended to improve clarity, minimize complexity, and provide for new and future market participants.

Because the current and proposed CRA regulations apply the same performance test to each bank type, the change in nomenclature does not

[165] As provided in the OCC's agency-specific amendments, below, final 12 CFR part 25 generally replaces the term ''bank'' in the common rule text with the term ''bank or savings association.'' As such, in the definition of ''large depository institution'' the phrase ''limited purpose'' modifies both ''banks'' and ''savings associations'' and should be read as ''limited purpose banks'' and ''limited purpose savings associations.'' More generally, any modifiers that precede the terms ''bank(s) or savings association(s)'' or ''bank(s) and savings association(s)'' modify both ''bank(s)'' and ''savings association(s).''

[166] *See supra* note 145.

[167] *See* current 12 CFR ____.12(n).

[168] *See* current 12 CFR ____.12(x).

[169] *See* Q&A § ____.12(x)—1.

[170] The meaning of retail customers is consistent with current guidance for wholesale banks. *See* Q&A § ____.12(x)—1.

substantively affect the application of performance tests. In other words, a wholesale bank under the proposal would have been subject to proposed § ____.26; a limited purpose bank (which includes wholesale banks under the proposed definition) under the final rule remains subject to the performance test in § ____.26. The agencies believe that most banks that meet the current definition of a ''wholesale bank'' or ''limited purpose bank'' will continue to meet the ''limited purpose bank'' definition in the final rule. However, the agencies acknowledge that a bank that primarily offers automobile loans (and therefore meets the majority-automobile-lender standard discussed below) may have qualified as a limited purpose bank under the current rule or the proposal but will not qualify as a limited purpose bank under the final rule because they are in the business of extending loans evaluated under § ____.22 to retail customers.

The agencies declined to revise the definition of ''limited purpose bank'' to exclude consumer credit card banks or evaluate credit card banks under the Retail Lending Test, as requested by some commenters. First, based on the agencies' supervisory experience, credit card banks often have unique business models and do not have extensive branch systems. Second, evaluating credit card banks under the Retail Lending Test would require significant additional data collection from these banks. Credit card underwriting may not rely on a customer's income, and banks do not have an obligation to collect and routinely update credit card customers' income data. As a result, credit card customer data collected from these banks would not be complete and could vary widely among banks, posing significant challenges to performing the borrower distributions that are central to the Retail Lending Test. The agencies recognize, however, the importance of credit card lending to low- and moderate-income individuals, small businesses, and small farms. For further discussion of the evaluation of credit card and other non-automobile consumer loans under the final rule, see the section-by-section analyses of §§ ____.22(d) (Retail Lending Test; major product lines) and ____.23 (Retail Services and Products Test). In this regard, for example, the agencies note that small business credit card lending is included in the small business loan product line evaluated under the final Retail Lending Test.

In response to some commenters' recommendations, the agencies note that guidance included in the Interagency Questions and Answers on wholesale and limited purpose banks will no longer be relevant guidance for the final rule, unless the agencies specifically include this guidance in subsequent issuances.

Loan Location

Under the current CRA regulation, the definition of ''loan location'' provides that a consumer loan is located in the geography where the borrower resides; a home mortgage loan is located in the geography where the property to which the loan relates is located; and a small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.[171] The agencies proposed technical revisions to this definition to add greater precision and clarity. As discussed above, the agencies proposed a conforming change across many definitions to replace the term ''geography'' with the more precise term ''census tract.'' Additionally, to clarify the point in time when a consumer loan's location is assigned, the agencies proposed that the location of a consumer loan is based on where the borrower resides at the time the consumer submits the loan application. Further, the agencies proposed to clarify that a home mortgage loan's location is based on where the property securing the loan is located, instead of where the property related to the loan is located.

The agencies did not receive any comments concerning the proposed ''loan location'' definition and are adopting the definition as proposed with the following changes. First, the agencies have replaced the term ''consumer'' with the term ''borrower'' in the first prong, to conform with the reference to ''borrower'' earlier in the sentence. Second, the agencies have included multifamily loan in the second prong to clarify the location of multifamily loans, which the agencies recognize was not specified in the proposal. Third, the agencies made a non-substantive change to the sentence structure of the third prong to remove the passive tense in one clause.

As adopted, the definition of ''loan location'' in the final rule provides that: (1) a consumer loan is located in the census tract where the borrower resides at the time that the borrower submits the loan application; (2) a home mortgage loan or a multifamily 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 borrower will otherwise apply the loan proceeds, as indicated by the borrower.

Loan Production Office

The current CRA regulations define ''loan production office'' to mean a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.[172] The agencies proposed to remove this definition given the limited focus on, and consideration of, loan production offices in the agencies' proposal. The agencies did not receive any comments concerning the removal of this definition, and the agencies are removing this definition in the final rule as proposed.

Low Branch Access Census Tract; Very Low Branch Access Census Tract

The agencies proposed to define ''low branch access census tract'' to mean a census tract with one bank, thrift, or credit union branch, and a ''very low branch access census tract'' to mean a census tract with no bank, thrift, or credit union branches, within: (1) 10 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.

The agencies proposed to evaluate a bank's branch distribution in, among other geographic areas, ''low branch access census tracts or very loan branch access census tracts.'' [173] Upon further consideration of comments received on this topic, the agencies have elected to not consider the availability of branches in low branch access census tracts or very low branch access census tracts in the Retail Services and Products Test. For additional discussion, see the section-by-section analysis of § ____.23, Retail Services and Products Test. As a result, the CRA regulations no longer require definitions of ''low branch access census tracts'' or ''very low branch access census tracts'' and the agencies are adopting the final rule without them.

Low-Cost Education Loan

Current § ____.21(e), *Low-cost education loans provided to low-income*

[171] *See* current 12 CFR ____.12(o).

[172] *See* current 12 CFR ____.12(p).

[173] *See* proposed § ____.23(b)(1)(i)(C)(*1*).

borrowers, provides that, for purposes of that paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (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 that term is 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. It further provides that such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

The agencies proposed to add this definition of ''low-cost education loan'' to § ____.12, with changes to update a citation, applying the definition only to private loans, as provided in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)), and other minor wording changes. This definition was needed for the proposal to consider the responsiveness of credit products and programs to the needs of low- and moderate-income individuals, including through low-cost education loans, in the proposed Retail and Products Service Test.[174] As with the current rule, this proposed definition leveraged the statutory definitions of related terms.

Specifically, the agencies proposed to define ''low-cost education loan'' to mean 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). The agencies did not receive any comments concerning the proposed definition of ''low-cost education loan'' and adopt it as proposed in the final rule with one technical change to replace the reference to U.S. Department of Education regulations with the regulatory citation, 34 CFR part 600.

Low-Income Credit Union

The agencies proposed to add a definition for ''low-income credit union (LICU)'' in support of various proposed provisions related to community development. As discussed further in the section-by-section analysis of § ____.13, Consideration of community development loans, investments, and services, the agencies proposed to create a category of ''community development'' that would comprise activities with MDIs, WDIs, LICUs, or CDFIs.[175] In addition, the agencies proposed to consider, as a factor in evaluating the impact and responsiveness of any community development activity, whether the activity supports an MDI, WDI, LICU, or Treasury Department-certified CDFI.[176]

The agencies proposed to define LICU as having the same meaning given to that term in NCUA's regulations, 12 CFR 701.34. The NCUA's regulations provide, in part, that based on data obtained through examinations, the NCUA will notify a Federal credit union that it qualifies for designation as a LICU if a majority of its membership qualify as low-income members.[177]

The agencies did not receive any comments concerning the proposed definition of ''LICU'' and adopt it as proposed in the final rule.

Low-Income Housing Tax Credit

The final rule includes a new definition for ''Low-Income Housing Tax Credit (LIHTC),'' not included in the proposal, to clarify that ''Low-Income Housing Tax Credit'' in the CRA regulations is a reference to a Federal program. This term is utilized in §§ ____.13, ____.15, and ____.42. Accordingly, the agencies are adopting a definition of ''Low-Income Housing Tax Credit (LIHTC)'' in the final rule to mean a Federal tax credit for housing persons of low income pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

Major Product Line

The final rule includes a new definition for ''major product line,'' not included in § ____.12 of the proposal. In the proposal, the agencies described the concept of major product line in § ____.22. In the final rule, instead of including the concept solely in § ____.22, the agencies are also adding a definition for ''major product line'' in § ____.12 because the term is used outside of § ____.22 and the agencies recognized it was more appropriate as a defined term. However, in the final rule the agencies are modifying what constitutes a ''major product line.'' The new definition explains that ''major product line'' means a product line that the appropriate Federal financial supervisory agency evaluates in a particular Retail Lending Test Area, pursuant to § ____.22(d)(2) and paragraphs II.b.1 and II.b.2 to appendix A of the final rule. This definition is intended to identify the product lines with the greatest importance to the bank and its community and that, accordingly, are subject to evaluation under the Retail Lending Test. As described in the section-by-section analysis of § ____.22, Retail Lending Test, closed-end home mortgage loans, small business loans, and small farm loans are major product lines in a facility-based assessment area or outside retail lending area if the bank's loans in the respective product line represent at least 15 percent of the bank's reported loans and other loans considered across all product lines in the same geographic area during the evaluation period. This 15 percent standard is calculated based on a combination of loan dollars and loan count (see above for a discussion of the definition of ''combination of loan dollars and loan count''). The same 15 percent standard is used to determine whether automobile loans are a major product line in a facility-based assessment area or outside retail lending area, if the bank is a majority automobile lender for the institution as a whole or opts into having its automobile lending evaluated. In addition, closed-end home mortgage loans and small business loans are a major product line in a particular calendar year for a retail lending assessment area if the product line meets or exceeds the threshold requiring delineation of a retail lending assessment area pursuant to § ____.17 (*i.e.,* 150 reported closed-end home mortgage loans, or 400 reported small business loans, in each of the prior two calendar years). As discussed in the section-by-section analysis of § ____.22, the agencies determined that it was not appropriate to include open-end home mortgage loans or multifamily loans in the major product line definition in the final rule, as the agencies proposed.

[174] *See* proposed § ____.23(c)(1). This aspect of the proposal was intended to incorporate into the CRA regulations the statutory requirement that the agencies consider low-cost education loans provided to low-income borrowers as a factor in evaluating a bank's record of helping to meet the credit needs of its entire community. *See* 12 U.S.C. 2903(d). For further discussion, see the section-by-section analysis of § ____.23.

[175] *See* proposed § ____.13(j).

[176] *See* proposed § ____.15(b)(3).

[177] *See* 12 CFR 701.34(a)(1).

Majority Automobile Lender

The final rule includes a new definition for ''majority automobile lender,'' not included in the proposal, defined to mean a bank for which more than 50 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans were automobile loans, as determined pursuant to paragraph II.b.3 of appendix A. Paragraph II.b.3 of appendix A includes the provisions of the final rule that identify the banks for which evaluation of automobile lending is mandatory in each facility-based assessment area or in an outside retail lending area in which automobile lending represents a major product line.

As described in the section-by-section analysis of § ____.22, a bank is considered a majority automobile lender if its automobile loans originated and purchased over the combined two-calendar-year period preceding the first year of the evaluation period exceeded 50 percent, based on a combination of loan dollars and loan count, of the bank's lending across specified categories. Specifically, the final rule calculates the 50 percent standard based on the following loan categories: home mortgage loans; [178] multifamily loans; small business loans; small farm loans; and automobile loans originated and purchased overall.

The agencies intend this new definition to be a clarifying change and have added it to make the regulatory text in § ____.22 and appendix A less complex and readable.

Metropolitan Area

The agencies proposed to add a definition of ''metropolitan area'' because the term is used throughout the rule to describe areas where the agencies will evaluate a bank. Specifically, the agencies proposed to define ''metropolitan area'' to mean any MSA, combined MSA, or metropolitan division as that term is defined by the Director of the Office of Management and Budget (Director of the OMB).[179]

The agencies did not receive any comments related to the proposed ''metropolitan area'' definition. However, the agencies are adopting this definition with several revisions. First, the agencies are removing reference to ''combined MSA'' from the definition because ''combined MSA'' is not a term defined by the Director of the OMB. Second, the agencies are removing reference to ''metropolitan division'' from the definition. Metropolitan divisions are parts of certain populous MSAs, so the agencies determined that the term is not necessary and that it added complexity to separately list both terms in the ''metropolitan area'' definition. For example, any county in a metropolitan division would also be in an MSA. Finally, the agencies are removing the phrase ''as defined by the Director of the Office of Management and Budget'' from the definition. As discussed below, the term ''MSA'' is defined in the final rule to mean a metropolitan statistical area defined by the Director of the OMB. Accordingly, ''metropolitan area'' in the final rule means any MSA.

Metropolitan Division

The current CRA regulations define ''metropolitan division'' to mean a metropolitan division as defined by the Director of the OMB.[180] The agencies proposed this same definition, with a minor technical change. Specifically, the agencies replaced the phrase ''means a metropolitan division as defined'' with the phrase ''has the same meaning given to that term.'' The agencies did not receive any comments related to the proposed definition of ''metropolitan division,'' and are adopting the definition as proposed in the final rule.

Military Bank

The agencies proposed to add a new definition of ''military bank'' in support of proposed § ____.16, which would provide an exception to certain facility-based assessment area delineation requirements for military banks.[181] Specifically, the agencies proposed to define ''military bank'' to mean 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, basing this definition on language in the CRA statute.[182] The agencies proposed this definition to increase clarity and consistency in the CRA regulations.

A commenter provided input on the proposed definition of ''military bank.'' Although expressing support for inclusion of a definition of ''military bank,'' the commenter expressed concern that the agencies' proposed definition is too narrow and recommended that the word ''predominantly'' be defined to include ''a bank whose most important customer group is military personnel or their dependents,'' as in the OCC 2020 CRA Final Rule. The commenter noted that this qualification should lead to the extension of the ''military bank'' definition to all financial institutions with a commitment, mission, or business model to serve the military community exclusive of all other communities. The commenter also suggested that the definition of ''military bank'' should include on-base branches of financial institutions that do not otherwise fit within the definition so that branches on military bases could benefit from the CRA's geographic assessment area exception without extending this treatment to the larger, non-military financial institution of which they are part. Further, this commenter expressed support for the proposed definition's inclusion of those who serve or have served in the Armed Forces or dependents of military personnel. Finally, the commenter noted that the definition of ''military bank'' should include the U.S. Space Force, established in 2019, in the definition's listing of military service branches.

The agencies have made substantive edits to the proposed definition of ''military bank'' in response to these comments. First, the agencies agree that ''predominantly'' should be defined to clarify that a ''military bank'' is a bank whose most important customer group is military personnel or their dependents. This added language is consistent with the interpretation of ''predominantly'' in the preamble to the 1979 CRA rulemaking [183] and codifies a decades-old interpretation that ''predominantly'' is not based on a numerical standard.[184] Additionally, the

[178] *See* the definition of ''home mortgage loan'' in final § ____.12.

[179] The CRA statute defines the term ''metropolitan area'' to mean ''any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area, as defined by the Director of the OMB, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.'' 12 U.S.C. 2906(e)(2). The agencies did not propose to include ''primary metropolitan statistical area'' or ''consolidated metropolitan area'' because the Director of the OMB no longer uses these terms. The agencies exercised their discretion to define this term in the final rule to include all MSAs, without regard to whether it has a population of 250,000 or more.

[180] *See* current 12 CFR ____.12(q).

[181] *See* proposed § ____.16(d). *See also* the section-by-section analysis of § ____.16 for further discussion of this provision.

[182] *See* 12 U.S.C. 2902(4) (''A financial institution whose business predominately consists of serving the needs of military personnel who are not located in a defined geographic area may define its 'entire community' to include its entire deposit customer base without regard to geographic proximity.''). The agencies note that the statute uses the term ''predominately,'' however, the more common spelling is ''predominantly,'' and accordingly, the agencies have used that term instead.

[183] 44 FR 18163, 18164 (Mar. 27, 1979).

[184] *Id.*

agencies believe this final rule regulatory text comports with the language in the CRA statute. Second, the agencies agree with the commenter that the new U.S. Space Force should be included in the definition as a branch of the U.S. Armed Forces.

The agencies, however, declined to adopt the commenter's suggestion that the definition should include on-base branches of financial institutions that do not otherwise fit within the definition. The agencies believe such revision would be inconsistent with the CRA statute's provision regarding military banks, which refers to the business of the financial institution as predominantly consisting of serving the needs of military personnel, and not branches of a financial institution.[185]

For the reasons stated above, the agencies are adopting a definition of ''military bank'' to mean a bank whose business predominantly consists of serving the needs of military personnel who serve or have served in the U.S. Armed Forces (including the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Marine Corps, U.S. Navy, and U.S. Space Force) or their dependents. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority Depository Institution

Current Approach and the Agencies' Proposal

The agencies proposed to add a definition of ''minority depository institution (MDI)'' to support the provisions in the proposal related to community development. As discussed above, and further in the section-by-section analysis of § ____.13(k), the agencies proposed to create a category of ''community development'' that would comprise activities with MDIs, WDIs, LICUs, or CDFIs.[186] In addition, the agencies proposed to consider, as a factor in evaluating the impact and responsiveness of any community development activity, whether the activity supports an MDI, WDI, LICU, or Treasury Department-certified CDFI.[187] The proposed definitions also account for a provision in the CRA statute providing that the amount of any bank contribution or loss in connection with donating, selling on favorable terms, or making available on a rent-free basis any branch of the bank located in a predominantly minority neighborhood to an MDI or WDI may be a factor in determining whether the bank is meeting the credit needs of its community, which includes specific definitions of MDI and WDI.[188]

The agencies structured the proposed ''MDI'' definition to provide two avenues through which an institution may qualify as an MDI. The agencies pursued this dual track structure to both ensure consistency with the CRA statute and incorporate the agencies' current policies for determining what institutions qualify as ''minority-owned financial institutions'' under 12 U.S.C. 2903(b). First, the agencies determined that the proposed ''MDI'' definition should incorporate the statutory definition of ''minority depository institution'' to ensure consistency with the CRA statute, which applies to certain transactions involving branches. Specifically, under 12 U.S.C. 2907 (*i.e.,* the statutory provision concerning donating, selling on favorable terms, or making certain branches available on a rent-free basis to a minority depository institution), ''minority depository institution'' is defined as a depository institution (as defined in 12 U.S.C. 1813(c)): (1) more than 50 percent of the ownership or control of which is held by 1 or more minority individuals; and (2) more than 50 percent of the net profit or loss of which accrues to 1 or more minority individuals. The agencies note that this definition is required for the narrow set of branching activities referenced in 12 U.S.C. 2907.

More broadly, 12 U.S.C. 2903 states that, in assessing an institution's record of helping to meet the credit needs of the entire community, the agencies may consider, ''as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with *minority- and women-owned financial institutions* and LICUs provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.'' [189] Unlike 12 U.S.C. 2907, 12 U.S.C. 2903 does not define the terms ''minority-owned financial institution'' or ''women-owned financial institution.'' Given the absence of statutory definitions, the agencies, through their respective supervisory authority, have applied criteria for determining which institutions are considered minority- or women-owned financial institutions when interpreting CRA.[190] Therefore, the second aspect of the proposed ''MDI'' definition was designed to capture those institutions that the agencies recognize as ''minority-owned financial institutions'' pursuant to their current policies.

Specifically, the agencies proposed to define an ''MDI,'' for purposes other than the specified branch-related transactions under 12 U.S.C. 2907, as a bank that: (1) meets the definition under 12 U.S.C. 2907(b)(1); [191] (2) 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); [192] or (3) is considered to be a minority depository institution by the appropriate Federal banking agency. This proposed definition is derived in part from the definition of ''minority depository institution'' in the

[185] *See* 12 U.S.C. 2902(4).

[186] *See* proposed § ____.13(j).

[187] *See* proposed § ____.15(b)(3) and the accompanying section-by-section analysis of § ____.15.

[188] *See* 12 U.S.C. 2907.

[189] 12 U.S.C. 2903(b) (emphasis added).

[190] Generally, the agencies have considered institutions that qualify under their MDI policies to qualify under section 2903. *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 a bank that no longer meet the minority ownership requirement to continue to be considered a minority depository institution if it primarily serves the credit and economic needs of the community in which it is chartered and serves 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, 86 FR 32728, 32732 (June 23, 2021) (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).

[191] The agencies incorporated section 2907 into this second prong of the definition to ensure that banks are not limited to the engaging in the specified branch-related activities with institutions that meet the statutory definition but are not otherwise consistent with the agencies' MDI designation policies.

[192] The agencies' MDI designation policies are based on section 308 of the FIRREA, and the agencies determined it was appropriate to expressly reference that statute in the definition for further consistency. Under section 308, ''minority financial institution'' means any depository institution that—(A) if a privately owned institution, 51 percent is owned by one or more socially and economically disadvantaged individuals; (B) if publicly owned, 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and (C) in the case of a mutual institution where the majority of the Board of Directors, account holders, and the community which it services is predominantly minority. Further, under section 308, the term ''minority'' means any black American, Native American, Hispanic American, or Asian American.

Emergency Capital Investment Program[193] enacted as part of the Consolidated Appropriations Bill of 2021,[194] revised to be appropriate for the CRA. The agencies stated that using this statutory-based definition for purposes of CRA promotes further consistency across government programs.

Comments Received

A number of commenters addressed the proposed ''MDI'' definition. For example, a commenter supported a definition that would include both banks owned by minority individuals and minority-operated banks. According to the commenter, successful and growing banks need to raise outside capital, which could result in the bank no longer meeting the minority-owned definition and would therefore have the unintended consequence of keeping minority banks small.

In response to the agencies' question on whether to include minority insured credit unions recognized by the NCUA in the ''MDI'' definition, most commenters stated that such credit unions should be included. In addition, some commenters recommended that State-insured MDI credit unions and Puerto Rico's cooperativas also be included in this category. Commenters generally noted that such credit unions and related entities share the same purpose as MDIs, are insured and supervised, and accordingly should be treated the same as MDI banks. A commenter stated that this addition could expand the number of MDIs available to partner with banks on CRA activities. Although no commenters expressed opposition to including MDI credit unions in the definition, a commenter did suggest that smaller credit union MDIs could be included, but those with more than 50,000 members or more should be subject to additional scrutiny to ensure that 51 percent of its owners are people of color.

Final Rule

The agencies are adopting the proposed ''MDI'' definition in the final rule with several technical edits. First, in paragraph (1), the agencies removed the parenthetical, ''(*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).'' This language paraphrased the cited statute, 12 U.S.C. 2907(b)(1), and is therefore not necessary. Second, the agencies made non-substantive wording changes to the definition to improve its structure and readability and to promote consistency with the statutes cited in the definition. Accordingly, the final rule defines ''minority depository institution (MDI)'' to mean: (1) for purposes of activities conducted pursuant to 12 U.S.C. 2907(a), ''minority depository institution'' as defined in 12 U.S.C. 2907(b)(1); and (2) for all other purposes: (i) a ''minority depository institution'' as defined in 12 U.S.C. 2907(b)(1); (ii) a ''minority depository institution'' as defined in section 308 of the FIRREA (12 U.S.C. 1463 note); or (iii) a depository institution considered to be a minority depository institution by the appropriate Federal banking agency. For purposes of this definition, ''appropriate Federal banking agency'' has the meaning given to it in 12 U.S.C. 1813(q).

As also discussed in the section-by-section analysis of § ____.13(k), the agencies considered but are not including minority credit unions in the ''MDI'' definition. Unlike MDIs, which are independently reviewed by each agencies' staff, credit unions self-certify MDI status and the NCUA does not verify or certify the accuracy of this status.[195] The agencies also note that there is a large overlap between minority credit unions and LICUs.[196] Thus, a large percentage of minority credit unions will be eligible under the rule for community development consideration based on their LICU status.

In response to comments about including banks that are owned by minority individuals and minority-operated banks in the ''MDI'' definition, the agencies recognize that banks have varied ownership structures and need to raise capital and have considered these issues when designating MDIs. The proposed and final rule both include as a component of the definition of ''MDI'' banks that are considered to be minority depository institutions by the appropriate Federal banking agency. This component of the definition provides flexibility and incorporates each agency's applicable policies regarding the designation of MDIs.

Mission-Driven Nonprofit Organization

The agencies are adding a new definition for ''mission driven nonprofit organization,'' not included in the proposal, to support this term's use in §§ ____.13 and ____.42 in the final rule. Specifically, the final rule defines ''mission-driven nonprofit organization'' to mean an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of such Code that benefits or serves primarily low- or moderate-income individuals or communities, small businesses, or small farms.

The agencies are adopting this definition primarily to support revisions made in the final rule, based on consideration of comments, to expand the government plan eligibility criteria in the place-based community development categories to include plans, programs, or initiatives of mission-driven nonprofit organizations.[197] The final rule also provides services that are conducted with a mission-driven nonprofit organization as one example of a qualifying community supportive service in § ____.13(d). These aspects of the final rule are discussed in greater detail in the section-by-section analysis of § ____.13. The final rule also uses the term mission-driven nonprofit organization for consistency as an example of detail that could be provided about a community development loan or community development investment in final § ____.42.

The agencies included the first part of this definition to explicitly state that an organization must be a 501(c)(3) organization to qualify as a mission-driven nonprofit organization. Further, the definition specifies that these organizations benefit or serve primarily low- or moderate-income individuals, small businesses, or small farms. The agencies believe that, with these two core components, the definition of mission-driven nonprofit organization is appropriately tailored to capture entities that are dedicated to benefiting and serving low- and moderate-income individuals or communities, small businesses, or small farms while being sufficiently narrow not to permit a broad expansion of eligibility criteria under the place-based community development categories. The agencies also believe that this definition is consistent with the types of organizations that the agencies proposed would be partners with banks in conducting community development.

[193] *See* 12 U.S.C. 4703a.

[194] *See* Public Law 116–260, 134 Stat. 1182 (Dec. 27, 2020).

[195] *See* 80 FR 36356, 36357 (June 24, 2015).

[196] *See* NCUA, ''Minority Depository Institutions Annual Report to Congress,'' 2 (2021), *https://ncua.gov/files/publications/2021-mdi-congressional-report.pdf* (approximately 81% of MDIs also held a designation as LICUs as Dec. 31, 2021 (*i.e.,* 412 out of 509 MDIs)).

[197] *See* final § ____.13(e) through (j).

For example, the proposal included a discussion of nonprofit organizations in reference to the proposed affordable housing category of community development in proposed § ____.13(b), as well as in relation to community supportive services in proposed § ____.13(d).[198]

MSA

Under the current CRA regulations, the agencies define ''MSA'' to mean a metropolitan statistical area as defined by the Director of the OMB.[199] The agencies proposed maintaining this definition but changing the defined term from ''MSA'' to ''metropolitan statistical area (MSA)'' and with minor technical wording changes. The agencies did not receive any comments on this proposed definition. However, after further consideration, the agencies are reverting back to the current defined term ''MSA'' in the final rule because ''MSA'' is the term known and understood by the industry. The agencies are also reverting the wording of the definition back to its current form to be consistent with the wording of other definitions and making minor technical changes to reference OMB delineation and to add OMB authority citations. Accordingly, the agencies are defining ''MSA'' to mean a metropolitan statistical area delineated by the Director of the Office of Management and Budget, pursuant to 44 U.S.C. 3504(e)(3) and (10), 31 U.S.C. 1104(d), and Executive Order 10253 (June 11, 1951).

Mortgage-Related Definitions

Under the current CRA regulations, the agencies define ''home mortgage loan'' to mean a closed-end mortgage loan or an open-end line of credit as defined under 12 CFR 1003.2 (Regulation C), the CFPB's HMDA implementing regulations, that is not an excluded transaction under 12 CFR 1003.3(c)(1) through (10) and (13).[200] The agencies proposed to amend the current ''home mortgage loan'' definition to refer to an ''open-end home mortgage loan'' rather than an ''open-end line of credit,'' with no intent to change the meaning. The agencies also proposed to remove the cross-reference to the CFPB's Regulation C and add new definitions for ''closed-end home mortgage loan'' and ''open-end home mortgage loan,'' which would have the same meanings given to ''closed-end mortgage loan'' and ''open-end line of credit'' in 12 CFR 1003.2(d) and (o), respectively, excluding multifamily loans as defined in proposed § ____.12.[201] ''Closed-end home mortgage loan'' is defined in 12 CFR 1003.2(d) to mean an extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit under the HMDA regulations. ''Open-end line of credit'' is defined in 12 CFR 1003.2(o) to mean an extension of credit that is secured by a lien on a dwelling and is an open-end credit plan as defined in CFPB's Regulation Z, 12 CFR 1026.2(a)(20),[202] but without regard to whether the credit is consumer credit, as defined in 12 CFR 1026.2(a)(12),[203] is extended by a creditor, as defined in 12 CFR 1026.2(a)(17),[204] or is extended to a consumer, as defined in 12 CFR 1026.2(a)(11).[205]

The agencies proposed to add separate definitions for ''closed-end home mortgage loan'' and ''open-end home mortgage loan,'' because, as discussed further in the section-by-section analysis of § ____.22, given their distinct characteristics, these types of loans would be considered separately under the proposed Retail Lending Test. The agencies' proposed definitions of these terms are consistent with the current ''home mortgage loan'' definition, which cross-references 12 CFR 1003.2 to define closed-end home mortgage loans and open-end lines of credit. The agencies excluded multifamily loans from the definitions of ''closed-end home mortgage loan'' and ''open-end home mortgage loan'' because the proposal included a separate definition for ''multifamily loan'' that covers different transactions (as discussed below in the section-by-section analysis). This exclusion was

[198] *See* proposed § ____.13(b)(2)(ii) and (d)(1); *see also* 87 FR 33884, 33896 (June 3, 2022).

[199] *See* current 12 CFR ____.12(r).

[200] *See* current 12 CFR ____.12(l). Excluded transactions under 12 CFR 1003.3(c)(1) through (10) and (13) are as follows: (1) a closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity; (2) a closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land; (3) temporary financing; (4) the purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit; (5) the purchase solely of the right to service closed-end mortgage loans or open-end lines of credit; (6) the purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in § 1003.2(c); (7) a closed-end mortgage loan or open-end line of credit, or an application for a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than $500; (8) the purchase of a partial interest in a closed-end mortgage loan or open-end line of credit; (9) a closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes; (10) a closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end line of credit is a home improvement loan under § 1003.2(i), a home purchase loan under § 1003.2(j), or a refinancing under § 1003.2(p); and (11) a transaction that provided or, in the case of an application, proposed to provide new funds to the applicant or borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement classified as a supplemental mortgage under New York Tax Law section 255; the transaction is excluded only if final action on the consolidation was taken in the same calendar year as final action on the new funds transaction.

[201] As discussed further below, the agencies proposed to define ''multifamily loan'' as ''a loan for a 'multifamily dwelling' as defined in 12 CFR 1003.2(n).'' Multifamily dwelling is defined in 12 CFR 1003.2(n) as ''a dwelling, regardless of construction method, that contains five or more individual dwelling units.''

[202] ''Open-end credit'' means consumer credit extended by a creditor under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. *See* 12 CFR 1003.2(o) and 100.1026.2(a)(20).

[203] ''Consumer credit'' means credit offered or extended to a consumer primarily for personal, family, or household purposes. *See* 12 CFR 1026.2(a)(12).

[204] ''Creditor'' means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. For purposes of §§ 1026.4(c)(8) (Discounts), 1026.9(d) (Finance charge imposed at time of transaction), and 1026.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card. For purposes of subpart B, any card issuer that extends either open-end creditor credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. For purposes of subpart B (except for the credit and charge card disclosures contained in §§ 1026.60 and 1026.9(e) and (f), the finance charge disclosures contained in §§ 1026.6(a)(1) and (b)(3)(i) and 1026.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in § 1026.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments. A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of § 1026.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of § 1026.32 or one or more such credit extensions through a mortgage broker. *See* 12 CFR 1026.2(a)(17).

[205] ''Consumer'' means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. For purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest. *See* 12 CFR 1026.2(a)(11).

necessary because, under the proposal, the agencies could consider multifamily loans, unlike other closed-end home mortgage loans, under the Community Development Financing Test in § ____.24.[206] The agencies also proposed this exclusion of multifamily loans because multifamily loans were a distinct category of retail loan which could qualify as a major product line under the Retail Lending Test in § ____.22.

A commenter requested that the excluded transaction language in the definition of ''home mortgage loan'' referencing 12 CFR 1003.3(c)(1) through (10) and (13) be narrowed to 12 CFR 1003.3(c)(1),[207] (5),[208] (7) through (10),[209] and (13).[210] In particular, the commenter objected to the current definition's exclusion of loans secured by unimproved land (12 CFR 1003.3(c)(2)), expressing the view that this would penalize financial institutions for lending to builders or individuals seeking to build in low- and moderate-income communities. Similarly, the commenter objected to the exclusion of temporary financing (12 CFR 1003.3(c)(3)), such as bridge financing or a loan for home construction, asserting that this could undermine a financial institution's ability to finance the construction of homes in low- and moderate-income communities, even if the financing is only on a temporary basis. The commenter objected to excluding from the ''home mortgage loan'' definition purchased closed-end home mortgage loans and open-end lines of credit, whether as a pool of credits or through an acquisition or merger (12 CFR 1003.3(c)(4) and (6)), explaining that financial institutions are purchasing whole loans and servicing rights and not merely purchasing an investment vehicle, and that purchasing loan pools also permits financial institutions to meet the credit needs of their communities despite not having the resources to generate these loans one transaction at a time.

The agencies decline to revise the excluded transactions language. As under the current CRA regulations, the agencies intend to leverage HMDA data in the final rule, *i.e.,* data reported pursuant to 12 CFR part 1003, which allows for sufficient data for analysis while not increasing the data collection or reporting burden on these banks, as part of the CRA evaluation framework. If the agencies narrowed the number of excluded transactions as requested by the commenter, HMDA reporters would be required to produce additional data that exceeds their current HMDA reporting obligations, which would both increase burden for banks and add complexity to CRA examinations.

Further, the agencies note that the exclusion of purchased closed-end home mortgage loans and open-end lines of credit from the ''home mortgage loan'' definition does not mean that they are not considered under the CRA regulations. For a more detailed discussion of the CRA regulations' consideration of purchased loans, see the section-by-section analysis of final § ____.22, Retail Lending Test.

After consideration of commenters' concerns and recommendations and further review of the proposed definitions in light of other aspects of the final rule, the agencies are adopting the definitions of ''home mortgage loan,'' ''closed-end home mortgage loan,'' and ''open-end home mortgage loan'' with technical changes. First, the agencies have moved the HMDA exclusions from the definition of ''home mortgage loan'' to the definitions of ''closed-end home mortgage loan'' and ''open-end home mortgage loan,'' where the exclusions are more appropriately located. Second, the agencies have removed the specific paragraph designations in the cross-references to the HMDA definitions so that they now read ''12 CFR 1003.2'' instead of 12 CFR 1003.2(d) and (o) so that these cross-references remain accurate if the CFPB modifies this section in the future. Accordingly, under the final rule:

- ''home mortgage loan'' means a closed-end home mortgage loan or an open-end home mortgage loan as these terms are defined in final § ____.12;
- ''closed-end home mortgage loan'' has the same meaning given to the term ''closed-end mortgage loan'' in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in final § ____.12; and
- ''open-end home mortgage loan'' has the same meaning as given to the term ''open-end line of credit'' in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in final § ____.12.

Multifamily Loan

The agencies proposed to add a new definition of ''multifamily loan'' and define it to mean a loan for a ''multifamily dwelling'' as defined in 12 CFR 1003.2(n) in the CFPB's Regulation C, which implements HMDA. Multifamily dwelling is defined in 12 CFR 1003.2(n) to mean a dwelling, regardless of construction method, that contains five or more individual dwelling units. The agencies intended the proposed definition to correspond to the proposal to treat multifamily loans separately from closed-end and open-end home mortgage loans, given their distinct characteristics. The proposal for considering ''multifamily loans'' is discussed in detail in the section-by-section analyses of §§ ____.22 (Retail Lending Test) and ____.13(b) (affordable housing category of community development).

The agencies did not receive any comments on this definition and are adopting it as proposed, with two changes. First, the agencies are replacing ''loan'' with ''an extension of credit that is secured by a lien'' in the final rule to make this term consistent with HMDA. Second, the agencies have removed the specific paragraph designations in the cross-references to the CFPB's definition so that it now reads ''12 CFR 1003.2'' instead of ''12 CFR 1003.2(n).'' Accordingly, ''multifamily loan'' is defined in the final rule to mean an extension of credit that is secured by a lien on a ''multifamily dwelling'' as defined in 12 CFR 1003.2.

Multistate MSA

The agencies proposed to add a new definition of ''multistate metropolitan statistical area (multistate MSA)'' and define it to have the same meaning given to that term by the Director of the OMB. As discussed in detail in the section-by-section analysis of § ____.28, under the proposal, the agencies would assign conclusions for a bank's performance under each applicable performance test and ratings for a bank's overall CRA performance across performance tests at the State, multistate MSA, and institution levels.[211] The agencies did not receive any comments related to the proposed ''multistate metropolitan statistical area'' definition.

The agencies are adopting a definition of this term in the final rule with technical changes. First the agencies revised the definition to remove the cross-reference to the OMB definition and instead are defining the term to mean an MSA that crosses a State boundary, which is the agencies' intended meaning of this term. The agencies made this revision to reflect the fact that ''multistate metropolitan statistical area'' is not a term defined by the Director of the OMB. Instead, the

[206] *See* proposed § ____.22(a)(5)(ii).

[207] *See* 12 CFR 1003.3(c)(1).

[208] *See* 12 CFR 1003.3(c)(5).

[209] *See* 12 CFR 1003.3(c)(7) through (10).

[210] *See* 12 CFR 1003.3(c)(13).

[211] *See, e.g.,* proposed § ____.28 and appendices C, D, and E.

Director of OMB defines the term ''MSA,'' and the final rule defines ''MSA'' by cross-referencing to this OMB definition. Second, consistent with the change discussed above under the definition of ''MSA,'' the agencies are replacing ''metropolitan statistical area'' with ''MSA.'' Thus, the resulting defined term will be ''multistate MSA'' instead of ''multistate metropolitan statistical area.'' Accordingly, ''multistate MSA'' is defined in the final rule to mean an MSA that crosses a State boundary.

Nationwide Area

The agencies proposed to add a new definition for ''nationwide area'' to support the proposal to evaluate a bank's community development financing activities in a ''nationwide area,'' as discussed below in the section-by-section analyses of §§ ____.24 through ____.27; the proposal to evaluate large banks' and certain intermediate banks' retail lending performance in ''outside retail lending areas,'' as discussed in the section-by-section analysis of § ____.18, which would include the ''nationwide area'' outside of a bank's assessment areas; the proposal's impact and responsiveness review, as discussed in the section-by-section analysis of § ____.15; and the proposal's data collection, maintenance, and reporting requirements, as discussed in the section-by-section analysis of § ____.42. Specifically, the agencies proposed that ''nationwide area'' would mean ''the entire United States and its territories.''

The agencies received one comment requesting clarity on what the agencies meant by the term ''nationwide area,'' recommending that the agencies define this term to include the broader regional areas beyond defined multistate MSAs. In this way, the commenter theorized that banks could receive credit for financing activities like affordable housing in a particular region of the United States that cover multiple States but where that region is not a defined multistate MSA. This commenter misunderstands the scope of the proposed ''nationwide area'' definition. ''Nationwide area'' includes the entirety of the United States and its territories, and is not limited to multistate areas. The allocation of community development financing activities, including how an activity that benefits more than one State but not the entire nation will be attributed, is discussed in the section-by-section analysis of § ____.24. Thus, the agencies are adopting the definition of ''nationwide area'' as proposed in the final rule.

Native Land Area

The Agencies' Proposal

The agencies proposed to add a new definition of ''Native Land Area'' to provide clarity in support of the proposal's encouragement of activities that address the significant and unique community development challenges in these areas. The proposal sought to encourage these activities through the proposed establishment of a category of community development for qualifying activities in Native Land Areas,[212] discussed in the section-by-section analysis of § ____.13(j), and by considering the impact and responsiveness of a bank's community development activities that benefit Native communities, such as community development activities in Native Land Areas under § ____.13(j),[213] discussed in the section-by-section analysis of § ____.15(b)(8).

Native American land ownership is complex, and lands can have a complicated and intermingled mix of land ownership status involving various statutes, regulations, titles, and restrictions.[214] The agencies intended the proposed ''Native Land Area'' definition to be responsive to stakeholder feedback provided during outreach prior to the issuance of the proposal indicating support for a geographic definition broader than the definition of Indian country under 18 U.S.C. 1151, and to include lands such as Hawaiian Home Lands, as well as other lands typically considered Native and tribal lands with unique political status under established Federal Indian law. The proposed ''Native Land Area'' definition leveraged other Federal and State designations of Native and tribal lands, as well as the OCC 2020 CRA Final Rule, and included areas typically considered by the Bureau of Indian Affairs (BIA) and the U.S. Census Bureau as Native geographic areas. Accordingly, the proposed ''Native Land Area'' definition included all geographic areas delineated as U.S. Census Bureau American Indian/Alaska Native/Native Hawaiian (AIANNH) Areas and/or BIA Land Area Representations. For example, the proposed definition included State American Indian reservations established through a governor-appointed State liaison that provides the names and boundaries for State-recognized American Indian reservations to the Census Bureau.

Specifically, under the proposal, ''Native Land Area'' would mean: (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.

Comments Received

The agencies received many comments concerning the proposed ''Native Land Area'' definition, discussed below.

Geographic areas included in the definition. Some commenters expressed support for the geographic areas included in the proposed definition. For example, a commenter supported such an inclusive list given the past and ongoing discrimination against Indigenous people and communities. Another commenter recognized the proposal's relatively comprehensive list of defined Native American lands, further indicating that accurately and comprehensively identifying Native lands is difficult because of the fragmented ownership of Native lands arising from historical Federal land allotment policies. This commenter also recommended that the agencies provide a single source file made available once the definition is agreed on. Another commenter expressed support for ensuring that all Native people in

[212] *See* proposed § ____.13(l).

[213] *See* proposed § ____.15(b)(7).

[214] *See, e.g.,* Congressional Research Service, ''Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress'' (July 2021), *https://sgp.fas.org/crs/misc/R46647.pdf.*

Alaska and Hawaii would be covered under the definition.

In contrast, some commenters recommended broadening the definition to include additional geographic areas. Several other commenters supported the ability for tribes to designate lands eligible for CRA qualification, with some supporting the inclusion of ''unceded'' lands, *i.e.,* lands without a formal agreement with the government and controlled by non-tribal interests but that tribes consider historically Native lands, as part of the definition in light of prior Federal dispossession policies. Another commenter suggested that the definition should be connected to census geographies.

Several other comments recommended that the ''Native Land Area'' definition should include Native American Pacific Islands including Guam, American Samoa, and the Commonwealth of the Mariana Islands. A few commenters expressed support for adding tribal fee lands citing the loss of tribal lands due to earlier Federal policies aimed at dispossessing tribes, with one commenter stating that this would be consistent with the current Federal policy of encouraging tribal self-determination and with principles of tribal sovereignty. This commenter also noted that the process of gaining Federal trust status for tribal fee lands (which would then meet the definition of ''Native Land Area'' pursuant to proposed § ____.12, addressing lands held in trust) is expensive and time consuming.

Geographic areas outside of the proposed definition. Many commenters supported broadening the ''Native Land Area'' definition to include activities benefiting Native individuals and communities outside of proposed geographic areas. Several commenters asserted that activities benefiting Native Americans should qualify anywhere and cited that the majority of American Indian, Alaska Native, and Native Hawaiian people live outside the Native Land Areas covered by the proposed definition. A group of commenters further stated that the proposed definition would limit the ability of Native CDFIs, tribal governments, and other entities to secure CRA-qualified investments to support Native communities residing within their respective service areas but outside of the proposed ''Native Land Area'' definition. A commenter supported including service areas adjacent to reservations, where a large number of tribal members live or tribal programs are distributed, to help facilitate better community revitalization activities. However, alternatively, a commenter asserted that qualification for activities should not extend past designated geographic areas.

Alternative approaches for designating geographic areas. A commenter suggested that, rather than focusing on activities in Native Land Areas, the agencies consider a metric-based determination for where activities could qualify, in conjunction with Native-led organizations and CDFIs, that would consider capital access in Native American communities. This commenter suggested that the agencies additionally include a weighting factor for banks investing in rural and remote Native American communities that might not have any credit or capital access. In support of these ideas, the commenter indicated that some populations covered in the ''Native Land Area'' definition have access to credit and successful economic development opportunities, while some Native American communities not in Native Land Areas as defined under the proposal do not. Another commenter asserted that the definition of ''Native Land Area'' should use an alternative geographic criterion for qualifying activities, instead including qualification for activities in census tracts with a greater than 40 percent Native American population and earning less than 100 percent of the average median family income.

Final Rule

The agencies are adopting the ''Native Land Area'' definition as proposed with a few technical changes. First, the agencies have revised paragraph (4) of the definition to include any land held in trust by the United States for tribes or Native Americans or tribally-held restricted fee land. This change more clearly effectuates the agencies' intent in the proposal to include in the definition both individually- and tribally-owned restricted fee lands as well as land held in trust by the United States for both tribes and individuals. This change also aligns the definition with available BIA data, which covers both individually-held and tribally-held restricted fee and trust lands.[215] The agencies are also removing the cross-reference to ''38 U.S.C. 3765(1)(A)'' in paragraph (4) as redundant.[216] Finally, the agencies are making a technical change to paragraph (6), which covers Alaska Native villages, to use the term defined in the cited statute; as a result, the final rule references ''Any Native village, as defined in 43 U.S.C. 1602(c), in Alaska.''

The ''Native Land Area'' definition in the final rule is intended to align with existing and established Federal Indian law regarding lands and communities with unique political status. The final rule is also intended to be responsive to stakeholder feedback received at all stages of this rulemaking, indicating support for a comprehensive geographic definition of ''Native Land Areas.'' The final definition focuses on lands and communities that, as noted by commenters, have generally experienced little or no benefits from bank access or investments.

The agencies have carefully considered commenters' suggestions for expanding the geographic areas included in the definition, and are sensitive to the many complexities underlying the development of a ''Native Land Area'' definition, including the impacts of varying historical policies regarding land ownership and political status.[217] However, the agencies are concerned that substantively expanding the ''Native Land Area'' definition could inadvertently create new precedent by incorporating lands without a similar unique political status as those lands included under the definition, and further could be impracticable where data is not currently collected, reported, or readily available. The agencies believe it is important for stakeholders and examiners to have access to and utilize a consistent and comparable data set.

The agencies also decline to expand the ''Native Land Area'' definition to incorporate areas outside of the proposed geographic areas where Native individuals may also reside, or to use alternative metrics for defining Native Land Areas. The agencies are concerned about precedential impact, as well as the practicality of implementation, such a change would have, particularly with a highly dispersed population. Further, complex land ownership structures associated with the lands falling within the final definition can make economic development in those lands particularly difficult, which the agencies believe support a more specific focus on those lands. The agencies note that activities benefiting Native individuals and

[215] *See* Bureau of Indian Affairs, Branch of Geospatial Support, ''General Information for Geospatial Questions'' (Sept. 5, 2023), *https://biamaps.geoplatform.gov/faq.html.*

[216] *See* 38 U.S.C. 3765(1)(A).

[217] *See, e.g.,* U.S. Dept. of Interior, ''Land Buy-Back Program for Tribal Nations,'' *https://www.doi.gov/buybackprogram/fractionation* (discussing fractionation resulting from Federal allotment policies); Congressional Research Service, ''Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress'' (July 2021), *https://sgp.fas.org/crs/misc/R46647.pdf* (discussing historical land policies).

communities outside a designated Native Land Area may qualify for CRA consideration under another community development purpose as provided in § ____.13. (For a detailed discussion of these community development categories under the final rule, see the section-by-section analysis of § ____.13.) For example, a loan to support the development of a multifamily housing project to benefit low- and moderate-income tribal individuals outside of a Native Land Area would qualify for consideration under § ____.13(b) (affordable housing) if a portion of the project's housing units are affordable.[218] The agencies also note that the final rule incorporates various impact and responsiveness review factors under § ____.15 for examiners to consider in evaluating a bank's community development activities. This includes an impact and responsiveness factor for areas with low levels of community development financing and activities serving low-income individuals and families that may apply to activities benefiting Native Americans living adjacent to or otherwise outside a Native Land Area.[219]

Finally, as noted in the proposal, robust, publicly available data files (''shapefiles''), defining the boundaries of the geographic areas adopted in the final rule are actively maintained by the U.S. Census Bureau and BIA, respectively.[220] The agencies anticipate making this data readily available to stakeholders as part of the agencies' regulatory implementation efforts, which, among other benefits, the agencies anticipate will facilitate stakeholders' ability to engage with confidence in CRA-eligible activities and enhance the transparency of the agencies' consideration of those activities.

In adopting the ''Native Land Area'' definition, the agencies sought to maintain consistency with established categories of Native Land Areas. On balance, the agencies believe the final rule's definition is as comprehensive as feasible to ensure alignment with current Federal Indian law and to support the rule with durable, publicly available data sources. This, in turn, will make identifying Native Land Areas practicable for stakeholders and facilitate their ability to engage in and track CRA-eligible activities.

New Markets Tax Credit

As a clarification, the final rule includes a definition for ''New Markets Tax Credit (NMTC),'' not included in the proposed rule, to mean a Federal tax credit pursuant to section 45D of the Internal Revenue Code of 1986 (26 U.S.C. 45D). The final rule uses this term in § ____.15(b)(10) as one of the impact and responsiveness factors and in § ____.42(a)(5)(ii) as part of the data collection of community development loans and community development investments, including whether the community development loan or community development investment is an investment in a project financed by NMTCs. The proposal used this term in proposed § ____.42 but did not define it.

Nonmetropolitan Area

The agencies proposed no changes to the current ''nonmetropolitan area'' [221] definition, which would continue to mean any area that is not located in an MSA. The agencies did not receive any comments concerning the ''nonmetropolitan area'' definition and are adopting it as proposed in the final rule.

Open-End Home Mortgage Loan

For a discussion of the definition of ''open-end mortgage loan,'' *see* the discussion above for *Mortgage-Related Definitions.*

Operations Subsidiary or Operating Subsidiary

The Board proposed to add a definition of ''operations subsidiary'' to its CRA regulations, and the OCC and FDIC proposed to add a definition of ''operating subsidiary'' to their respective CRA regulations. The agencies each proposed their own definitions because of differences in their supervisory authority. The agencies proposed these changes to identify those bank affiliates whose activities would be required to be attributed to a bank's CRA performance pursuant to proposed § ____.21, Performance Tests, standards, and ratings, and § ____.28, Assigned conclusions and ratings.[222]

Specifically, the Board proposed to define ''operations subsidiary'' to mean 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.[223]

The FDIC proposed to define ''operating subsidiary'' to mean an operating subsidiary as described in 12 CFR 5.34.[224] The OCC proposed to define ''operating subsidiary'' to mean 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.[225]

Regarding comments concerning the definitions of ''operations subsidiary'' and ''operating subsidiary,'' a commenter stated that the proposed definition of an ''operations subsidiary'' and ''operating subsidiary'' appear reasonable. The commenter stated that, generally, there should be uniformity in these and other definitions across all Federal agencies that receive financial institution data or reports. Another commenter recommended that the agencies avoid defining operations subsidiary and operating subsidiary too broadly. The commenter stated that it is not correct that financial institutions universally exercise ''a high level of ownership, control, and management'' of all affiliates, which in some circumstances may be considered as ''subsidiaries.'' As an example, the commenter stated that numerous CDFI banks have nonprofit affiliates that provide substantial mission support, but these nonprofit organizations often have their own boards of directors, have been capitalized in a variety of ways, and control is exercised in different manners as well.

For the reasons stated below, the Board is adopting the proposed definition of ''operations subsidiary,'' and the FDIC and OCC are adopting the proposed definitions of ''operating subsidiary.'' The agencies believe that the proposed definitions of ''operations subsidiary'' and ''operating subsidiary'' are sufficiently consistent based on the agencies' respective statutory authorities and mandates. In addition, the agencies do not believe these proposed definitions are too broad. If an entity meets the definition of affiliate, and not the definition of operation subsidiary or operating subsidiary, it will not be treated as an operations subsidiary or operating subsidiary under the CRA regulations. Further, the agencies elected not to change these definitions because the description of these terms in the agencies' CRA regulation should

[218] *See* final § ____.13(b)(1) and (2), discussed in the section-by-section analysis of these provisions below.

[219] *See* final § ____.15(b)(2) and (7), discussed in the section-by-section analysis of these provisions below.

[220] *See* U.S. Census Bureau, ''AIANNH shapefile,'' *https://www2.census.gov/geo/tiger/TIGER2021/AIANNH/;* Bureau of Indian Affairs, ''BIA Tract Viewer,'' *https://biamaps.geoplatform.gov/BIA-opendata/.*

[221] *See* current 12 CFR ____.12(s).

[222] *See* proposed § ____.21(c).

[223] *See* proposed 12 CFR 228.12.

[224] *See* proposed 12 CFR 345.12.

[225] *See* proposed 12 CFR 25.12.

not differ from the description of these terms in other contexts.

Other Delivery System

The agencies are adopting a new definition of ''other delivery system,'' not included in the proposal, to mean a ''channel, other than branches, remote services facilities, or digital delivery systems, through which banks offer retail banking services.'' This may include telephone banking, bank-by-mail, or bank-at-work.

For a more detailed discussion of the meaning of other delivery system, see the section-by-section analysis of § ____.23(b)(4).

Outside Retail Lending Area

As discussed above, the agencies proposed to replace the term ''assessment area'' in § ____.12 with the terms ''facility-based assessment area,'' ''retail lending assessment areas,'' and ''outside retail lending areas.'' The agencies proposed to define the new term ''outside retail lending area'' to mean the nationwide area outside of a bank's facility-based assessment areas and, as applicable, retail lending assessment areas. The agencies proposed this new term as part of the proposed Retail Lending Test.[226] In particular, under the proposed Retail Lending Test, the agencies would evaluate the retail lending performance of large banks and certain intermediate banks in areas outside of facility-based assessment areas and retail lending assessment areas, as applicable.

The final rule now includes a new section that describes the bases for delineating outside retail lending areas. Therefore, the more detailed proposed definition of outside retail lending areas is not necessary, and instead the final rule defines ''outside retail lending area'' to mean the area delineated pursuant to § ____.18. Comments pertaining to the proposed outside retail lending area provisions, as well as detailed information regarding the final rule's outside retail lending area delineation requirements, are described in the section-by-section analysis of § ____.18.

Persistent Poverty County

The agencies included in proposed § ____.15(b)(1) a definition of ''persistent poverty county'' to mean a county or county-equivalent that had poverty rates of 20 percent or more for the past 30 years, as measured by the most recent decennial censuses. This definition appeared in proposed § ____.15(b) in connection with a list of factors (termed ''impact review'' factors in the proposal) relevant for evaluating the impact and responsiveness of community development activities.

In the final rule, the agencies are moving the ''persistent poverty county'' definition to § ____.12 for ease of reference, as the term appears in both final § ____.15(b)(1) (finalized as an impact and responsiveness review factor) and the corresponding data collection provision in final § ____.42(a)(5) and (6). Further, consistent with the revision to the definition of ''county,'' discussed above, ''county-equivalents'' has been removed from the definition of ''persistent poverty county'' in the final rule. Lastly, the agencies are replacing the phrase ''as measured by the most recent decennial censuses'' with reference to a list of counties designated by the Board, FDIC, and OCC and published by the FFIEC. Among other things, this change will provide for statistical reliability while also allowing for regular data updates as conditions change. For a more detailed discussion of the definition of ''persistent poverty county,'' comments received on the definition, and the final impact and responsiveness review factor associated with this term, see the section-by-section analysis of § ____.15(b).

Accordingly, the agencies are adopting a definition of ''persistent poverty county'' in the final rule that means as a county that has had poverty rates of 20 percent or more for 30 years, as publicly designated by the Board, FDIC, and OCC, compiled in a list, and published annually by the FFIEC.

Product Line

The agencies are adopting a new definition of ''product line'' in the final rule, not included in the proposal. The final rule defines ''product line'' to mean a bank's loans in one of the following, separate categories in a particular Retail Lending Test Area: (1) closed-end home mortgage loans; (2) small business loans; (3) small farm loans; and (4) automobile loans, if a bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to § ____.22. As discussed in greater detail in the section-by-section analysis of § ____.22, the definition of ''product line'' is intended to increase clarity regarding identifying those bank product lines that may potentially be subject to evaluation under the Retail Lending Test, as applicable.

Remote Service Facility

The Board's and OCC's current CRA regulations define the term ''automated teller machine (ATM)'' to mean an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.[227] The FDIC's CRA regulation instead contains a definition for ''remote service facility,'' which has the same definition as the Board's and OCC's definition of ATM but also includes a list of examples, specifically, automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility. The proposal would replace the Board's and OCC's ''ATM'' definitions with a definition of ''remote service facility'' that would include ATMs and update the FDIC's existing definition of ''remote service facility.[228]

Specifically, the proposal defined ''remote service facility'' to mean an automated, virtually staffed, or unstaffed banking facility owned or operated by, or operated exclusively for, a 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. The agencies believed the proposed definition better reflects changes in the way that banks deliver banking services.

The agencies requested feedback as to whether the proposed ''remote service facility'' definition includes sufficient specificity for the types of facilities and circumstances under which banks would be required to delineate facility-based assessment areas, or whether other changes to the CRA regulations are necessary to better clarify when the delineation of facility-based assessment areas would be required. A commenter suggested that the ''remote service facility'' definition should include ATMs that are not owned or operated by, or operated exclusively for financial institutions, noting the importance of low- and moderate-income individuals' access to independent ATMs. Several commenters recommended that deposit-taking remote service facilities should include any bank partnerships with third parties involving remote or virtual banking services, with another commenter suggesting ATM networks operated by a third party. The agencies have declined to explicitly incorporate remote services facilities that are not owned or operated by, or operated exclusively for, a bank into the ''remote service facility'' definition because of the tenuous connections of these ATMs to a bank. The agencies do not believe that a non-proprietary remote service

[226] *See* proposed § ____.22.

[227] *See* current 12 CFR 25.12(d) and 228.12(d).

[228] *See* current 12 CFR 245.12(d).

facility, such as a network ATM, constitutes a bank facility because such ATMs are owned and operated by a third party. Further, a bank participating in such an ATM network may have limited control over where an ATM is located. The agencies note that the current definition of ''ATM'' requires that the ATM be owned or operated by, or operated exclusively for, the bank.[229]

Therefore, the agencies are adopting the proposed definition of ''remote service facility'' in the final rule with two clarifying changes. First, the definition now provides that a remote service facility must be open to the general public. The agencies believe this substantive change clarifies that this definition only captures those remote deposit facilities that benefit the credit needs of the bank's local community by having a public facing presence. Second, the definition in the final rule now provides that deposits are ''accepted'' instead of ''received.'' This change was made to describe the facility's interaction more accurately with the public.

Accordingly, the final rule provides that ''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, that is open to the general public and at which deposits are accepted, cash dispersed, or money lent.

Reported Loan

To enhance clarity in the final rule, the agencies are adding a new definition of ''reported loan,'' not included in the proposal, defined to mean: (1) a home mortgage loan or a multifamily loan reported by a bank pursuant to HMDA, as implemented by 12 CFR part 1003; or (2) a small business loan or a small farm loan reported by a bank pursuant to § ____.42. This term is primarily used in the Retail Lending Test (final § ____.22 and appendix A) to specify where only reported loans are used in certain benchmarks. In addition, the term is used in defining when a retail lending assessment area must be delineated pursuant to final § ____.17. For a detailed discussion of the Retail Lending Test, see the section-by-section analysis of final § ____.22 (also addressing appendix A), and for a discussion of retail lending assessment areas, see the section-by-section analysis of § ____.17.

The agencies have included an amendment to transition the definition of ''reported loan'' to reference small business loans and small farm loans reported by a bank pursuant to the CFPB Section 1071 Final Rule after the section 1071 data is available.[230]

Retail Banking Products

The final rule includes a new definition of ''retail banking products,'' not included in the proposed rule, to clarify the agencies' intended meaning of the term in final § ____.23 (Retail Services and Products Test). Specifically, the final rule defines ''retail banking products'' to mean credit and deposit products or programs that facilitate a lending or depository relationship between the bank and consumers, small businesses, or small farms. For additional discussion of retail banking products, see the section-by-section analysis of § ____.23.

Retail Banking Services

The agencies proposed to add a new definition of ''retail banking services'' to increase clarity and consistency in the CRA regulations, particularly with respect to the proposed Retail Services and Products Test.[231] The agencies proposed to define ''retail banking services'' to mean retail financial services provided by a bank to consumers, small businesses, and small farms, and to include a bank's systems for delivering retail financial services. The agencies did not receive any comments concerning the proposed ''retail banking service'' definition and are adopting the definition as proposed in the final rule with a non-substantive wording change.

Retail Lending Assessment Area

As discussed above, the agencies proposed to replace the term ''assessment area'' in § ____.12 with the terms ''facility-based assessment area,'' ''retail lending assessment areas,'' and ''outside retail lending areas.'' The agencies proposed to define the term ''retail lending assessment area'' to mean a geographic area, separate and distinct from a facility-based assessment area, delineated in accordance with § ____.17. The agencies proposed this new term as part of the proposed Retail Lending Test.[232]

The agencies did not receive any comments specific to the proposed definition of ''retail lending assessment area.'' However, the agencies received numerous comments regarding the retail lending assessment area approach, which are discussed in the section-by-section analysis of § ____.17. To be consistent with the ''facility-based assessment area'' and ''outside retail lending area'' definitions in the final rule, the agencies are revising the ''retail lending assessment area'' definition in the final rule. Specifically, the agencies are removing the phrase ''separate and distinct from a facility-based assessment area'' and replacing ''in accordance with'' with ''pursuant to.'' Accordingly, the final rule defines ''retail lending assessment area'' to mean ''a geographic area delineated pursuant to § ____.17.'' Detailed information regarding the final rule's retail lending assessment area delineation requirements is included in the section-by-section analysis of § ____.17.

Retail Lending Test Area

In the final rule, the agencies are adding a new definition of ''Retail Lending Test Area,'' not included in the proposal, to mean a facility-based assessment area, a retail lending assessment area, or an outside retail lending area. The agencies believe this definition will increase the final rule's consistency and improve its readability with respect to referencing retail lending assessment areas, facility-based assessment areas, and outside retail lending areas, both individually and collectively, for purposes of the Retail Lending Test.

Retail Loan

In relation to the proposed Retail Lending Test,[233] the agencies proposed to add a new definition of ''retail loan'' to mean, for purposes of the Retail Lending Test in § ____.22, an automobile loan, closed-end home mortgage loan, open-end home mortgage loan, multifamily loan, small business loan, or small farm loan. For all other purposes, retail loan would mean a consumer loan, home mortgage loan, small business loan, or small farm loan. The agencies did not receive any comments concerning this proposed definition. However, after further review, the agencies have elected not to adopt a definition of ''retail loan'' in § ____.12 in the final rule. Instead, the agencies are adopting a definition of ''product line'' in the final rule, which

[229] *See* current 12 CFR ____.12(d) (definition of ''automated teller machine (ATM)'').

[230] Specifically, the transition amendments included in this final rule will amend the definitions of ''reported loan'' to mean a small business loan or small farm loan reported by a bank pursuant to subpart B of 12 CFR part 1002. The agencies will provide notice of the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[231] *See* proposed § ____.23.

[232] *See* proposed § ____.22.

[233] *See* proposed § ____.22.

references loan categories relevant to the Retail Lending Test.

Small Bank

For a discussion of the definition of ''small bank,'' *see* the discussion above for *Bank Asset-Size Definitions.*

Small Business and Small Farm

Current Approach and the Agencies' Proposal

The agencies proposed to add definitions of ''small business'' and ''small farm,'' as they are not defined in the current CRA regulations. Instead, the current CRA regulations define ''community development'' to be activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the SBA's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less. The current regulations also consider the borrower distribution of small business loans and small farm loans to businesses and farms with gross annual revenues of $1 million or less.

The proposal would define ''small business'' to mean ''a business that had gross annual revenues for its preceding fiscal year of $5 million or less'' and ''small farm'' to mean ''a farm that had gross annual revenues for its preceding fiscal year of $5 million or less.'' The agencies proposed these definitions to support the evaluation of retail lending under the proposed Retail Lending Test [234] and community development loans and investments supporting small businesses and small farms that would be evaluated under the proposed Community Development Financing Test.[235] These proposed definitions were consistent with the definitions for ''small business'' proposed by the CFPB in its section 1071 rulemaking.[236]

Comments Received

The agencies received numerous comments related to the proposed ''small business'' and ''small farm'' definitions. Some commenters expressed support for the proposed definitions, while other commenters recommended the agencies adopt the definitions with various changes or implement new definitions that incorporate different criteria.

Specifically, many commenters supported the proposal to adopt size standards for small businesses and small farms that would be consistent with the proposed small business size standard in the CFPB's section 1071 rulemaking (*i.e.,* gross annual revenues of $5 million or less for the preceding fiscal year). In general, these commenters asserted that consistent definitions across regulations and regulators would provide for reporting consistency and efficiency with less burden. Several other commenters stated that, although they believed that the gross annual revenues of $5 million or less proposed by the CFPB was too high, they supported aligning the definitions with the CFPB's section 1071 rulemaking even if the CFPB later adopted the larger size threshold in its Section 1071 Final Rule. Some commenters suggested that the small business size standard should be as consistent as possible with both the CFPB's section 1071 rulemaking and the SBA's small business size standards.

However, other commenters opposed the proposal to align the size standards for small businesses and small farms with the proposed small business size standard in the CFPB's section 1071 rulemaking. Many of these commenters generally stated that the proposed small business and small farm size standards are unusually high because the vast majority of small businesses have gross annual revenues significantly below $5 million. Moreover, a few of these commenters stated that CRA's focus should be on the credit needs of the smallest businesses, with some commenters expressing concern that the proposed $5 million threshold would result in capital being redirected to larger businesses. Several commenters also emphasized that aligning the ''small business'' and ''small farm'' definitions with the CFPB's size standard would be inappropriate because section 1071 serves a different purpose than the CRA; namely, the threshold proposed by the CFPB establishes reporting requirements that would facilitate enforcement of fair lending laws. A few commenters also stated that it was not prudent for the agencies to propose a size standard based on a proposed rule.

Many commenters that opposed aligning the small business and small farm size standards with the CFPB's section 1071 proposed small business size standard recommended a range of alternative thresholds for consideration. A commenter recommended that the agencies adopt the SBA's small business size standards. Another commenter recommended that a small business definition should encompass manufacturing businesses with 500 or fewer employees and other businesses with gross annual revenues up to $8 million. One other commenter argued in favor of an $8 million gross annual revenues threshold, asserting that this figure is the most common size standard threshold for average annual business receipts and would capture a majority of small businesses. Another commenter recommended that the agencies define ''small business'' and ''small farm'' based on loan size rather than gross annual revenues but did not specify an amount. One other commenter supported a threshold of gross annual revenues of $1 million or less because many large banks only have system codes for gross annual revenues that indicate whether a business is above or below $1 million, but not the actual threshold.

Other commenters requested clarifications of the definitions of ''small business'' and ''small farm'' or offered additional comments regarding these definitions. A commenter requested clarity on the treatment of revenues for affiliated businesses and guarantors, and how to calculate the revenues of small businesses or small farms when a line of credit is renewed (and updated revenue information is not collected). A few other commenters noted that defining small business and small farm by reference to gross annual revenues could create difficulty at the beginning of a calendar year, when borrowers may not have reliable revenue figures for the preceding year. Both commenters suggested that banks should be able to use prior-year revenue figures under these circumstances. Another commenter stated there should be clear guidance on how gross annual revenues should be determined to better provide reporting and examination consistency.

A commenter suggested that the agencies adopt a consistent definition of ''small business'' and ''small farm'' across the regulation, including for the borrower distribution metrics under the Retail Lending Test.[237] A few commenters pointed out that even if the agencies align the ''small business'' and ''small farm'' definitions with the CFPB's size standard in its section 1071 rulemaking, there would still be opportunity to improve consistency across banking regulations because

[234] *See* proposed § ____.22.

[235] *See* proposed §§ ____.13(c)(2) and (3); ____.24; and ____.26.

[236] The CFPB section 1071 regulation does not separately define ''small farm,'' rather it includes them as types of small businesses identifiable by the of the NAICS codes 111–115. *See* 88 FR 35150, 35271, 35295 (May 31, 2023).

[237] Under proposed § ____.22(d)(2)(iii)(D), the agencies would review bank lending to, among other borrowers, small businesses, and small farms with gross annual revenues of $250,000 or less and small businesses and small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.

these definitions would not be reflected in Call Report requirements.

Final Rule

After considering the varied perspectives and recommendations on the proposed ''small business'' and ''small farm'' definitions, the agencies are adopting the definitions as proposed.[238] The final rule defines ''small business'' to mean a business that had gross annual revenues for its preceding fiscal year of $5 million or less and ''small farm'' to mean a farm that had gross annual revenues for its preceding fiscal year of $5 million or less.[239]

The agencies declined to use the SBA's small business size standards because they believe that these standards would not serve the CRA's purposes well. The SBA small business size standards are based on gross annual revenues or the average number of employees for a wide range of business entities, resulting in over 1,000 North American Industry Classification System (NAICS) codes. In addition, the agencies also considered the fact that the SBA has recently increased many of its size standards and no longer employs a $1 million average annual receipts size standard for any industry.[240] In particular, many of the SBA's gross annual revenues standards are much larger than the gross annual revenues thresholds included in the proposed ''small business'' and ''small farm'' definitions. The SBA's size standards for agricultural industries now range from $2.25 million to $34 million, and the size standards for non-agricultural industries now range from $8 million to $47 million.[241] Therefore, applying the SBA size standards under the CRA regulations would undermine the focus on smaller small businesses and farms.

Further, the agencies believe it is not appropriate to set a lower threshold, particularly when considering how the final rule will use the terms. A lower size standard may unduly restrict the type of lending and investment that the agencies have historically considered under economic development (*i.e.,* the current rule considers as loans and investments that support businesses and farms that meet the size eligibility standards of the SBA's Development Company or Small Business Investment Company programs (13 CFR 121.301)).

In addition, the agencies believe that size standards that draw on a single data point—*i.e.,* gross annual revenues of $5 million or less in the preceding year—are easy for institutions to understand and implement and minimize the data banks are required to collect and report. If the agencies adopted definitions that introduced additional criteria, as suggested by some commenters—*e.g.,* average number of employees, average revenue, or industry codes—institutions would be required to collect and report additional data points, which would increase banks' collection and reporting burden.

The agencies also believe that $5 million is the appropriate threshold for small businesses and small farms. As discussed above, commenters advocated for both lowering the threshold to focus the regulations on the smallest small business and raising the threshold to capture larger small businesses, but the agencies believe that the proposed ''small business'' and ''small farm'' definitions strike a proper balance. As such, the definitions in the final rule capture entities all along the small business spectrum, from the smallest small businesses and farms through larger small businesses and farms.

Further, a $5 million threshold is consistent with the definition of ''small business'' in the CFPB's section 1071 rulemaking. As explained in more detail below in the discussion of the definitions of ''small business loans'' and ''small farm loans,'' leveraging the CFPB's ''small business'' definition for purposes of the Retail Lending Test will reduce the data collection and reporting burden under the CRA regulations because banks will not have to report small business loan data to two different agencies with two different thresholds once the agencies transition to using section 1071 data.[242] In addition, as also explained below, aligning the CRA's ''small business'' and ''small farm'' definitions with the CFPB's ''small business'' definition will enable the agencies to expand and improve the analysis of CRA small business and small farm lending for all banks subject to the Retail Lending Test.

The agencies understand that the CFPB's section 1071 rulemaking, although finalized, is not yet applicable, and, therefore, the agencies will not yet be able to leverage the CFPB's section 1071 rulemaking's ''small business'' definition for purposes of the Retail Lending Test at this time. However, the final rule's ''small business'' and ''small farm'' definitions are also necessary for determining which loans, investments, or services meet the community development criteria under final § ____.13 for purposes of the Community Development Financing Test in § ____.24, the Community Development Services Test in § ____.25, and the Community Development Financing Test for Limited Purpose Banks in § ____.25, and for evaluating a bank's retail banking services and retail banking products under the Retail Services and Products Test in final § ____.23. As explained above, the current regulations do not explicitly define ''small business'' and ''small farm,'' and defining ''small business'' and ''small farm'' to mean those businesses and farms with $5 million or less in gross annual revenues is preferable to using the SBA's small business size standards, which can be significantly larger, and would undermine the CRA's focus on smaller small businesses and farms. Therefore, to be consistent throughout the CRA regulations, the agencies believe it is important to include this definition in the final rule.

With regard to commenters' concerns related to the treatment of revenues, the agencies anticipate updating the CRA data collection and reporting guidance to reflect the new collection and reporting obligations related to the reporting of gross annual revenues. In developing that guidance, the agencies will consider the commenters' suggestions and recommendations.

With respect to the commenter's concern regarding the agencies proposing a size standard based on the

[238] The agencies requested and received permission from the SBA to use size standards for small businesses and small farms that differ from the SBA's size standards, as required by 15 U.S.C. 632(a)(2)(C) and 13 CFR 121.903.

[239] The final rule's transition amendments will amend the definitions of ''small business'' and ''small farm'' to instead cross-reference to the definition of ''small business'' in the CFPB section 1071 regulation. This will allow the CRA Regulatory definitions to adjust if the CFPB increases the threshold in the CFPB section 1071 regulatory definition of ''small business.'' This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB section 1071 regulation. The agencies will provide the effective date of these amendments in the **Federal Register** once section 1071 data is available.

[240] Through a series of rules that became effective on May 2, 2022, the SBA implemented revised size standards for 229 industries (all using average annual receipts standards) to increase eligibility for its Federal contracting and loan programs. *See* 87 FR 18607 (Mar. 31, 2022); 87 FR 18627 (Mar. 31, 2022); 87 FR 18646 (Mar. 31, 2022); 87 FR 18665 (Mar. 31, 2022). The SBA did not reduce any size standards—it either maintained or increased the size standards for all 229 industries, in many cases with size standard increases of 50 percent or more. Effective July 14, 2022, the SBA also increased size standards for 22 wholesale trade industries and 35 retail trade industries. 87 FR 35869 (June 14, 2022). *See* SBA Small Business Size Standards by NAICS Industry, 13 CFR 121.201.

[241] *See* SBA Small Business Size Standards by NAICS Industry, 13 CFR 121.201.

[242] As discussed in the section-by-section analysis of § ____.42, the agencies will eliminate the current CRA small business and small farm data collection and reporting requirements once the agencies transition to using section 1071 data.

CFPB proposed rule under section 1071 of the Dodd-Frank Act (Section 1071 Proposed Rule),[243] the agencies note that the $5 million size standard for a small business or small farm was included in the proposal; the agencies did not cross-reference to the CFPB section 1071 rulemaking. Therefore, commenters were able to comment on the exact threshold proposed.

The agencies appreciate commenters' concern that inconsistencies with respect to size standards for small businesses and small farms would remain because the CRA definitions would not be reflected in the Call Report. However, revisions to Call Report requirements are outside the scope of this rulemaking.

Small Business Loan and Small Farm Loan

Current Approach

The current CRA regulations define ''small business loan'' to mean ''a loan included in 'loans to small businesses,' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.'' [244] Likewise, ''small farm loan'' means ''a loan included in 'loans to small farms,' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.'' [245] The 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.[246]

The Agencies' Proposal

The agencies proposed to retain these definitions with two technical changes. First, the proposed ''small business loan'' and ''small farm loan'' definitions included a provision indicating that the proposed ''small business loan'' and ''small farm loan'' definitions should be read independently from the ''small business'' and ''small farm'' definitions. This distinction is relevant because, until the agencies transition to using small business lending data derived from the CFPB Section 1071 Final Rule, the CRA regulations need to continue to use the current rule's ''small business loan'' and ''small farm loan'' definitions in evaluating bank performance under the proposed Retail Lending Test in § ____.22. The agencies indicated in the proposal that once section 1071 data on small business loans become available, the agencies will transition to ''small business loan'' and ''small farm loan'' definitions that are consistent with the definition of ''small business'' in the CFPB Section 1071 Final Rule.

Second, the agencies proposed to substitute ''Consolidated Report of Condition and Income'' in each definition for the shorter term, ''Call Report,'' which would have the same meaning and be established as the term used throughout the regulation earlier in the regulatory text. (*See* the ''assets'' definition discussion above.)

With these technical changes, the agencies proposed to define ''small business loan'' to mean, notwithstanding the definition of ''small business'' in § ____.12, a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Call Report, and ''small farm loan'' to mean notwithstanding the definition of ''small farm'' in § ____.12, a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Call Report.''

Comments Received

The agencies received numerous comments related to the proposed ''small business loan'' and ''small farm loan'' definitions. Some commenters expressed support for the proposed definitions and intended transition to the CFPB section 1071 rulemaking definition of ''small business,'' while other commenters recommended the agencies adopt definitions with various changes or implement entirely new definitions that incorporate different criteria.

Specifically, a few commenters stated that using the proposed small business size standard in the CFPB's section 1071 rulemaking will provide a more accurate picture of lending to small entities than the current threshold, which measures lending based on loan size as opposed to business revenue size.

However, other commenters opposed the proposed changes to the ''small business loan'' and ''small farm loan'' definitions and recommended continuing using the Call Report definitions, with a commenter stating that retaining these definitions is necessary to ensure that smaller dollar loans are targeted to businesses with capital gaps. Another commenter recommended continuing to use the current Call Report definitions of ''loans to small businesses'' and ''loans to small farms,'' and reevaluating after a full year of section 1071 data are available. Some commenters contended that the proposed threshold would impose considerable new data collection and reporting requirements for community banks that elect to be evaluated under the proposed Retail Lending Test.

Another commenter proposed a hybrid approach that would define ''small business loan'' to include both: (1) a loan to a business with gross annual revenues of $1 million or less; and (2) a commercial loan in an amount of $1 million or less. Some commenters suggested using certain size standards adopted by the SBA and USDA to encourage lending to socially disadvantaged businesses and farms owned by persons of color. Another commenter questioned whether the ''small business loan'' and ''small farm loan'' definitions include loans made to individuals because of the use of the term ''revenue'' as opposed to ''income.'' This commenter claimed that the exclusion of small business and small farm loans to individuals would cause underreporting and could negatively affect a bank's Retail Lending Test results, metrics, benchmarks, and possibly other areas. Further, the commenter suggested the ''small business loan'' and ''small farm loan'' definitions should include renewals and credit limit increases, as set forth in the Interagency Questions and Answers.[247]

Another commenter suggested that the agencies should not give CRA consideration for all loans to businesses that meet the SBA standards for small businesses. This commenter reasoned that the SBA standards for employee size represent too high a threshold to meaningfully segment the small business lending market.

Final Rule

The agencies appreciate the commenters' varied perspectives and recommendations related to the proposed ''small business loan'' and ''small farm loan'' definitions. However, after consideration of these comments, the agencies are adopting the ''small business loan'' and ''small farm loan'' definitions as proposed in the final rule, with technical changes, and have included amendments to transition to ''small business loan'' and ''small farm loan'' definitions leveraged off of the CFPB section 1071 regulation's ''small business'' definition once section 1071 data is available.[248] Specifically, the final rule provides that ''small business loan'' and ''small farm loan'' mean those loans included in ''loans to small businesses'' or ''loans to small farms'' as

[243] *See* 86 FR 56356 (Oct. 8, 2021).

[244] *See* current 12 CFR ____.12(v).

[245] *See* current 12 CFR ____.12(w).

[246] *See* Call Report, Schedule RC–C, Part II.

[247] *See* Q&A § ____.42(a)–5.

[248] The final rule's transition amendments will amend the definitions of ''small business loan'' and ''small farm loan'' to mean a loan to a small business or small farm, respectively, as defined in § ____.12 of the CRA regulations. The agencies will provide notice of the effective date of this amendment in the **Federal Register** once section 1071 data is available.

reported in Schedule RC–C of the Call Report. The agencies are referring to these terms as reported in the Call Report, instead of as defined in the instructions, to more accurately provide a source for these terms. As indicated above, maintaining the current rule's definitions of ''small business loan'' and ''small farm loan'' based on the Call Report is necessary until the agencies transition to using section 1071 data.

Further, transitioning to section 1071 data will enable the agencies to use borrower and geographic distribution metrics and benchmarks that provide more insight into banks' performance relative to the demand for small business loans in a given geographic area. It also will 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 the section-by-section analysis of § ____.22, the Retail Lending Test. In sum, these definitions will enable the agencies to expand and improve the analysis of CRA small business and small farm lending for all banks, as applicable, since section 1071 data will also enable expanded analysis for intermediate and small banks that are subject to reporting pursuant to the CFPB's section 1071 rulemaking. Further, because a large business may obtain small dollar loans, and a small business may obtain large dollar loans, the agencies believe the size of a business obtaining the loan is a better factor than the size of the loan to a business for determining whether a loan is made to a small business that warrants CRA consideration.

For the same reasons as noted in the ''small business'' and ''small farm'' definitions discussion, the agencies do not find it appropriate to adopt definitions of ''small business loan'' or ''small farm loan'' based on the SBA's small business size standards. As noted above, the SBA currently employs varying small business standards which are based on various factors, including industry, average annual receipts, and average number of employees. As a result, capturing all loans to businesses that qualify as small businesses under the SBA's standards would necessitate the collection and reporting of additional data, including NAICS codes to determine the industry in which a business operates, average employee headcount, and average receipts over a multi-year period. This would impose increased compliance and operational burden and costs in negotiating what, for many or most banks, would be a complicated overlay on their lending activity (*e.g.,* use of NAICS codes) that could reduce efficiencies in their small business and small farm lending programs.

In response to comments about the inclusion of loans to individuals as small business loans or small farm loans based on income of the individual as opposed to business revenues and how renewals and other credit limit increases are considered, the agencies intend to continue historical practices with respect to these issues. Specifically, pursuant to Call Report instructions and certain limitations, loans to sole proprietorships for commercial or agricultural purposes are included in the ''small business loan'' and ''small farm loan'' definitions, respectively. Banks have historically reported the gross annual revenues relied on in making credit decisions. This reporting included affiliate revenues when relied on, but never combined individual income with business revenues even if the bank relied on the individual income of a sole proprietor in making the credit decision. The agencies continue to believe this is appropriate, because irrespective of whether the bank relied on individual income in making a credit decision, it keeps the focus on the size of the business for purposes of considering the loan under the performance tests. Therefore, under the final rule, banks will report only the gross annual revenues of the business benefiting from the loan proceeds.[249]

It is also notable that once the transition to section 1071 data is complete, the small business loan data used for the Retail Lending Test will capture business credit transactions that are secured by real estate. For example, section 1071 data will capture business loans secured by an applicant's primary residence or residential investment property as collateral for inventory financing or working capital. Such loans would not be captured under HMDA because they do not involve a home purchase, home improvement, or refinancing and would not be captured in the Call Report definition of ''loans to small businesses'' because they are secured by residential real estate.

For the reasons discussed above, the agencies are adopting in the final rule a definition of ''small business loan'' that 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. Similarly, the agencies are adopting in the final rule a definition of ''small farm loan'' that 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. Amendments included in the final rule will transition these definitions to reflect the final rule's definitions of ''small business'' and ''small farm,'' which leverages the definition of ''small business'' in the CFPB's section 1071 rulemaking, once small business data reported pursuant to that rulemaking becomes available and the agencies announce an effective date for this transition in the **Federal Register**.

State

To increase clarity and consistency in the CRA regulations, the agencies proposed to add a definition of ''State'' to mean a U.S. State or territory, and the District of Columbia. The agencies did not receive any comments on this definition and are adopting the definition as proposed in the final rule.

Targeted Census Tract

The agencies proposed to add a definition of ''targeted census tract'' for purposes of certain community development categories in proposed § ____.13. As proposed, this term would mean: (1) a low-income census tract or a moderate-income census tract; or (2) a distressed or underserved nonmetropolitan middle-income census tract. This definition was intended to reflect the current CRA regulations regarding community development activities now categorized as revitalization and stabilization activities,[250] as well as accompanying guidance in the Interagency Questions and Answers regarding relevant geographic areas for these activities.[251] The agencies did not receive any comments concerning the proposed definition of ''targeted census tract'' and adopt it as proposed in the final rule.

Tribal Government

The final rule includes a new definition for ''tribal government,'' not included in the proposal, to clarify the agencies' intended meaning of ''tribal government'' where referenced in the

[249] The agencies intend to make one change from the current guidance regarding the treatment of affiliate revenues, pursuant to the final rule and any guidance issued, gross annual revenue reporting will be limited to the business revenues of the benefiting business regardless of whether affiliate revenues are considered in a credit decision to more accurately identify the size of a business under the performance tests.

[250] *See* current 12 CFR ____.12(g)(4).

[251] *See generally* 81 FR 48506, 48526–48528 (July 25, 2016).

final rule (*see, e.g.,* community development categories in proposed and final § ____.13 and the accompanying section-by-section analysis). As discussed above, the proposed and final community development place-based categories, including activities in Native Land Areas, include as eligibility criterion that activities be ''conducted in conjunction with a Federal, State, local, or tribal government plan, program, or initiative.'' [252] However, the proposal did not define ''tribal government,'' although the agencies sought feedback on various aspects of the government plan criterion. Some commenters addressed the types of entities that should be included in the government plan requirement, including tribal governments, associations, and other designees. A commenter expressed support for defining ''tribal government'' to mean the recognized governing body of any Indian, or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list most recently published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994.[253]

Based on comments and on further consideration, the agencies believe that a definition of ''tribal government'' will provide needed clarity and certainty for banks and other stakeholders seeking to determine whether activities meet the required eligibility criterion. Accordingly, the final rule defines ''tribal government'' to mean the recognized governing body of any Indian, or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list most recently published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). As with the definition of ''Native Land Areas,'' this definition is derived from and intended to align with existing Federal Indian law.

Wholesale Bank

As detailed in the ''limited purpose bank'' definition discussion above, the agencies are adopting the single term, ''limited purpose bank,'' and eliminating the ''wholesale bank'' definition in the final rule. This change is intended to improve clarity, minimize complexity, and provide for new and future market participants.

[252] *See* final § ____.13(j)(2)(i).

[253] *See* Public Law 103–454, 108 Stat. 4791 (Nov. 2, 1994).

Women's Depository Institution

The agencies proposed to define ''women's depository institution (WDI)'' as having the same meaning given to that term in 12 U.S.C. 2907(b)(2). The cross-referenced provision of the CRA statute defines ''WDI'' to mean a depository institution, as defined in the FDI Act, with: (1) more than 50 percent of the ownership or control of which is held by 1 or more women; (2) more than 50 percent of the net profit or loss of which accrues to 1 or more women; and (3) a significant percentage of senior management positions of which are held by women. The agencies did not include an alternate definition of WDI because their policies with respect to designating WDI's vary. The FDIC does not specifically designate or define WDIs under its MDI policy statement, however, it does recognize WDIs for purposes of the CRA. The Board defines WDI consistent with the CRA statute and institutions that meet the definition are eligible to access resources under the Federal Reserve System's Partnership for Progress program.[254] The OCC, in contrast, considers WDIs to be MDIs under its MDI Policy Statement, and, therefore, women-owned institutions that do not meet the statutory definition of WDI in section 2907 would be considered MDIs if the institution otherwise meets the requirements of the OCC's MDI Policy Statement.

The agencies did not receive any comments on the proposed definition of WDI and are adopting the definition as proposed with non-substantive revisions for conformity with the structure of other definitions in final § ____.12. Accordingly, under the final rule, ''Women's depository institution (WDI)'' means ''women's depository institution'' as defined in 12 U.S.C. 2907(b)(2).

Section ____.13 Consideration of Community Development Loans, Community Development Investments, and Community Development Services

Current Approach and the Agencies' Proposal

The current CRA regulations define ''community development'' as comprising four broad categories: affordable housing, community services, economic development, and revitalization and stabilization.[255] The agencies proposed to update the community development definition in current § ____.12 by creating a new § ____.13 that would define community development as including eleven different categories of activities and would establish standards for when community development activities would receive full and partial consideration. Proposed § ____.13 incorporated aspects of the current Interagency Questions and Answers into the regulation and established specific eligibility standards for a broad range of community development activities. Proposed § ____.13 was also designed to provide more clarity regarding the kinds of activities the agencies consider to be community development, as well as regarding eligibility for community development consideration.

[254] *See* 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. 25, 2021), *https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm.*

[255] *See* current 12 CFR ____.12(g).

Comments Received

Commenters provided general feedback on the agencies' proposal to adopt a definition of community development with eleven categories of activities, as well as on the specific proposed categories (which are discussed in the section-by-section analysis of each individual category below). Many commenters were generally supportive of the proposal, with several noting that the proposed approach for defining community development would provide more clarity for all stakeholders on the types of activities that qualify and the eligibility requirements for different activity types. Several commenters were particularly supportive of adding new categories to the current community development definition, such as the proposed categories for disaster preparedness and climate resiliency activities, activities with MDIs, WDIs, LICUs, and CDFIs, and activities in Native Land Areas. Other commenters noted that proposed changes to the community development definition would increase the responsiveness of banks to community needs and expressed the view that the changes would help to more effectively target community development activities.

In contrast, a few commenters opposed the proposed changes to the community development definition. Commenter feedback included: that the activities that could be considered under the new categories could be considered under the four existing categories of community development; concern that the new community development categories were too rigid and complex, including that it would be difficult to obtain the data needed to show activities meet the new requirements; and that the definition of community development would lead to a narrowing of what could qualify, which might result in fewer or less impactful activities in low- and moderate-income communities. Additionally, several commenters provided suggestions for additional categories of activities that should be considered under community development, such as equitable media, activities focused on arts and culture, broadband and digital inclusion, activities benefiting military communities, and activities that are designed to support individuals with disabilities.

Final Rule

The agencies are adopting proposed § ____.13, with revisions from the proposal and retitled as ''Consideration of community development loans, community development investments, and community development services.'' The final rule updates the current definition of community development to provide banks with additional clarity regarding the loans, investments, and services that the agencies have determined support community development that is responsive to the needs of low- and moderate-income individuals and communities, certain distressed or underserved nonmetropolitan areas, and small businesses and small farms.

Consistent with the structure of the proposal, final § ____.13 adopts standards for when community development loans, community development investments, and community development services will receive full and partial consideration (final § ____.13(a)), and replaces the current definition of community development with the following eleven categories:

Section ____.13(b) Affordable housing;

Section ____.13(c) Economic development;

Section ____.13(d) Community supportive services;

Section ____.13(e) Revitalization or stabilization;

Section ____.13(f) Essential community facilities;

Section ____.13(g) Essential community infrastructure;

Section ____.13(h) Recovery of designated disaster areas;

Section ____.13(i) Disaster preparedness and weather resiliency;

Section ____.13(j) Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas;

Section ____.13(k) Activities with MDIs, WDIs, LICUs, or CDFIs; and

Section ____.13(l) Financial literacy.

Final § ____.13(a) has been revised to clarify the standards within each category for determining full or partial consideration. Final § ____.13(b) through (l) have also been revised to address comments, improve clarity, and promote greater internal consistency. Revisions to these categories are discussed in greater detail in the corresponding section-by-section analyses below.

The final rule incorporates aspects of the guidance that is currently provided in the Interagency Questions and Answers and provides more specificity, relative to the current rule, on the kinds of activities that the agencies consider to be community development. By building on the current rule and expanding the categories of community development, the agencies believe that final § ____.13 will emphasize activities that are responsive to community needs, and especially the needs of low- and moderate-income individuals, families, and households and small businesses and small farms. Further, the agencies believe that the final rule will provide increased transparency and consistency by providing stakeholders with a better upfront understanding how loans, investments, and services supporting community development can receive consideration. Overall, the agencies believe that the final rule will reduce uncertainty and facilitate banks' ability to identify community development opportunities.

In adopting final § ____.13, the agencies considered comments regarding each proposed category of community development, and on appropriate standards for providing full and partial consideration for community development activities. These comments and the final rule are discussed below in the section-by-section analyses of § ____.13(a) through (l). In addition, the agencies are adopting a variety of clarifying and conforming technical edits across final § ____.13. For example, across all community development categories, the agencies are revising the term ''low- and moderate-income individuals'' to ''low- and moderate-income individuals, families, and households'' for consistency across the various paragraphs in § ____.13, to provide more clarity and to comprehensively include the beneficiaries of different community development activities. Similarly, where appropriate, the final rule replaces ''activities'' with ''loans, investments, and services,'' consistent with revisions made elsewhere in the regulation to more accurately capture the distinction between community development activities, and a bank's loans, investments, and services that support those activities (for which CRA consideration is granted).

The agencies considered commenter feedback that revising community development to include eleven categories could be too rigid or complex, and comments that activities under proposed § ____.13(b) through (l) could be included under the four existing community development categories. The agencies believe, however, that additional community development categories, with specific eligibility requirements for each, will provide stakeholders with better clarity. Additionally, as previously noted and consistent with the proposal, the final rule incorporates existing guidance into the definition, which represents an evolution towards a more comprehensive and transparent regulation. The agencies note that, while banks subject to the rule are permitted to qualify loans, investments, and services under any applicable community development category, and that some activities may meet the criteria of multiple categories, activities may count only once for the purposes of calculating the Community Development Financing Metric.

The agencies also appreciate comments suggesting additional categories for inclusion under community development and note that these are generally discussed in the section-by-section analyses of final § ____.13(b) through (l). The agencies have considered these comments but believe that the adopted categories most clearly and specifically align with the scope of community development under the CRA regulations. The agencies note that loans, investments, and services supporting additional activities suggested by commenters could still receive consideration if they otherwise meet the required criteria under any category included in final § ____.13.

Finally, the agencies believe that the establishment in final § ____.14 of an illustrative list of qualifying community development activities and of a confirmation process, available if a bank wants to request review in advance, will help to provide additional clarity and transparency for banks regarding the consideration of community development loans, investments, and services. For more information, see the section-by-section analysis of § ____.14.

Section ____.13(a) Full and Partial Credit for Community Development Loans, Community Development Investments, and Community Development Services

Current Approach

Under the current CRA rule, a bank may, depending on its size and business model, be evaluated for its community development lending, investments, and services under the lending, investment, or service tests, as applicable.[256] To be eligible for CRA community development consideration, a loan, service, or investment must have community development as its primary purpose.[257]

The Interagency Questions and Answers explain that a loan, investment, or service is considered to have a primary purpose of community development ''when it is designed for the express purpose of'' the following:

- ''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).'' [258]

The Interagency Questions and Answers explain that the agencies use one of two approaches to determine whether an activity is ''designed for an express community development purpose.'' An activity meets the primary purpose standard, and the entire activity may be eligible for CRA considerations if:

- ''[A] majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes;'' [259] or
- Less than a majority of the dollars or benefits is identifiable to one or more community development purposes, but: (1) ''the express, bona fide intent of the activity . . . is primarily one or more of the enumerated community development purposes''; (2) ''the activity is specifically structured . . . to achieve the expressed community development purpose''; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved.'' [260]

Even where those standards have not been met, loans, investments, or services involving the provision of mixed-income housing that incudes affordable housing may be deemed to have a primary purpose of community development as specified in the Interagency Questions and Answers.[261] Specifically, at a bank's option, these activities may be considered to have a primary purpose of community development and be eligible for CRA credit on a pro rata basis; a bank may receive pro rata consideration for the portion of the activity that helps to provide affordable housing to low- or moderate-income individuals.[262] For example, a bank could receive CRA consideration for 20 percent of the dollar amount of a loan or investment for a mixed-income development, if 20 percent of the units are set aside for affordable housing for low- or moderate-income individuals.[263]

The Agencies' Proposal

The agencies proposed to define the standards for determining whether a community development activity has a ''primary purpose'' of community development to clarify eligibility criteria for different community development loans, investments, or services (proposed § ____.13(a)). To this end, proposed § ____.13(a)(1) established specific standards based on the interagency guidance described above [264] for eleven categories of community development. These categories were listed in proposed § ____.13(a)(2) and described in detail in proposed § ____.13(b) through (l). With the proposed categories, the agencies intended to 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.

Specifically, proposed § ____.13(a) stated that ''[a] bank may receive community development consideration for a loan, investment, or service that has a primary purpose of community development.'' The agencies proposed several ways in which an activity could be determined to have a primary purpose of community development.[265] First, under proposed § ____.13(a)(1)(i), if a majority of the dollars, applicable beneficiaries, or housing units of the activity were identifiable to one or more of the community development purposes listed in proposed § ____.13(a)(2), then the activity would meet the requisite primary purpose standard and would receive full CRA credit.

Second, and alternatively, under proposed § ____.13(a)(1)(i)(A), where an activity supported rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a Federal, State, local, or tribal government (*see* proposed § ____.13(b)(1)), and fewer than 50 percent of the housing units supported by that activity were affordable, the activity would be considered to have a primary purpose of community development only in proportion to the percentage of total housing units in the development that were affordable.

Third, under proposed § ____.13(a)(1)(i)(B), where an activity involved low-income housing tax credits to support affordable housing under proposed § ____.13(b), the activity would be considered to have a primary purpose of community development for the full value of the investment, even if fewer than 50 percent of the housing units supported by that activity were affordable.

Finally, under proposed § ____.13(a)(1)(ii), a loan, investment, or service would be considered to have a primary purpose of community development if the express bona fide intent of the activity was one or more of the proposed community development purposes and the activity was specifically structured to achieve, or was reasonably certain to accomplish, the community development purpose.

Pro rata consideration for other community development activities. Although the proposal did not specify any other application of partial credit, the agencies sought feedback on whether such consideration would be appropriate for other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities). If so, the agencies also sought feedback on whether the activity should be eligible for partial consideration only if a minimum percentage of the

[256] *See, e.g.,* current 12 CFR ____.22 through ____.26.

[257] *See* current 12 CFR ____.12(h)(1) (for community development loans), (i)(1) (for community development services), and (t) (for community development or ''qualified'' investments).

[258] *See* Q&A § ____.12(h)–8. The referenced requirements for small businesses and small farms are that they ''meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (12 CFR 121.301) or have gross annual revenues of $1 million or less.'' 12 CFR ____.12(g)(3).

[259] Q&A § ____.12(h)–8.

[260] *Id.* Q&A § ____.12(h)–8 specifies that the ''express, bona fide intent'' of the activity may be ''as stated, for example, in a prospectus, loan proposal, or community action plan.'' *Id.*

[261] *See id.*

[262] *See id.*

[263] *See id.*

[264] *See id.*

[265] *See* proposed § ____.13(a)(1).

community development purpose it supported served low- or moderate-income individuals or census tracts or small businesses and small farms, such as 25 percent. Further, if partial consideration were provided for certain types of community development activities, the agencies sought feedback on whether to require a minimum percentage standard greater than 51 percent to receive full consideration—such as a threshold between 60 and 90 percent.

Comments Received

The agencies received several comments generally supporting the proposed standard for determining whether an activity has a ''primary purpose'' of community development. For example, one commenter offered the general comment that it found the proposed clarifications to the primary purpose standard to be helpful and clear. As discussed in this section, many comments focused on the specific components of the proposed primary purpose standard and provided responses to the questions on which the agencies requested feedback.

A majority of dollars, applicable beneficiaries or housing units are identifiable to one or more of the community development categories (proposed § ____.13(a)(1)(i)). Many commenters supported the agencies' proposal to determine that an activity has a primary purpose of community development if a majority of dollars, applicable beneficiaries or housing units of the activity are identifiable to one or more community development purposes set out in proposed § ____.13(a)(2). A few commenters supported this aspect of the proposal without changes, while others asserted that CRA credit generally should not be granted unless the majority of beneficiaries are low- or moderate-income people and communities, or people and communities of color and indigenous people and communities.

The express, bona fide intent of the activity is one or more of the community development categories and the activity is specifically structured to achieve, or is reasonably certain to accomplish, the community development purpose (proposed § ____.13(a)(1)(ii)). A few commenters expressed concern with the agencies' proposal to determine that an activity has a primary purpose of community development if the express, bona fide intent of the activity is one or more of the community development categories or the activity is specifically structured to achieve, or is reasonably certain to accomplish, the community development purpose. One of these commenters suggested that this could lead to abuses where only a small percentage of dollars are dedicated to community development. To mitigate this potential problem, the commenter suggested eliminating this basis for determining whether an activity has a primary purpose of community development or, alternatively, pairing this consideration with a minimum threshold for the percentage of the activity that corresponds with community development, such as 40 percent, below which no consideration would be available.

Another commenter asserted that the agencies should revise this prong to retain only the proposed language regarding whether ''[t]he express, bona fide intent of the activity is one or more of the community development purposes.'' This commenter stated that that language regarding the activity being ''specifically structured to achieve'' the community development purpose was redundant in light of the ''intent'' requirement. The commenter further expressed the view that determining whether an activity is ''reasonably certain to accomplish'' a community development purpose would result in bank and examiner speculation regarding the results of an activity. According to this commenter, the resulting uncertainty of both the ''specifically structured to achieve'' and ''reasonably certain to accomplish'' components of this proposed standard could be confusing and discourage innovative community development activities.

Affordable housing-related provisions (proposed § ____.13(a)(1)(i)(A) and (B)). Many commenters addressed the two proposed clarifications to the primary purpose standard for affordable rental housing. As described above, these included: (1) a provision allowing for pro rata consideration of activities in conjunction with a Federal, State, local, or tribal government plan, program, initiative, tax credit, or subsidy, when fewer than 50 percent of housing units supported by the activity are affordable (proposed § ____.13(a)(1)(i)(A)); and (2) a provision allowing for full consideration of any affordable housing activity involving low-income housing tax credits (proposed § ____.13(a)(1)(i)(B)).

Subsidized affordable rental housing (proposed § ____.13(a)(1)(i)(A)). Many commenters supported providing pro rata consideration for affordable rental housing activities based on the percentage of housing units that are affordable. Several commenters supporting pro rata consideration for affordable housing cited the benefits of mixed-income housing for sustaining needed services and amenities in low- and moderate-income communities and for low- and moderate-income residents, as well as for promoting economic stability for low- and moderate-income individuals and communities. A commenter also noted that in rural areas, mixed-income housing is needed to accommodate projects of a sufficient scale to achieve development and operating efficiencies.

Some commenters expressed the view that the pro rata consideration proposal was too narrow. In this regard, commenter suggestions included changes to the proposal to enhance incentives for investments and loans in affordable housing, *e.g.,* that the agencies should afford full credit for subsidized affordable housing if 20 percent of the units were affordable, a level some commenters stated would align with the eligibility thresholds of certain other Federal affordable housing programs. A few commenters noted, however that, when less than 20 percent of the units are affordable, affordability may be incidental to the project and immaterial to financing. Commenter feedback also included the view that properties developed without government funding should receive pro rata consideration if the percentage of units affordable to low- or moderate-income households were 50 percent or lower, and full consideration if the percentage of units affordable to low- or moderate-income households were greater than 50 percent.

A few commenters conveyed that the proposal for pro rata consideration was too broad. In this regard, for example, a commenter expressed concern that the proposal could lead to providing CRA consideration for projects that do not preserve long-term affordability for low- or moderate-income individuals. Instead, the commenter stated that pro rata consideration should be limited to affordable housing projects that are: (1) owned by mission-driven affordable housing nonprofit organizations or public entities; (2) restricted to remain affordable at the lesser of 80 percent of area median income or HUD's Small Area Fair Market Rent;[266] and (3) subject to compliance monitoring by a public entity. One commenter urged caution with pro rata consideration for affordable housing, stating that displacement pressure associated with new market rate housing in a low- and moderate-income community could

[266] *See,* HUD, Office of Policy Development and Research, ''Small Area Fair Market Rents,'' *https://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

offset the benefit of providing the additional affordable units. Another commenter suggested that banks should not receive credit for affordable housing lending if the percentage of affordable units falls meets only the minimum required under a local inclusionary ordinance.

LIHTCs (proposed § ____.13(a)(1)(i)(B)). Many of the commenters addressing the affordable housing component of the primary purpose standard strongly supported the proposal to provide full consideration for activities that involve LIHTCs to support affordable housing. A few commenters referenced the important role that LIHTC-financed projects have in addressing the need for affordable housing and noted that the LIHTC program drives most privately financed construction and rehabilitation of affordable housing. Other commenters asserted that the statutory and regulatory restrictions of the LIHTC program ensured that these activities were in the interest of public welfare.

Several commenters, however, suggested changes to this component. Some commenters stated that banks should receive full consideration for *investments* in mixed-income LIHTC projects, noting that the tax credits for investments under the LIHTC program is already prorated based on the percentage of units that are affordable. However, these commenters urged that *lending* to these projects should be prorated, asserting that lending to mixed-income LIHTC projects could include significant financing for market-rate housing, and expressed the view that banks should not get community development credit for this portion.

Several commenters suggested that full consideration for affordable housing projects should apply more broadly to include other types of affordable housing, in addition to LIHTC projects. A few commenters recommended that full consideration be given for investments through nonprofit organizations with a mission or primary purpose of providing affordable housing, regardless of the purpose of the underlying collateral. One of these commenters asserted that bank investments supporting affordable housing projects through community-based development organizations (CBDOs) with a history of serving the needs of low- and moderate-income people and communities should also receive full consideration. This commenter maintained that full consideration for these projects would be warranted regardless of the income levels targeted by the project because CBDOs have the ‘‘mission and experience’’ to consider community mixed-income housing needs. Another commenter questioned why full consideration would not also be extended to all affordable housing developed with Federal housing subsidies, such as HUD's HOME Investment Partnerships Program (HOME) or project-based section 8 rental assistance.

Pro rata consideration for other community development categories. As noted previously, the agencies sought commenter perspectives on whether a partial consideration framework should be extended to some, or all, community development categories, in addition to affordable rental housing. Some commenters supported limiting partial consideration to only affordable housing. These commenters noted several common reasons for this, including the documented benefits of mixed-income housing for low- and moderate-income individuals and communities; the additional financing challenges for affordable housing compared to other types of projects; and the concern that expanding partial consideration beyond housing could divert limited resources away from projects that target low- and moderate-income individuals or communities. One commenter stated that approximately one-third of the national population is low- and moderate-income, so many activities could receive approximately that amount of credit if pro rata consideration were based on the population of low- and moderate-income individuals, without specifically targeting this population. This commenter asserted that any percentage of low- and moderate-income beneficiaries set for pro rata consideration would have therefore have to be substantially higher than the share of the low- and moderate-income population to demonstrate that the activity had the actual intent of serving that population, at which point the level would approach the existing 50 percent threshold. Thus, the commenter believed that there is little to be gained and much to be lost in offering partial consideration outside of affordable housing activities, where income mixing is often part of an intentional strategy or necessary condition for creating new affordable homes.

Other commenters supported allowing partial credit for certain types of larger-scale community development projects that might benefit low- or moderate-income individuals and communities. In general, these commenters noted that some projects might not be limited to a specific geographic area and would still benefit low- and moderate-income people and communities within the area affected. One commenter suggested that providing pro rata credit for a wider range of community development activities would acknowledge the complexities of delivering services to a large geographic area and could incentivize more financing in economically struggling or rural areas.

The community development activity most often cited by commenters urging more extensive partial consideration was expanding access to broadband, with commenters noting the critical need for these services that are lacking in many rural and low- and moderate-income communities. Examples of other community development activities referenced by commenters for partial credit included: (1) infrastructure and community facilities; (2) projects that increase access to transportation, health care or renewable energy; or (3) projects that help to revitalize vacant and abandoned land or buildings. One commenter expressed general opposition to partial consideration but conveyed support for exceptions for projects in rural areas, using access to broadband as an example.

Several commenters suggested that, if partial consideration is provided, certain guardrails should be in place to ensure that low- or moderate-income individuals and communities benefit. One commenter stated that partial consideration should be allowed only for activities that specifically target low- and moderate-income areas, and that merely benefiting these areas was not sufficient. A few commenters similarly expressed concerns about granting partial credit for activities that support community development but do not intentionally target benefits to low- and moderate-income people and communities; specifically they recommended that, for activities supporting community facilities and essential infrastructure to qualify for partial credit, the primary beneficiaries of the project should be low- and moderate-income persons or residents of low- and moderate-income communities. Another commenter supported partial credit for infrastructure projects that benefit ‘‘rural and other socially disadvantaged communities,’’ citing as an example the educational benefits to low- and moderate-income populations afforded by access to broadband. However, this commenter stated that no credit should be given to projects that would happen even without the incentive of CRA credit and that do not have a demonstrable benefit for low- or moderate-income communities. This commenter further recommended that partial CRA credit be given in proportion with the demonstrated impact on low- and moderate-income communities, suggesting that this might be based on the income levels of the census tracts a project spans. Finally, a commenter suggested that partial consideration could be warranted for community development activities other than support for affordable housing, as communities might have other community development needs but recommended, however, that the community development activities, among other criteria: (1) ''significantly improve'' factors impacting the health of residents in low- and moderate-income communities; (2) be undertaken with a U.S. Treasury-certified CDFI; (3) be widely supported by the community; and (4) ''contribute directly'' to a range of potential community benefits.

Numerous other commenters favored expansion of partial consideration for all community development categories. Several commenters asserted that partial consideration would encourage banks to expand the geographic reach of their community development activities and encourage more community development activity that benefits low- and moderate-income individuals and communities. One commenter expressed the view that extending partial consideration to all community development categories would not dilute community development resources for low- or moderate-income communities and asserted that partial credit could incentivize more large-scale projects addressing infrastructure needs beyond affordable housing. Another commenter added that a partial credit framework would appropriately account for the complexities that can be associated with bringing services to geographically dispersed populations. Similarly, several commenters stated that partial consideration of community development activities would be particularly beneficial in rural areas, where the population is more widely dispersed and there are fewer low- or moderate-income tracts and individuals. One commenter expressed support for partial consideration for all community development activities but indicated that the ''majority'' standard for primary purpose should also be retained,[267] since some banks might not have the capacity to document partial consideration levels with more specificity.

Threshold for partial consideration. Many commenters who supported partial consideration for activities in some or all community development categories also thought that a minimum threshold for the percentage of the activity that serves low- or moderate-income individuals and geographic areas or small businesses and small farms should apply for a bank to be eligible to receive partial consideration for the activity. Numerous commenters suggested a minimum threshold ranging from 10 percent to over 50 percent for partial consideration eligibility, with a minimum of 25 percent being the threshold most frequently suggested. For example, a commenter suggested that a threshold of 10 percent would be appropriate, allowing for projects with complex development and construction markets, including higher-income markets.

A number of commenters asserted that no minimum threshold should be required for partial consideration eligibility, as long as some benefit of the activity to low- or moderate-income individuals or communities or small businesses or small farms could be documented. For example, a commenter stated that excluding loans or investments that do not meet a 50 percent threshold presents an incomplete picture of a bank's overall community development activities. This commenter further asserted that a pro rata framework for all community development activities would further the CRA goals of expanding lending and investment in low- and moderate-income communities because all of a bank's community development efforts would count.

Finally, regarding when full consideration of an activity should be given, some commenters expressed the view that, for an activity to receive full credit, the percentage of benefits to low- or moderate-income individuals or communities or small businesses and small farms should be higher than 51 percent (*see* discussion of comments on the ''majority'' standard above). The thresholds suggested by these commenters ranged from 60 percent to 80 percent for full consideration. For example, one commenter recommended a 75 percent threshold and cautioned against activities that do not in fact serve communities but sustain poverty over the long term, such as, among other examples, infrastructure projects that cause affordable housing losses. This commenter also urged the agencies to consider a standard based on whether the activity is supported or requested by the community itself. Another commenter suggested that a 60 percent threshold would strike an appropriate balance between incentivizing a focus on low- and moderate-income needs and allowing for a range of projects that could benefit a wider range of residents, such as in a mixed-income community.

Final Rule

The agencies are finalizing the proposal to clarify eligibility criteria for different community development activities, with several changes and restructuring. The agencies carefully considered comments received regarding standards for determining whether an activity has the primary purpose of a community development. Based on the agencies' review of the comments and supervisory experience, the agencies concluded that ''primary purpose'' does not accurately describe when a bank will receive full or partial credit and resulted in some confusion in this regard. Thus, under the final rule, the agencies are modifying the proposal that focused on a primary purpose standard by adopting specific standards for full and partial consideration of community development activities, to clarify when activities will receive such consideration. To streamline the regulation, the agencies are eliminating the list of community development categories in proposed § ____.13(a)(2) and instead adding new language in final § ____.13(a) that a bank may receive community development consideration for a loan, investment, or service that supports one of eleven categories of community development described in final § ____.13(b) through (l), as outlined above. The agencies also reorganized proposed § ____.13(a) into two distinct sections: final § ____.13(a)(1), which details the circumstances in which a bank receives full credit; and final § ____.13(a)(2), which details the circumstances in which a bank receives partial credit for a community development loan, investment, or service.

Also as noted above, the agencies are replacing ''primary purpose'' terminology and setting forth a framework consistent with the current and proposed primary purpose standard, but delineated for each category of community development to convey more clearly and transparently the parameters for community development loans, investments, and services to receive full or partial credit, as discussed in more detail below in the section-by-section analysis of final § ____.13(a)(1) and (2).

Overall, the agencies believe that the final rule provides meaningful clarification of the standards for consideration of community development loans, investments, and services, in response to comments and

[267] *See* proposed § ____.13(a)(1)(i). *See also* Q&A § ____.12(h)–8.

on further deliberation by the agencies. The section-by-section analysis below provides additional detail.

Section ____.13(a)(1) Full credit

The agencies are adopting final § ____.13(a)(1) to identify four circumstances under which a bank will receive credit for the entire community development loan, investment, or service. More specifically, banks will receive full credit for these types of activities if they:

- Meet the majority standard in § ____.13(a)(1)(i);
- Meet the bona fide intent standard in § ____.13(a)(1)(ii);
- Involve an MDI, WDI, LICU, or CDFI as provided in § ____.13(a)(1)(iii); or
- Involve LIHTCs as provided in § ____.13(a)(1)(iv).

The agencies intend with this reorganization to address comments seeking clarification about standards for community development consideration. By categorizing and clarifying the types of community development activities that receive full credit, the agencies are emphasizing activities that are responsive to community needs.

Section ____.13(a)(1)(i) Majority Standard

Similar to proposed § ____.13(a)(1)(i), the agencies are finalizing a majority standard with additional criteria that more specifically address how the standard is applied with respect to each of the community development categories. Final § ____.13(a)(1)(i)(A), states that any loan, investment, or service must support community development under one or more of the categories outlined in final § ____.13(b) through (l). Further, final § ____.13(a)(1)(i)(B) provides that the loan, investment, or service must meet one or more of the other criteria established under the majority standard that correspond to each of the community development purposes. Specifically, under § ____.13(a)(1)(i)(B)(*1*), for a community development loan, investment or service that supports any of the categories of affordable housing under final § ____.13(b)(1) through (3) to meet the majority standard, the majority of the housing units supported by the bank's loan, investment or service must be affordable to low- or moderate-income individuals. The agencies believe that, for these categories of community development, the housing unit standard for measuring whether the majority standard is met (or the appropriate proportion of partial credit) is objective and consistent with the impact that the project will have on the community. Regarding other categories of community development, final § ____.13(a)(1)(i)(B)(*2*) through (*6*) provide that a loan, investment, or service meets the majority standard if the majority of beneficiaries are, or the majority of dollars benefit or serve, the following:

- Low- and moderate-income individuals, with respect to affordable housing and community supportive services pursuant to final § ____.13(b)(4) and (5) and (d), respectively; [268]
- Small businesses and small farms, with respect to economic development pursuant to final § ____.13(c); [269]
- Residents of targeted census tracts, with respect to revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency pursuant to final § ____.13(e) through (g) and (i); [270]
- Residents of designated disaster areas with respect to recovery of designated disaster areas pursuant to final § ____.13(h); [271]
- Residents of Native Land Areas, with respect to revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas pursuant to final § ____.13(j).[272]

Lastly, final § ____.13(a)(1)(i)(B)(*7*) provides that loans, investments, and services supporting community development under final § ____.13(b)(l) meet the majority standard if they primarily support financial literacy.

The agencies considered comments that suggested establishing a threshold greater than a majority (*i.e.,* over 50 percent) (ranging from 60 to 80 percent) to receive full credit for a community development activity. However, the agencies believe that the majority standard, which has a longstanding history in the current rule, appropriately identifies those activities that primarily have a community development purpose, while acknowledging that many important community development initiatives and projects are not solely dedicated to the community development purposes in final § ____.13(b) through (l).

While a few commenters suggested that the majority standard should be applied to beneficiaries that are racial and ethnic minorities in addition to those elements that were identified in the proposal, the agencies did not add these beneficiaries to the majority standard, although the agencies expect that the clarified majority standard will better facilitate banks meeting the community development needs of their entire communities. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Section ____.13(a)(1)(ii) Bona Fide Intent Standard

Consistent with proposed § ____.13(a)(l)(ii), the agencies are adopting final § ____.13(a)(l)(ii), with restructuring and a technical change from the proposal. The final rule confirms loans, investments, and services that meet the bona fide intent standard receive full community development credit. A loan, investment, or service meets the bona fide intent standard if:

- The housing units, beneficiaries, or proportion of dollars necessary to meet the majority standard are not reasonably quantifiable; [273]
- The loan, investment, or service has the express, bona fide intent of one or more of the community development purposes in final § ____.13(b) through (l); [274] and
- The loan, investment, or service is specifically structured to achieve one or more of the community development purposes in final § ____.13(b) through (l).[275]

In addition to reorganizing final § ____.13(a)(l)(ii) from the proposal for clarity and to confirm that a bank may receive full credit for meeting the bona fide intent standard, the agencies are clarifying that the bona fide intent standard applies when the ''housing units, beneficiaries, or proportion of dollars necessary to meet the majority standard are not reasonably quantifiable.'' For example, this standard could be appropriate when considering a loan to an organization that has a bona fide intent of serving low- or moderate-income individuals but does not track data on the income of every individual served, such that demonstrating an activity meets the majority standard would be highly challenging. Additionally, the agencies removed the language in the proposal that the activity must also be

[268] *See* final § ____.13(a)(1)(i)(B)(*2*).

[269] *See* final § ____.13(a)(1)(i)(B)(*3*).

[270] *See* final § ____.13(a)(1)(i)(B)(*4*).

[271] *See* final § ____.13(a)(1)(i)(B)(*5*).

[272] *See* final § ____.13(a)(1)(i)(B)(*6*).

[273] *See* final § ____.13(a)(1)(ii)(A).

[274] *See* final § ____.13(a)(1)(ii)(B).

[275] *See* final § ____.13(a)(1)(ii)(C).

''reasonably certain to accomplish'' a community development purpose. The agencies appreciated the commenter concern that the ''reasonably certain to accomplish'' criterion could produce uncertainty and inconsistency in application, based on conjectures regarding the outcomes of the activity. However, the agencies are retaining the criterion that an activity must be ''specifically structured to achieve'' a community development purpose, which the agencies believe helps to ensure that any activities that do not meet the majority standard appropriately receive consideration under the bona fide intent standard, as an activity focused on a community development purpose.

The agencies also considered the commenter suggestion that the bona fide intent standard should be removed from the final rule, but based on supervisory experience, believe that this would eliminate from consideration numerous beneficial initiatives that have a community development purpose, but do not meet the majority standard in final § ____.13(a)(l)(i). Further, the agencies believe the three required criteria for the bona fide intent standard will help to eliminate any potential abuse in the application of this standard. With the revisions to the language regarding the bona fide intent standard, the agencies believe that the standard is a balanced approach to encouraging community development activities, while eliminating from consideration any activities that are not predominantly focused on a community development purpose.

Section ____.13(a)(1)(iii) Community Development Related to MDIs, WDIs, LICUs, and CDFIs

As the proposal did not specifically address how the primary purpose consideration would be applied with respect to a loan, investment, or service to an MDI, WDI, LICU, or CDFI that supports community development under proposed § ____.13(a)(2)(ix) and (j), the agencies added and are finalizing § ____.13(a)(l)(iii) to clarify that activities conducted in conjunction with these four types of entities are eligible for full credit. As discussed in more detail in the section-by-section analysis of final § ____.13(k), community development under final § ____.13(k) (renumbered from proposed § ____.13(j)) differs somewhat from the other types of community development under final § ____.13(b) through (j) and (l) in that the credit a bank receives is based exclusively on the entity to which the bank is providing the loan, investment, or service, rather than looking at a measurable benefit using the corresponding dollars, beneficiaries, or housing units associated with the activity. The provision of full credit to these types of activities is also consistent with how the agencies currently consider loans, investments, and services that support MDIs, WDIs, and LICUs.[276]

Section ____.13(a)(1)(iv) Community Development Related to LIHTC-Financed Projects

The agencies are adopting proposed § ____.13(a)(1)(i)(B), renumbered as final § ____.13(a)(1)(iv), with certain revisions for clarity. This provision clarifies the agencies' intent, consistent with the current CRA framework, that a loan, investment or service involving a project financed by LIHTCs under final § ____.13(b)(1) will receive full community development credit. Under proposed § ____.13(a)(1)(i)(B), full consideration was limited to only investments in projects financed by LIHTCs. Many commenters supported providing full community development credit for all activities that involve LIHTCs to finance affordable housing. Therefore, in response to these commenters and considering past supervisory practice, the agencies adopted final § ____.13(a)(1)(iv), to state that a loan, investment or service involving LIHTCs to finance the development of affordable housing under final § ____.13(b)(1) will receive full community development credit.

The agencies considered commenter concerns that lending to mixed income housing projects that include units financed by LIHTCs could also include financing for market-rate housing that does not benefit or serve low- and moderate-income individuals. However, the agencies determined that granting full credit for these loans under § ____.13(a)(1)(iv) is appropriate for ensuring certainty regarding existing approaches to financing LIHTC projects, as full credit for these loans is consistent with current guidance.[277] The agencies also considered that projects developed with LIHTCs have the expressed intent of providing affordable housing, regardless of the percentage of affordable units that are supported, and believe that providing credit for LIHTC-related lending aligns with the statutory purpose of encouraging banks to meet the credit needs of their communities, including low- and moderate-income populations.[278]

The agencies also considered comments suggesting that full credit for loans, investments, or services should be extended to all affordable housing developed with Federal housing subsidies or to all affordable housing projects developed through CBDOs with a history of serving low- and moderate-income populations. The agencies recognize the importance of all Federal housing programs in financing affordable housing and the important role that CBDOs play in developing affordable housing. However, on further review of these suggestions, the agencies have determined that loans, investments, and services for projects financed by Federal housing subsidies or developed by CBDOs should not automatically receive full consideration because the scope and target of these subsidies and projects may vary greatly. While the agencies believe that most of the affordable housing projects developed in conjunction with Federal subsidies and CBDOs will likely warrant consideration as a community development activity, the agencies believe that they should be considered individually, and not universally provided full credit; rather, given the wide variety of subsidies and projects, the corresponding loans, investments, and services will be more appropriately considered under the full or partial credit criteria in final § ____.13(a)(1) and (2), as applicable to these types of projects.

Section ____.13(a)(2) Partial Credit

Partial consideration for affordable housing. A second category implemented as part of the restructuring reflected in final § ____.13(a) includes loans, investments, and services that will receive partial credit. The agencies are adopting proposed § ____.13(a)(l)(i)(A), renumbered as final § ____.13(a)(2), and reworded for clarity. Final § ____.13(a)(2) memorializes current interagency guidance related to the provision of mixed-income housing with an affordable housing set-aside required by a Federal, State, or local government.[279] Under this construct, a bank will receive partial credit for any loan, investment, or service that supports affordable housing under final § ____.13(b)(1) and does not meet the majority standard under final § ____.13(a)(1)(i). This partial credit will

[276] *See* current § ____.21(f) and Q&A § ____.21(f)–1.

[277] *See* Q&A § ____.12(t)–4.

[278] For further discussion of final rule provisions regarding LIHTCs, see the section-by-section analysis of § ____.15(b)(10) (impact and responsiveness review factor for investments in LIHTC).

[279] *See* Q&A § ____.12(h)–8.

be calculated in proportion to the percentage of total housing units in any development that are affordable to low- or moderate-income individuals. 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- and moderate-income individuals according to a local government set-aside requirement, the bank may elect to treat $1 million of such loan as a community development loan. This provision will provide flexibility for banks to engage in affordable housing even if 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 does not include a majority of housing units that are affordable to low- or moderate-income individuals.

The final rule is intended to be responsive to the numerous commenters that supported the proposal to provide pro rata consideration for affordable rental housing based on the percentage of housing units that are affordable. While commenter suggestions included that banks receive full credit for subsidized affordable housing that represented at least 20 percent of the bank's financing, the agencies believe that such treatment could inappropriately dilute the consideration of community development loans and investments by providing significant amounts of credit for housing that is not affordable to low- and moderate-income people. The agencies have also decided not to provide partial credit to loans or investments in affordable housing projects that are developed without government support if less than 50 percent of the units are affordable. This type of affordable housing may not have protections to preserve the housing as affordable to low- and moderate-income individuals during the term of the loan or investment, which are typical of government-supported affordable housing.

As mentioned previously, the agencies considered comments suggesting that partial credit for affordable housing was too broad and should be limited to provide partial credit only for those projects that maintain at least 20 percent of the units as affordable. However, the agencies do not believe that such a limitation is necessary. The final rule restricts partial consideration to only rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy pursuant to § ____.13(b)(1), which will help ensure that there is an intent of providing affordable housing and will limit the consideration of housing units that may be incidental. The agencies believe it is appropriate to defer to the Federal, State, local, or tribal government to set minimum standards for participating in affordable housing programs, plans, initiatives, tax credits, or subsidies that are responsive to their respective communities.

The agencies also contemplated the suggestion that banks should not receive credit for lending for affordable housing if the housing is associated with a local inclusionary zoning ordinance and provides only the minimum amount of affordable housing required. While the agencies acknowledge the compulsory nature of these ordinances and concerns with providing community development credit for loans and investments that support this housing, the agencies believe that affordable housing associated with inclusionary zoning should be included. The agencies recognize that inclusionary zoning represents an important tool utilized by local jurisdictions to create and preserve affordable housing for low- and moderate-income individuals, especially in higher-income areas. In addition, under the final rule, if affordable housing provided through these programs does not meet the majority standard, the credit afforded to a bank is limited to only the percentage of units that are considered affordable.

Partial consideration for other community development categories. As discussed above, the agencies received a wide range of comments in response to the request for feedback on whether partial credit should be extended to some, or all, community development categories, in addition to affordable housing. After consideration of these comments, the agencies are adopting final § ____.13(a)(2) without extending partial credit to other categories of community development. The agencies share commenter concerns that expanding partial consideration beyond mixed-income rental housing could divert limited community development resources away from the projects that target low- or moderate-income people and communities, as well as small businesses and small farms. To this end, the agencies are not adopting suggestions that the final rule provide partial credit for certain larger-scale community development projects that have the potential to impact low- or moderate-income individuals and communities but are not primarily targeted to these populations. Unless these projects are associated with LIHTCs or are conducted with MDIs, WDIs, LICUs, or CDFIs, the agencies believe that these projects should receive credit only when they meet the majority or bona fide intent standards. The full and partial credit criteria in § ____.13(a) serve as sufficient guardrails to ensure that low- or moderate-income individuals and communities, as well as other underserved segments of the community identified in community development categories in § ____.13(b) through (l), benefit.

The agencies also considered feedback from some commenters that supported some degree of expansion of the partial credit standard with certain qualifications, limitations, and additional criteria. However, the agencies determined that the consistent and transparent application of an expansion with these qualifications would be untenable, such as limiting partial credit to projects that would only happen without CRA recognition or that are widely supported by the community. The agencies also considered suggestions to allow partial consideration with a minimum threshold for the percentage (ranging from 10 to 50 percent and most often cited as 25 percent) of the activity that served low- or moderate-income individuals and geographic areas, small businesses, and small farms. The agencies carefully considered the many varying views on extending a partial credit framework to other community development categories, and the suggested thresholds for doing so. On balance, the agencies believe that applying the majority and bona fide intent standards to other categories of community development affords the consistency and clarity that can foster a predictable and transparent framework for bank partnerships and engagement in community development within the communities they serve. For the reasons discussed above, the agencies believe that government-related mixed-income affordable housing is distinguishable from other types of community development in ways that make a partial credit framework appropriate for facilitating bank involvement in these projects, consistent with government assessments of the affordable housing needs of their communities. Further, the agencies note that banks will receive full credit for any loan, investment, or service that is not entirely dedicated to a community development purpose, as long as it meets the majority or bona fide intent standard pursuant to § ____.13(a)(1).

As mentioned previously, several commenters suggested the expansion of partial credit consideration for broadband, noting that the need for this infrastructure is particularly critical in many rural and low- and moderate-income communities. The agencies have considered these comments but determined that outside of affordable housing, it is difficult to single out unique treatment for specific activities. Therefore, the agencies have decided to retain the final rule as proposed, and all activities beyond affordable housing will have to meet the majority or bona fide intent standard pursuant to pursuant to § ____.13(a)(1). The agencies recognize that a need for broadband exists in rural and low- or moderate-income communities and seek to address this need under § ____.13(g), the community development category for essential community infrastructure, which allows consideration for infrastructure activities, including those expanding broadband access, that benefit or serve targeted census tracts (which includes low-income, moderate-income, or distressed or underserved middle-income nonmetropolitan tracts) and meets other specified criteria. For further discussion, including additional comments on broadband access and other types of essential community infrastructure, see the section-by-section analysis of § ____.13(g). The agencies intend that consideration for activities under several community development categories, including revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency [280] that benefit or serve residents of targeted census tracts, including distressed and underserved nonmetropolitan middle-income census tracts, will help to address commenters' concern that partial credit is necessary to ensure that the community development needs of rural areas, which are often more widely dispersed and have fewer low- or moderate-income tracts and individuals, are met.

Section ____.13(b) Affordable Housing

In proposed § ____.13(b), the agencies proposed a definition for affordable housing that included four components: (1) affordable rental housing developed in conjunction with Federal, State, local, and tribal government programs; (2) multifamily rental housing with affordable rents; (3) activities supporting affordable low- or moderate-income homeownership; and (4) purchases of mortgage-backed securities that finance affordable housing. The agencies intended the proposed definition to clarify the eligibility of affordable housing as well as to recognize the importance of promoting affordable housing for low- or moderate-income individuals.[281] Specifically, the agencies stated their belief that the proposal would, first, add greater clarity around the many types of subsidized activities that currently qualify for CRA consideration.[282] Second, the agencies sought to provide clear and consistent criteria in order to qualify affordable low- or moderate-income multifamily rental housing that does not involve a government plan, program, initiative, tax credit, or subsidy (also referred to in the agencies' proposal as ''naturally occurring affordable housing'' or ''affordable multifamily rental housing'').[283] Third, the agencies stated their intention to ensure that activities that support affordable low- and moderate-income homeownership are sustainable and beneficial to low- or moderate-income individuals and communities.[284] Finally, the agencies, through the proposal, sought to appropriately consider qualifying mortgage-backed security investments, so as to emphasize community development financing activities that are most responsive to low- or moderate-income community needs.[285]

Comments on the overall structure of the agencies' affordable housing proposal varied, with some commenters commending the breadth of housing activities included in the proposal, while others viewed the proposal as too narrow or rigid, or questioned whether the proposal would add burden on banks that may constrain banks' capacities to meet affordable housing needs.

Commenters also provided feedback on specific aspects of the affordable housing community development category proposal, including feedback on which affordable housing activities should be required to meet an agency-determined affordability standard, which affordability standard or standards the agencies should adopt, and what, if any, geographical considerations should be factored in when determining whether affordable housing activities should be eligible for community development consideration.

For the reasons discussed in this section, the agencies have adopted an approach to defining the affordable housing category of community development that aligns closely with the agencies' proposal, as well as key aspects of current practice and interpretations under the CRA. Importantly, in response to commenter feedback, the agencies are adopting modifications to the affordable housing community development category to ensure that the criteria are sufficiently flexible to account for a variety of housing models that address community needs. The final rule adds a component for consideration of activities that finance one-to-four family rental housing with affordable rents in nonmetropolitan areas. In addition, the final rule incorporates revisions designed to clarify the eligibility of rental housing in conjunction with a government affordable housing program, initiative, tax credit or subsidy. The final rule also revises and clarifies the affordability standard for naturally occurring affordable housing, clarifies the requirements for affordable owner-occupied housing activity, and revises and clarifies the requirements for purchases of mortgage-backed securities.

Current Approach

The current CRA regulations define ''community development'' to include ''affordable housing (including multifamily rental housing) for low- or moderate-income individuals.'' [286] The agencies have stated in the Interagency Questions and Answers that, for housing to be considered community development, low- or moderate-income individuals must benefit or be likely to benefit from the housing.[287] In this regard, the Interagency Questions and Answers provide that, for example, consideration for a ''project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula'' would not be appropriate.[288]

Under the current regulation, single-family (*i.e.,* one-to-four family) home mortgage loans are generally considered as part of the large bank and small bank lending tests, but may be considered as community development loans under the community development test for intermediate small banks that do not report such loans under HMDA (at the bank's option and if for affordable housing).[289] Multifamily affordable

[280] *See* final § ____.13(e) through (i).

[281] 87 FR 33884, 33892 (June 3, 2022).

[282] *See id.* at 33894.

[283] *See id.* at 33895.

[284] *See id.* at 33897.

[285] *See id.*

[286] 12 CFR ____.12(g)(1).

[287] *See* Q&A § ____.12(g)(1)–1.

[288] *See id.*

[289] *See* current 12 CFR ____.22(b)(1) (lending test) and ____.26 (small bank performance standards). *See also* Q&A § ____.12(h)–2 (consideration of retail loans for small institutions) and Q&A § ____.12(h)–

Continued

housing loans may qualify for both retail lending and community development consideration if those loans also meet the definition of a ''community development loan.'' [290] Housing that is financed or supported by a government affordable housing program or a government subsidy is considered subsidized affordable housing and is generally viewed as qualifying under affordable housing if the government program or subsidy has a stated purpose of providing affordable housing to low- or moderate-income individuals. Multifamily housing with affordable rents 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). Such housing can qualify as affordable housing under the current definition of ''community development'' if the rents are affordable to low- or moderate-income individuals, and if low- or moderate-income individuals benefit, or are likely to benefit, from this housing.[291] Current interagency guidance mentions certain information that examiners may consider in making this determination.[292]

Regarding affordability, no specific standard exists under the current regulatory framework for determining when a property or unit is considered affordable to low- or moderate-income individuals, for either multifamily or single-family housing.[293] One approach used by some examiners is to calculate an affordable rent based on what a moderate-income renter could pay if they allocated 30 percent of their income to rent. Alternatively, some examiners use HUD's Fair Market Rents as a standard for measuring affordability.[294]

Purchases of mortgage-backed securities qualify as affordable housing activity if they demonstrate a primary purpose of community development.[295] Specifically, the security must contain a majority of single-family mortgage loans to low- or moderate-income borrowers, or of loans financing multifamily affordable housing, to qualify as an investment with a primary purpose of affordable housing.[296]

Overall Affordable Housing Category Structure

The Agencies' Proposal

The NPR stated in proposed § ____.13(a)(2)(i) that loans, investments, or services that ''promote . . . [a]ffordable housing that benefits low- or moderate-income individuals'' would have the requisite community development purpose for CRA consideration. This provision cross-referenced proposed § ____.13(b) for greater detail about which activities qualify as ''affordable housing that benefits low- or moderate-income individuals.'' To this end, the agencies proposed four types of activities that would qualify under the affordable housing category of community development: (1) affordable rental housing developed in conjunction with Federal, State, local, and tribal government programs; (2) multifamily rental housing with affordable rents; (3) activities supporting affordable low- or moderate-income homeownership; and (4) purchases of mortgage-backed securities that finance affordable housing.

The agencies sought feedback on what changes, if any, should be made to ensure that the proposed affordable housing category is clearly defined 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.

Comments Received

Structure of affordable housing category. Many commenters provided feedback on the overall structure of the proposed affordable housing category of community development. Several commenters suggested that the agencies should not distinguish between government-subsidized and naturally occurring affordable housing. These commenters supported combining the first and second components of the proposed affordable housing category into one, with a universally applied affordability standard. In this regard, some commenters suggested that creating separate affordable housing standards based on the presence or absence of government support would be mistaken and urged the agencies to establish a uniform standard that would apply to all affordable multifamily housing—other than housing financed with LIHTCs—regardless of whether it has government support. These commenters proposed focusing on rent affordability as a percent of area median income, or the HUD Fair Market Rents standard, and a combination of other criteria such as: location in low- or moderate-income census tracts or in census tracts where the median renter is low- or moderate-income; nonprofit or CDFI ownership or control; documented occupancy by low- or moderate-income individuals; or an owner commitment to maintain the affordability of housing units for low- or moderate-income individuals for at least five years. These commenters also asserted that the agencies should include a requirement to periodically confirm the continued affordability of housing activities that receive community development consideration.

Scope of affordable housing category. Many commenters urged the agencies to provide additional support for difficult-to-finance housing projects by narrowing the agencies' proposal. For example, one commenter expressed the view that, by incorporating a wide variety of housing models, the proposed affordable housing category could reward banks that gravitate to easier-to-finance projects, versus projects for which banks may need further incentives to provide financing. Other commenters, for example, suggested that the agencies should prioritize consideration of activities that finance owner-occupied homes over investor-owned housing, with one of these commenters conveying that the agencies should evaluate any investor-related lending to determine whether it helps to build wealth for minority consumers or, alternatively, displaces them. This commenter also asserted that the agencies needed to comprehensively analyze banks' multifamily lending to provide consideration for beneficial activities and to impose sanctions for adverse behavior, such as financing landlords who are harassing and displacing tenants. Along those same lines, several commenters emphasized that the agencies should scrutinize banks' multifamily lending programs, including those conducted in partnership with third-party non-bank institutions, for illegal practices. Another commenter asserted that insufficient regulation of low-income housing tax credit investments has contributed, nationally, to over-

3 (home mortgage loan consideration for intermediate small banks).

[290] *See* Q&A § ____.42(b)(2)–2; *see also* Q&A § ____.12(h)–2 and –3 (regarding multifamily loan consideration for intermediate small banks).

[291] *See* Q&A § ____.12(g)(1)–1.

[292] *See id.* (providing, for example, that for projects where the income of the occupants cannot be verified, ''examiners will review factors such as demographic, economic, and market data to determine the likelihood that the housing will 'primarily' accommodate low- or moderate-income individuals'').

[293] *See, e.g.,* Q&A § ____.12(g)(1)–1.

[294] *See* HUD, Office of Policy Development and Research, ''Fair Market Rents,'' *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr.*

[295] *See* Q&A § ____.12(t)–2.

[296] *See id.*

concentration and racial and ethnic segregation of low-income housing tax credit projects in minority communities, and that the agencies should address this dynamic in the final rule.

A variety of commenters addressed the agencies' request for feedback on what changes, if any, the agencies should consider to ensure that the proposed affordable housing category of community development is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals. Many commenters requested that the agencies add provisions specific to community land trusts, shared equity models, land banks, accessory dwelling units (ADUs), and manufactured housing to the proposed affordable housing category. In support of this view, a commenter asserted that adding these housing initiatives would help strengthen communities and reduce social barriers such as unemployment, lack of education, and limited transportation. Another commenter recommended that the agencies specifically include supportive housing that provides both affordable housing and wrap-around services for people with complex medical needs. Commenters further requested that the agencies allow a guidance line of credit, which is a form of credit pre-approval from a lender, to be eligible for CRA consideration, as this financing method is used by nonprofit organizations in the affordable housing space.

Other general comments on affordable housing category. Some comments touched on affordable housing in conjunction with other community development activities. Commenter feedback included requests that the agencies: promote co-development of disaster preparedness and climate resiliency activities with affordable housing and other activities to mitigate the risk of displacement; provide more support specifically for government-subsidized housing; and provide more quantitative and qualitative consideration of the value of low-income housing tax credit and NMTC syndications and sponsorship activities.

Final Rule

The agencies are adopting final § ____.13(b), which establishes criteria for consideration of affordable housing activities, substantially as proposed but with targeted revisions discussed in the section-by-section analysis that follows. Overall, the agencies are adopting a final rule that maintains the multi-pronged approach to the affordable housing category. As part of this, the agencies have decided to retain in the final rule separate prongs for government-related programs, including subsidized affordable housing, and naturally occurring affordable housing. Under this approach, the agencies can better tailor the standards for each affordable housing prong. Moreover, for information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION**.

Section ____.13(b)(1) Rental Housing in Conjunction With a Government Affordable Housing Plan, Program, Initiative, Tax Credit, or Subsidy

The Agencies' Proposal

In proposed § ____.13(b)(1), the agencies proposed that a rental housing unit 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. The agencies intended this proposed provision to cover a broad range of government-related affordable multifamily and single-family rental housing activities for low- or moderate-income individuals, including low-income housing tax credits.

To qualify under this component of the affordable housing category, a government-related affordable housing plan, program, initiative, tax credit, or subsidy would have needed ''a stated purpose or bona fide intent of supporting affordable rental housing for low- or moderate-income individuals.'' [297] The agencies did not propose a separate affordability standard for this prong and would rely upon the affordability standards set in each respective government affordable housing plan or program.

The agencies sought feedback on whether additional requirements should be included to ensure that activities qualifying under this category of community development support housing that is both affordable to and occupied by low- or moderate-income individuals. In this regard, the agencies sought feedback on whether to include in this component a specific rent affordability standard based on 30 percent of 80 percent of area median income, or a requirement that programs must verify that occupants of affordable units are low- or moderate-income individuals or families. The agencies also sought feedback on whether activities involving government-sponsored programs that have a stated purpose or bona fide intent to provide affordable housing that serves middle-income individuals, in addition to low- or moderate-income individuals, should qualify under this prong in certain circumstances. For example, the agencies sought feedback on government-sponsored programs that support housing affordable to middle-income individuals if the housing is located in nonmetropolitan counties or in high opportunity areas.[298]

Comments Received

Many commenters offered general views on the proposed standards of the first component of the affordable housing category. Some commenters believed the proposed component was overly broad, expressing concerns: that government programs and tax credits do not always benefit low-income individuals and people of color and, therefore, the agencies should reconsider the presumption that any government plan benefits local communities; that the agencies should address the over-concentration and racial and ethnic segregation of low-income housing tax credit projects in minority communities by imposing additional requirements for low-income housing tax credit investments to be eligible for community development consideration; that it is not clear how a plan can require and enforce affordable housing; and that the component should be removed entirely, asserting that it is overly restrictive and could hinder bank investments.

Several commenters asked the agencies to broaden the proposed government-related rental housing standard by permitting activities that are ''consistent with'' or ''in alignment with'' government program guidelines, so that such guidelines could be considered but not required. Other commenter feedback included: support for an automatic presumption that activities with State or Federal low-income housing tax credits or other affordable housing tax credits or incentives qualify for community development consideration; and requests that the agencies recognize activities undertaken in conjunction with additional program sponsors such as community-focused entities with a stated mission and record of providing affordable housing and Tribally Designated Housing Entities (TDHEs).

[297] Proposed § ____.13(b)(1).

[298] *See* proposed § ____.12.

Stated purpose or bona fide intent of providing affordable housing for low- or moderate-income individuals. Some commenters supported the agencies' proposal to require that government plans, programs, initiatives, tax credits, or subsidies must have a ''stated purpose or bona fide intent'' of providing affordable housing for low- or moderate-income individuals in order for associated bank activities to receive community development consideration. In this regard, a commenter noted that the proposal allows State and local governments to tailor their affordable housing programs to meet the specific needs of their constituents.

Other commenters expressed a variety of concerns about the ''stated purpose or bona fide intent'' standard, including: that the standard would not adequately target activities that benefit low- or moderate-income households; and that government programs should not need to have a stated purpose or bona fide intent of providing affordable housing to low- or moderate-income individuals.

Affordability standard. Some commenters supported the agencies' proposal to not include an affordability standard in proposed § ____.13(b)(1) and recommended that the agencies refrain from establishing any affordability standards for this component.

However, the majority of commenters that addressed this component of the proposal supported establishing an affordability standard that would be based on 30 percent of 80 percent of area median income for rents. This affordability standard would be separate from the affordability standard proposed for naturally occurring affordable housing (which is addressed in the section-by-section analysis of final § ____.13(b)(2)). Commenter feedback also included suggestions that the agencies: establish a lower affordability threshold in order to serve a lower income population; utilize hybrid approaches whereby the agencies adopt an area median income-based threshold for all units and require that a portion of the units serve lower income populations, such as very low-income individuals; and use the HUD Fair Market Rents standard to establish affordability standards.

Verification of low- or moderate-income status. Commenters expressed differing views about the use of verification measures to ensure the low- and moderate-income status of renter occupants of housing units. Some commenters supported the inclusion of verification measures in the government-related rental housing component of the final rule to ensure that low- and moderate-income individuals occupy a majority of the affordable units in government-related housing. For example, several commenters suggested that a majority standard was not enough, and that 100 percent of the units should be occupied by low- or moderate-income individuals in order to qualify under § ____.13(b)(1). A different commenter supported verifying the income of occupants in circumstances where funding did not occur under government housing programs with income guidelines. However, several other commenters stated that additional verification of occupant income would be unnecessary, given that it is reasonable to assume government programs would collect and verify this information.

Expanding the proposal to cover certain affordable housing to middle-income individuals. Many commenters expressed views regarding whether the agencies should expand CRA consideration in the affordable housing category to include activities in conjunction with government-related rental housing in certain geographic areas that is affordable to middle-income individuals. Some commenters opposed such an expansion, indicating that CRA resources should be targeted to low- or moderate-income families, not middle-income families. For example, a few commenters opposed providing consideration for middle-income housing, noting that the low- or moderate-income housing needs in high opportunity areas are immense and raised a concern that giving consideration for middle-income housing in such areas would dilute the incentive to meet those needs.[299] Some commenters expressed concern that consideration in the affordable housing category for lending that benefits middle- or high-income households would result in banks receiving CRA consideration for financing developments that could price low- and moderate-income families out of their current communities.

Among the commenters that supported expanding CRA consideration to government-related rental housing activities that provide affordable housing to middle-income individuals, most qualified their recommendation by stating that such activities should be limited to high opportunity areas, rural and nonmetropolitan counties, high-cost markets, or a combination thereof. Citing the need for rental housing affordable to middle-income individuals in high opportunity areas and nonmetropolitan areas, one commenter urged the agencies to further explore and consider providing CRA consideration for affordable housing that serves individuals and families with a range of incomes. Another commenter suggested that government programs serving middle-income—as well as low- and moderate-income—individuals in rural and nonmetropolitan areas should be included. A different commenter suggested that CRA consideration may be appropriate in nonmetropolitan and rural areas where median income measurements can distort market characteristics in a way that is unique to rural areas, and that partial credit could be considered for housing benefiting middle-income people if the housing is developed or maintained by a CBDO with a history of serving the needs of low- and moderate-income people and places.

Some commenters urged consideration for housing where the cost of rent is up to HUD's Fair Market Rents standard in the relatively few, particularly unaffordable markets where Fair Market Rents exceeds the affordability standard of 30 percent of 80 percent of area median income. One commenter suggested that housing for middle-income individuals should be considered where there is a documented need by the local government or housing agencies due to the high cost of housing in the area compared to local wages. Another commenter suggested that activities in middle-income census tracts and low- to moderate-income adjacent tracts should be considered. Other commenters recommended that the agencies use a high-cost areas standard rather than a high opportunity areas criterion.

Final Rule

The agencies are adopting final § ____.13(b)(1) with some substantive and technical revisions. Under final § ____.13(b)(1), rental housing for low- or moderate-income individuals that 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 will receive consideration under the affordable housing category. This component is intended to enable consideration of the full range of government-related affordable rental

[299] The term ''high opportunity area'' has not been uniformly defined within the housing industry. The agencies proposed to define a ''high opportunity area'' as (1) An area designated by HUD as a ''Difficult Development Area''; 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).

housing activities for low- and moderate-income individuals, including programs, plans, initiatives, tax credits, and subsidies pertaining to both multifamily and single-family properties. The examples in the following discussion demonstrate how this affordable housing component is designed to add greater clarity concerning the many types of government-related rental housing activities that qualify for consideration.

The final rule retains the requirement set out in the NPR that an activity be conducted ''in conjunction with'' a government plan, program, initiative, tax credit, or subsidy to ensure that there is a direct link between activities that are given consideration under this affordable housing prong and government-sponsored programs or initiatives. While the agencies have not adjusted the ''in conjunction with'' language in the final rule to expand the proposed standard as requested by some commenters, the agencies believe that the range of covered activities is broad. For example, consistent with the agencies' proposal, qualification under this component of the final rule includes activities with rental properties receiving low-income housing tax credits or subsidized by government 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. In addition, this component includes Federal, State, local, and tribal government affordable housing plans, programs, initiatives, tax credits, or subsidies that support affordable housing for low- or moderate-income individuals. Examples include 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. Qualification under this component also includes affordable rental units for low- or moderate-income individuals created as a result of local government inclusionary zoning programs, which often provide requirements or incentives for developers to set aside a portion of housing units within a property for occupancy by low- or moderate-income individuals.

Stated purpose or bona fide intent of providing affordable housing for low- or moderate-income individuals. As also discussed in the section-by-section analysis of final § ____.13(a), the final rule removes the specific requirement within proposed § ____.13(b)(1) that a government plan, program, initiative, tax credit, or subsidy must have a ''stated purpose or bona fide intent of providing affordable housing for low- or moderate-income individuals.'' The agencies are making this change in part to avoid potential confusion regarding how the activities eligible for consideration under this component differ from activities that qualify for consideration under the bona fide intent standard in final § ____.13(a)(1)(ii). Additionally, the agencies have considered commenter feedback that there are government plans, programs, initiatives, tax credits, and subsidies that provide access to rental housing for low- and moderate-income individuals but that do not have a stated mission of providing affordable housing for low- and moderate-income individuals. Removal of this specific requirement is intended to affirm that activities conducted in conjunction with such government plans, programs, initiatives, tax credits, or subsidies nonetheless may be considered under this component of the affordable housing category. Regarding commenter suggestions that certain government programs, including a low-income housing tax credit program, may not benefit, or may negatively affect, low-income or minority communities, the agencies believe that it is appropriate to recognize and defer to the expertise and priorities of Federal, State, and local government entities responsible for the design and implementation of affordable housing programs, plans, initiatives, tax credits, and subsidies. For more information and discussion regarding the agencies' consideration of comments recommending adoption of race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Affordability standard. While the NPR sought feedback on whether to include an affordability standard for activities under § ____.13(b)(1), the final rule implements the proposed approach without applying a uniform affordability standard. Instead, the final rule accommodates the various affordability standards across government affordable housing plans, programs, and initiatives. Consistent with concerns expressed by many commenters, the agencies are of the view that assessing affordability using the standards set in the applicable government program helps to ensure that the affordability determination reflects local needs and priorities that accommodate unique economic conditions, particularly in high-cost and rural areas. In addition, the agencies believe that adopting a uniform affordability standard in this context could create undue complexity by requiring additional evaluation to determine whether some loans, investments, or services supporting rental housing in connection with government programs could receive consideration under other components of the affordable housing category. Accordingly, under final § ____.13(b)(1), any loan, investment, or service supporting rental housing in conjunction with a government program will be eligible for consideration. The agencies note that in determining the amount of credit the bank will receive under final § ____.13(a), the agencies will defer to the government program's affordability standard. To illustrate, if a government program defines affordability as rent that does not exceed 40 percent of a low- or moderate-income renter's income, the agencies would consider the percentage of units with rents that do not exceed 40 percent of a low- or moderate-income renter's income to determine under final § ____.13(a) whether the project meets the majority standard. For more information on the majority standard and partial credit under CRA, see the section-by-section analysis of § ____.13(a).

Verification of low- or moderate-income status. As with the proposal, the final rule does not require, for activities under final § ____.13(b)(1), verification that a majority of occupants of affordable units are low- or moderate-income individuals. The agencies considered feedback on this issue and note that community development consideration will be based on the pro rata share of affordable units pursuant to final § ____.13(a) unless a majority of the units are affordable to low- or moderate-income individuals. *See* the section-by-section analysis of § ____.13(a). Ultimately, the agencies will be able to determine eligibility under final § ____.13(b)(1) by leveraging information demonstrating that the housing is in conjunction with a government plan, program, initiative, tax credit, or subsidy, and the rent amounts being charged to renters.

Housing affordable to middle-income individuals. As previously stated, the agencies sought 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 for affordable housing consideration in certain circumstances, such as when these activities are located in high opportunity areas or nonmetropolitan geographic areas.

While the agencies recognize that there are government programs that target affordable housing for middle-income individuals, the agencies have decided not to adopt a provision that would extend § ____.13(b)(1) to include housing affordable solely to middle-income individuals in certain geographic areas. Consistent with the proposal, and as discussed further in the section-by-section analysis of final § ____.13(a)(2), bank support for projects and programs that include housing that is affordable to low-, moderate-, and middle-income individuals would be eligible for pro rata consideration based on the portion of the project affordable to low- and moderate-income individuals.

The agencies acknowledge feedback from some commenters raising concerns about the limited supply of affordable housing in high opportunity areas and nonmetropolitan areas and expressing the view that consideration of support for housing affordable to middle-income individuals could provide additional flexibility for banks to identify opportunities to address community needs. However, the agencies are persuaded by commenter concerns that broadening this category could reduce the emphasis on activities that directly contribute to housing for low- and moderate-income individuals, for whom housing options in high opportunity areas and nonmetropolitan areas are equally important and may be more difficult to attain.

Under current CRA interagency guidance, examiners have flexibility to consider a bank's lending and investments in high-cost areas, including those activities that address the housing needs of middle-income individuals in addition to low- or moderate-income individuals.[300] In developing the final rule, the agencies considered whether this flexibility should be incorporated into the evaluation of multifamily rental housing activities in conjunction with a government plan, but decided to retain the proposed rule's focus on housing units that are affordable to low- and moderate-income individuals. The agencies considered that additional regulatory provisions would be needed to designate high-cost markets and to ensure that low- and moderate-income individuals are also likely to benefit from the housing (generally consistent with standards for affordable housing in high-cost market under current guidance)[301] and found these requirements would add undue complexity to the final rule while also adding significant uncertainty in terms of how this would impact affordable housing opportunities for low- and moderate-income individuals. Relatedly, the agencies considered that the structure of the Community Development Financing Metric would not distinguish between housing affordable to low- and moderate-income individuals, as opposed to middle-income households in high-cost markets, and have considered concerns that including all of these activities in the metric could impact the degree to which activities focus on housing affordable to low- and moderate-income individuals who likely also face acute housing needs in such high-cost areas. The agencies further considered the role of the impact and responsiveness review and whether it could address such complexities; however, the agencies determined that such an approach would be uncertain and that the more appropriate approach, on balance, was to focus this component on housing affordable to low- and moderate-income households. The agencies note that government affordable housing programs may benefit low-, moderate-, *and* middle-income individuals, even in high-cost markets. Accordingly, for an activity to receive full consideration under the final rule, the majority of the housing units must be affordable to low- or moderate-income individuals. If the housing units that are affordable to low- and moderate-income individuals represent less than a majority of the housing units, then the activity will receive pro rata consideration under the final rule.

For nonmetropolitan areas, the agencies considered—as expressed by some commenters—that these geographies may have limited opportunities for affordable housing. However, the agencies have determined that, as in other geographies, the best approach in nonmetropolitan areas is to focus on units affordable to low- or moderate-income individuals under this component of affordable housing. As discussed above, under the alternative approach of allowing housing affordable to middle-income individuals in nonmetropolitan areas, bank activities for affordable housing could consist of activities solely or mostly focused on housing affordable to middle-income individuals, with an eliminated or reduced focus on housing affordable to low- or moderate-income individuals in these communities. Accordingly, under the final rule, activities in conjunction with government programs in nonmetropolitan areas that may include middle-income renters such as the USDA Section 515 Rural Rental Housing or Multifamily Guaranteed Rural Rental Housing programs could be eligible for consideration to the extent such activities create units affordable to low- and moderate-income individuals. In addition, the agencies note the addition of a component focused on affordable single-family rental housing in nonmetropolitan census areas, as discussed further in the section-by-section analysis of § ____.13(b)(3).

While the agencies have declined to expand consideration of rental housing activities in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy that targets middle-income individuals, the agencies believe that including an impact and responsiveness factor that supports affordable housing in High Opportunity Areas in final § ____.15(b)(7) will support encouragement of affordable housing in geographic areas where the cost of residential development is high and affordable housing opportunities can be limited. Additional impact and responsiveness factors, such as the geographic impact and responsiveness factors discussed in the section-by-section analysis of § ____.15(b)(1) through (3), may also help encourage more affordable housing in nonmetropolitan areas. These and other impact and responsiveness factors are discussed further in the section-by-section analysis of final § ____.15.

Section ____.13(b)(2) Multifamily Rental Housing With Affordable Rents

The Agencies' Proposal

Proposed § ____.13(b)(2) provided criteria to define 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**). With the proposed criteria in § ____.13(b)(2), the agencies sought to provide clear and consistent standards

[300] *See* Q&A § ____.12(g)–3.

[301] *See id.* (noting, for example, that with respect to loans or investments addressing a middle-income credit shortage due to housing costs, the agencies consider ''whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development''). *See also* Q&A § ____.12(g)(1)–1 (''The concept of 'affordable housing' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate income simply because the rents or housing prices are set according to a particular formula.'')

to identify naturally occurring affordable housing that may receive affordable housing consideration under the CRA. First, under this component, the agencies proposed 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. Second, the agencies proposed that naturally occurring affordable housing would also be required to satisfy one or more of the following additional eligibility criteria in order to increase the likelihood that units benefit low- or moderate-income individuals: (1) the housing is located in a low- or moderate-income census tract; (2) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by a nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; (3) 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 (4) the bank provides documentation that a majority of the residents of the housing units are low- or moderate-income individuals or families.

Comments Received

Overall, commenters supported the inclusion of naturally occurring affordable housing in the affordable housing category. Many commenters generally expressed the view that naturally occurring affordable housing is an important part of the affordable housing ecosystem and serves many low- or moderate-income individuals.

Several commenters supported the inclusion of naturally occurring affordable housing-related activity but expressed concerns that the proposal as written would be either too restrictive or too lenient to provide assurance that the activity would actually support affordable housing for low- or moderate-income individuals. One commenter that opposed the inclusion of naturally occurring affordable housing in the affordable housing category asserted that doing so would divert CRA-eligible capital from traditional income-restricted, subsidized affordable housing that provides permanently affordable apartments to low- or moderate-income families, while another expressed concern that the proposal would not provide sufficient protection to residents in gentrifying areas and suggested additional affordability restrictions. Commenters who were concerned with the requirements being too restrictive expressed, for example, that the proposed standards would not account for any of the naturally occurring affordable housing in their local markets.

Final Rule

The agencies are adopting in final § ____.13(b)(2) a component for naturally occurring affordable housing with some substantive revisions. Specifically, as described in detail in the section-by-section analyses that follow, the final rule recognizes that multifamily rental housing purchased, developed, financed, rehabilitated, improved, or preserved can be considered under final § ____.13(b)(2) if for the majority of units, the monthly rent as underwritten by the bank, reflecting post-construction or post-renovation changes, does not exceed 30 percent of 80 percent of the area median income and if the housing also meets one or more of the criteria in final § ____.13(b)(2)(ii). The agencies believe that naturally occurring affordable housing provides a meaningful contribution to the stock of available affordable housing and believe that the criteria discussed in more detail below will help to address commenter concerns that including consideration for such housing will divert resources from other types of affordable housing projects.

As noted previously, some commenters urged the agencies to implement a single category for all affordable rental housing, including housing that is developed in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy and naturally occurring affordable housing. Upon consideration of commenter feedback, the agencies have determined to retain a separate component in the final rule for multifamily rental housing that has rents affordable to low- and moderate-income individuals. Naturally occurring affordable housing is not already subject to the requirements of a government plan, program, initiative, tax credit, or subsidy, and the agencies believe that by including adequate affordability criteria and the additional criteria in § ____.13(b)(2)(ii), the final rule will help to ensure that activities qualifying under this prong will meaningfully benefit low- and moderate-income individuals.

Section ____.13(b)(2)(i) Affordability Standard for Multifamily Rental Housing With Affordable Rents

The Agencies' Proposal

The agencies proposed an affordability standard to determine if multifamily rental housing had affordable rents and therefore would be considered naturally occurring affordable housing. The agencies proposed that rents would be considered affordable if the rent for the majority of the units in a multifamily property did not exceed 30 percent of 60 percent of the area median income for the metropolitan area or nonmetropolitan county.[302] This proposed standard would have established narrower affordability criteria 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 the area median income.

Under the agencies' proposal, the rent amount used to determine whether the affordability standard is met would be the monthly rental amounts as underwritten by the bank, reflecting any post-construction or post-renovation rents considered as part of the bank's underwriting for financing.[303] The agencies' objective in including this provision was to target community development consideration to properties that are likely to remain affordable and to minimize the likelihood of providing consideration for activities that may result in displacement of low- or moderate-income individuals. The agencies intended to reinforce these objectives by requiring that a majority of the units meet the affordability standard. The agencies sought feedback on whether there were alternative ways to ensure that CRA consideration for support of naturally occurring affordable housing is targeted to properties where rents remain affordable for low- or moderate-income individuals.

Comments Received

Many commenters addressed the affordability threshold for naturally occurring affordable housing under proposed § ____.13(b)(2). The majority of commenters on the issue opposed the proposed affordability threshold of 30 percent of 60 percent of area median income and supported raising the affordability threshold to 30 percent of 80 percent of area median income. Commenters cited several reasons for adopting a higher affordability standard,

[302] *See* proposed § ____.13(b)(2).

[303] *See id.*

including that doing so would align with other affordable housing programs and would better account for affordable housing needed to address housing shortages and provide workforce housing. Some commenters expressed concern that a 30 percent of 60 percent of area median income affordability standard could have a negative impact on the availability of debt financing for affordable rental housing. Other commenters supported the proposed 30 percent of 60 percent of area median income affordability threshold, citing that it would preserve resources for low- or moderate-income renters who are most in need of housing support. Other commenters suggested that the affordability standard should be closer to 30 percent of 30 to 50 percent of area median income in high-cost areas. In contrast, some commenters asserted that the affordability threshold should be higher and more flexible in high-cost markets. Lastly, a few commenters recommended that the agencies adopt the HUD Fair Market Rents standard to determine rental affordability for naturally occurring affordable housing.[304]

Several commenters expressed support for the proposal that monthly rents, for the purposes of determining affordability, be determined as underwritten by the bank, reflecting post-construction or post-renovation changes, as applicable. However, these same commenters noted that, to ensure continuing affordability, consideration for prior-year financings should be conditioned on periodic documentation that the units remain affordable. For example, one commenter suggested that examiners should evaluate rent rolls annually to confirm ongoing affordability of properties financed in prior years and examination cycles.

The agencies received comments supporting the requirement that a majority of units in a naturally occurring affordable housing property must meet the affordability standard. One commenter suggested that the agencies consider a higher standard for the percent of units that must meet the affordability criteria to ensure long term affordability of most units. Another commenter expressed concerns that the proposed requirement does not adequately incentivize mixed income and inclusionary housing. Rather, the commenter suggested the final rule should provide pro rata credit based on the percentage of affordable units among market rate units in a property.

Final Rule

Final § ____.13(b)(2)(i) is revised from the proposal and adopts an affordability standard stating that naturally occurring affordable housing purchased, developed, financed, rehabilitated, improved, or preserved will be considered affordable housing under final § ____.13(b) 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 80 percent of the area median income. The affordability standard adopted in the final rule does not include the proposed 30 percent of 60 percent of the area median income affordability standard, which the agencies proposed in recognition that, historically, a substantial percentage of occupied rental units with affordability between 61 and 80 percent of area median income were occupied by middle- or upper-income households.[305] However, the agencies have determined that the proposed affordability standard would have restricted eligibility for properties with affordability levels at 80 percent of area median income even in cases where many of the units are occupied by low- or moderate-income households. Additionally, the agencies are sensitive to the concerns expressed by some commenters that the proposed affordability standard could have had a negative impact on the availability of debt financing for this type of affordable housing. The overwhelming majority of commenters favored the adoption of a more flexible affordability standard than the proposal, with most commenters supporting the use of the 30 percent of 80 percent of area median income affordability standard adopted in final § ____.13(b)(2)(i).

The final rule retains the agencies' proposal to use the monthly rental amounts as underwritten by the bank to determine whether the rental housing meets the affordability standard. The prong further specifies that rent amounts should reflect any post-construction or post-renovation changes considered as part of the bank's underwriting for providing financing. The agencies' objective in including this provision is to target community development consideration to properties that are likely to remain affordable and to avoid providing consideration for activities that may result in displacement of low- or moderate-income individuals.

Though some commenters suggested that the agencies require documentation (such as rent rolls or an annual review of rents) to confirm ongoing affordability, the agencies are not adopting an annual verification process as part of the final rule. In this context, the agencies view evaluation of the loan underwriting, which contains a forward-looking assessment of projected rent amounts and rental income, along with the requirement to meet one of the four additional criteria, described below, as sufficient to promote the agencies' objective of ensuring that a bank intends to finance properties where rent remains affordable to low- or moderate-income individuals.

Final § ____.13(b)(2)(i) requires the majority of units in naturally occurring affordable housing to meet the affordability standard. The prong does not award pro rata consideration for activities related to properties in which fewer than 50 percent of housing units are affordable. The agencies believe that this requirement will help to ensure activities that qualify under this prong support housing that is both affordable and likely to be occupied by low- and moderate-income individuals. As discussed further in the section-by-section analysis of final § ____.13(a) above, this majority standard in § ____.13(b)(2) is consistent with similar majority criteria for other categories of community development in § ____.13(a), which are intended to emphasize activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities.

Section ____.13(b)(2)(ii) Additional Eligibility Standards for Multifamily Rental Housing With Affordable Rents

The Agencies' Proposal

The agencies proposed that one of four additional criteria would have to be met for multifamily housing to qualify as naturally occurring affordable housing under proposed § ____.13(b)(2).[306] These criteria were intended to increase the likelihood that multifamily housing under this component of affordable housing would benefit low- or moderate-income individuals and that the rents would likely remain affordable for low- or moderate-income individuals. Specifically, in addition to the requirement that rents for a majority of the units meet the affordability standard, multifamily housing would have to meet at least one of the following criteria:

[304] *See* HUD, Office of Policy Research and Development, ''Fair Market Rents,'' *https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/landlord/fmr.*

[305] *See* 87 FR 33884, 33895 (June 3, 2022).

[306] *See* proposed § ____.13(b)(2)(i) through (iv).

(1) The housing is located in a low- or moderate-income census tract;

(2) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, affordable housing;

(3) 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

(4) The bank provides documentation that the majority of the housing units are occupied by low- or moderate-income individuals or families.[307]

Comments Received

The agencies received a number of comments on this aspect of the proposal, with some commenters objecting generally to the proposed additional criteria, suggesting that naturally occurring affordable housing should be simplified into a single requirement that the housing meet an affordability standard. Comments specific to each of the additional eligibility criteria are discussed in the respective section-by-section analyses for those sections.

Final Rule

The agencies are adopting proposed § ____.13(b)(2)(i) through (iv) in a revised and reorganized final § ____.13(b)(2)(ii), which requires naturally occurring affordable housing to meet one or more eligibility criteria in addition to the affordability standard in § ____.13(b)(2)(i). Specifically, the final rule requires that a project meet at least one of the following eligibility criteria: (1) the housing is located in a low- or moderate-income census tract; (2) the housing is located in a census tract in which the median income of renters is low- or moderate-income and the median rent does not exceed 30 percent of 80 percent of the area median income; (3) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; or (4) the bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals or families.

The agencies have adopted several changes to the proposed eligibility criteria based on commenter feedback, as described below. The agencies believe that the eligibility criteria adopted in the final rule will ensure that naturally occurring affordable housing is likely to benefit low- or moderate-income individuals and increase the likelihood that rents will remain affordable for low- or moderate-income individuals. By offering multiple criteria to demonstrate that rental housing with affordable rents is likely to benefit low- and moderate-income individuals, the agencies sought to provide flexibility and balance the objectives of encouraging banks to support naturally occurring affordable housing with ensuring that this housing is likely to benefit low- and moderate-income individuals.

Section ____.13(b)(2)(ii)(A) and (B) Low- or Moderate-Income Census Tracts and Low- and Moderate-Renter Median Income Census Tracts

The Agencies' Proposal

The first proposed additional criterion was that the location of the multifamily housing be in a low- or moderate-income census tract.[308] This criterion was based in part on the agencies' recognition that verifying tenant income might be infeasible for many property owners or developers, whereas median census tract income is readily available. This criterion is also consistent with current guidance providing that examiners may consider economic and related factors associated with a particular geographic area to determine whether the housing is likely to benefit low- or moderate-income individuals.[309]

The agencies also sought feedback on whether to include a geographic criterion to encompass middle- and upper-income census tracts in which at least 50 percent of renters are low- or moderate-income. The agencies 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. Incorporating this standard into the CRA regulation could result in multifamily housing in certain middle- and upper-income census tracts qualifying as naturally occurring affordable housing under proposed § ____.13(b)(2).

Further, the agencies sought feedback on not including a geographic criterion. Under this option, to qualify under this component of affordable housing, the multifamily housing would have had to meet one of the other criteria in addition to the proposed affordability standard of rents not exceeding 30 percent of 60 percent of the area median income.

Comments Received

The agencies received some comments that supported requiring all naturally occurring affordable housing to be located in a low- or moderate-income census tract. Alternatively, some commenters urged the agencies to eliminate this criterion, with viewpoints including: that multifamily loans should be evaluated on the affordability of the housing and not simply the location of the housing; that this criterion could present a risk of providing consideration for units that are not serving low- or moderate-income residents soon after the financing occurs; and that this criterion could incentivize concentrating affordable housing in low- or moderate-income areas.

Some commenters addressed the agencies' request for comment on whether to expand this proposed geographic criterion. Of these, several commenters indicated a preference to prioritize other criteria (*e.g.,* affordability and low- or moderate-income occupancy) over the location of a property. However, other commenters supported qualifying naturally occurring affordable housing specifically in census tracts in which the majority of renters were low- or moderate-income. One commenter supported expansion of the geographic criteria into census tracts in which the majority of renters were low- or moderate-income if the agencies also increased the required percentage of units in naturally occurring affordable housing properties from the proposed 50 percent to 60 or 67 percent. Some commenters supported qualifying naturally occurring affordable housing in other geographic areas, including distressed and underserved census tracts, and others supported expansion of the geographic criteria to nonmetropolitan and rural census tracts.

Final Rule

In final § ____.13(b)(2)(ii)(A), the agencies are adopting the proposed geographic criterion (*see* proposed § ____.13(b)(2)(i)), that the housing be located in a low- or moderate-income census tract, as one of the ways of demonstrating that naturally occurring affordable housing is likely to benefit low- and moderate-income individuals. This approach is consistent with existing guidance, under which examiners may review factors such as demographic, economic, and market data in surrounding geographies to determine the likelihood that housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners look at median

[307] Proposed § ____.13(b)(2)(i) through (iv).

[308] *See* proposed § ____.13(b)(2)(i).

[309] *See* Q&A § ____.12(g)(1)–1.

rents of the assessment area and the project; the median home value of either the assessment area, and the project; the median home value of either the assessment area, low- or moderate-income geographies, or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project.[310] In addition, retaining the geographic criterion provides a streamlined option for determining whether housing qualifies as naturally occurring affordable housing that is likely to benefit low- and moderate-income individuals or families, as census tract income data is readily available and verifiable information.

The final rule also adopts a new geographic criterion in final § ____.13(b)(2)(ii)(B), indicating that naturally occurring affordable housing may qualify for consideration if it is located in a census tract in which the median income of renters is low or moderate, and the median rent does not exceed 30 percent of 80 percent of the area median income. In doing so, the agencies intend to help address the concern commenters noted, that restricting naturally occurring affordable housing to low- and moderate-income census tracts could promote geographic concentrations of poverty, and the agencies recognize the importance of locating affordable housing in communities of all income levels.

The agencies acknowledge concern expressed by some commenters that naturally occurring affordable housing in middle- and upper-income tracts could be more likely to attract higher-income renters and could contribute to the involuntary displacement of lower-income renters. The agencies evaluated several alternatives to this geographic criterion to better ensure that low- and moderate-income renters were likely to benefit from this housing and determined that adding the requirement that the median rent in the census tracts must not exceed 30 percent of 80 percent of the area median income would increase the likelihood that low- and moderate-income individuals would benefit from the housing. Moreover, adding these census tracts increases the number of qualifying census tracts (compared to only low- and moderate-income tracts) by over 100 percent—adding about 23,000 middle- and upper-income census tracts—in addition to the approximately 22,500 low- and moderate-income census tracts that would be eligible currently.[311] This criterion also aligns with current guidance in the Interagency Questions and Answers on the information that may be considered when determining the likelihood that the housing will primarily accommodate low- or moderate-income individuals or families.[312]

Section ____.13(b)(2)(ii)(C) Nonprofit Organizations With a Stated Mission of, or That Otherwise Directly Support, Providing Affordable Housing

The Agencies' Proposal

The agencies proposed a second criterion for determining whether multifamily housing qualifies as naturally occurring affordable housing under proposed § ____.13(b)(2). Specifically, the agencies proposed that if housing is purchased, developed, financed, rehabilitated, improved, or preserved by any ''nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing,'' then the activity could be considered naturally occurring affordable housing.[313] The agencies intended this provision to encompass organizations that have a mission to serve individuals and communities especially vulnerable to housing instability or that otherwise target services to low- or moderate-income individuals and communities. Multifamily housing that met this criterion in addition to the affordability standard in proposed § ____.13(b)(2)(i) would qualify as naturally occurring affordable housing under proposed § ____.13(b)(2) in any census tract, including middle- and upper-income census tracts.

Comments Received

Most of the commenters who commented on the second proposed criterion for naturally occurring affordable housing supported its inclusion and stated that it was well tailored to providing CRA consideration for units that meet the purposes of the CRA. A few commenters suggested that this criterion should be a requirement for CRA consideration for naturally occurring affordable housing. In addition, some commenters recommended additional requirements—for example, that the nonprofits should be led by people of color, a majority of residents should be low- or moderate-income, or the property must be compliant with anti-displacement principles.

Several other commenters opposed the proposed criterion. For example, a commenter opposing this criterion stated that it would impede banks from garnering community development financing consideration because affordable housing often comes from partnerships with small developers, as well as nonprofit organizations.

Final Rule

Under final § ____.13(b)(2)(ii)(C), the agencies are adopting the proposed additional eligibility criterion for affordable multifamily housing activity in conjunction with a nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing substantially as proposed (*see* proposed § ____.13(b)(2)(ii)). The agencies observe that many of these nonprofit organizations serve individuals and communities that are especially vulnerable to housing instability or otherwise target services to low- or moderate-income individuals and communities. The agencies do not anticipate that this criterion will impede community development financing consideration for banks working with small property developers that are not nonprofit organizations, as this criterion is only one of four criteria for qualifying naturally occurring affordable housing activities. The agencies also considered commenter recommendations for additional requirements, and the agencies do not believe such additional requirements are necessary given the agencies' view that the proposed criterion is adequate to provide consideration for loans, investments, and services supporting housing units that are likely to be occupied by low- or moderate-income individuals.

Proposed § ____.13(b)(2)(iii) Written Affordability Pledge

The Agencies' Proposal

The agencies proposed a third criterion for determining whether multifamily housing would qualify as naturally occurring affordable housing under proposed § ____.13(b)(2). This criterion would have required the property owner's explicit written pledge to maintain rents that are affordable for at least five years or for the length of the

[310] *See* Q&A § ____.12(g)(1)–1.

[311] Based on including census tracts where the median rent is below 30 percent of 80 percent of the area median income and where the median renter's income is below 80 percent of the area median income in the 2015–2019 American Community Survey.

[312] *See, e.g.,* Q&A § ____.12(g)(1)–1. Under existing guidance, examiners may look at median rents of an assessment area and other factors to determine the likelihood that housing will primarily accommodate low- and moderate-income individuals.

[313] Proposed § ____.13(b)(2)(ii).

financing, whichever is shorter,[314] and was intended to address concerns about the likelihood of rents in an eligible property increasing in the future and potentially displacing low- or moderate-income households. Multifamily housing that met this criterion in addition to the baseline affordable rent standard discussed above would qualify as naturally occurring affordable housing under proposed § ____.13(b)(2) in any census tract, including middle- and upper-income census tracts.

Comments Received

Several commenters supported this proposed criterion. Of those commenters, a few supported the proposed five-year time period for the affordability pledge. Most commenters addressing this aspect of the proposal suggested extending the duration of the pledge—to 10, 15, or 20 years—or ensuring that the pledge is binding. Other commenter sentiment included: that the effectiveness of the criterion would depend on the legal enforceability of such a written pledge and the ability of an entity to monitor compliance; that this criterion should be required of all naturally occurring affordable housing lending and should not be optional; and that the pledge should be to keep the rents affordable for low- and moderate-income renters for the life of the investment or loan. Another commenter suggested that the agencies should publish best-practice examples of documents that outline the affordability restrictions, time period for those restrictions, and applicable tenant protections.

Some commenters, however, opposed the additional criterion for an owner's explicit written pledge altogether on the grounds that it would be unappealing to property owners and unrealistic in many markets.

Final Rule

In the final rule, the agencies have determined to not adopt the proposed additional eligibility criterion that would allow consideration based on an explicit written pledge by the property owner to maintain affordable rents for low- or moderate-income individuals for at least five years or the length of the financing, whichever is shorter. In proposing this additional eligibility criterion, the agencies sought to increase the number of options for demonstrating the likelihood that housing will benefit low- and moderate-income persons, while recognizing that *requiring* such a pledge would necessitate additional documentation.

In determining not to adopt this part of the proposal, the agencies considered the views of many commenters who supported the written affordability pledge proposal, a longer affordability period, or a mandatory pledge on the belief that such requirements would help to ensure that housing remains affordable and would limit the risk of renter displacement due to increasing rents. The agencies also considered feedback that the effectiveness of such a pledge would depend on its legal enforceability and that enforcing the pledge could be impracticable and potentially require an entity to monitor compliance.

The agencies evaluated the proposed additional criterion in light of feedback from commenters and determined that, because neither the agencies nor the banks would be in a position to effectively oversee the enforceability of these pledges, which may not be recorded in the public record, the impact of these pledges could be limited. In addition, the proposed criterion would have required the pledge to be in effect for either five years or the length of the financing, which could have had the unintended result of providing consideration for, and possibly unintentionally encouraging, one-year loans that would not contribute to ongoing affordability. Finally, by retaining the criterion that naturally occurring affordable housing be purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing, the agencies believe that including a pledge criterion would likely be superfluous for nonprofit owners, and not a clear means to capture activity that is outside other criteria that would apply to naturally occurring affordable housing.

Section ____.13(b)(2)(ii)(D) Tenant Income Documentation

The Agencies' Proposal

A fourth additional criterion proposed by the agencies for determining whether multifamily housing would qualify as naturally occurring affordable housing under proposed § ____.13(b)(2) was that the bank provided documentation that the majority of the housing units were occupied by low- or moderate-income individuals or households.[315] Multifamily housing that met this criterion in addition to the affordability standard in § ____.13(b)(2)(i) would qualify as naturally occurring affordable housing under proposed § ____.13(b)(2) in any census tract, including middle- and upper-income census tracts.

Comments Received

Of those commenters who weighed in on the criterion that the bank provide documentation that the majority of the housing units were occupied by low- or moderate-income individuals or households, most supported retaining it as a criterion in the final rule and suggested ways that the criterion could be successfully implemented. However, one commenter asserted that banks do not have the authority to collect tenant income information, while another indicated that the documentation could be impossible to obtain if units remain vacant after the project is completed. Another commenter suggested that the acceptance of Housing Choice Vouchers should be included as a way of demonstrating that rents will be affordable for low- and moderate-income individuals. A few commenters raised objections, stating that the proposed criterion is unnecessary, overreaching, and impractical as proposed and could lead banks that seek CRA consideration to impose new burdensome administrative requirements on multifamily borrowers.

Final Rule

The final rule adopts § ____.13(b)(2)(iv) as proposed, renumbered as final § ____.13(b)(2)(ii)(D), which allows a bank to demonstrate the eligibility of multifamily housing by, in addition to meeting the affordability standard, providing documentation that a majority of the housing units in an unsubsidized multifamily affordable housing project are occupied by low- or moderate-income individuals or families. For example, in the case of a multifamily rental property with a majority of rents set at 30 percent of 80 percent of area median income, the activity could receive consideration under this additional criterion where the bank can document that the majority of occupants receive Housing Choice Vouchers.[316]

[314] *See* proposed § ____.13(b)(2)(iii). The agencies noted in the NPR their expectation that the length of financing would often go beyond the five-year written affordability pledge. The agencies further stated that they would scrutinize short-term financing (less than five years) to ensure such financing is not a way to avoid the affordability commitment. *See* 87 FR 33884, 33896 n. 72 (June 3, 2022).

[315] *See* proposed § ____.13(b)(2)(iv).

[316] 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

Continued

The agencies observe that such documentation would demonstrate that the activity was benefiting low- or moderate-income individuals. The agencies acknowledge commenters' assertion that tenant income documentation might be unobtainable, unnecessary, or impractical. However, the agencies ultimately believe this criterion provides a useful alternative for banks that are able to obtain such documentation through the process of originating or renewing a loan. Banks retain the flexibility to demonstrate eligibility using the other criteria in final § ____.13(b)(2)(ii)

Other Comments on Naturally Occurring Affordable Housing

Commenters offered a variety of suggestions for alternative ways to ensure that CRA consideration for naturally occurring affordable housing would be targeted to properties where rents remain affordable for low- or moderate-income individuals. Some commenters indicated that the rule should emphasize one or more of the proposed criteria in different combinations, while other commenters offered suggestions for criteria that were not expressly contemplated in the proposal. A few commenters asserted that the agencies should take steps to limit consideration for financing that may not provide long-term affordable housing, citing, for example, concern regarding the long-term intentions of certain institutional investors and private developers. Several commenters requested that the agencies require contracts or land use agreements that ensure a specific level and length of affordability, especially, at least one commenter noted, for properties where a renovation is occurring.

Some commenters suggested that the agencies create anti-displacement requirements, quality of housing requirements, or both, in order for activities supporting naturally occurring affordable housing properties to qualify for CRA consideration. Commenter feedback along these lines included: that the agencies should require banks to demonstrate that landlord borrowers are complying with tenant protection, habitability, local health code, civil rights, credit reporting act, unfair, deceptive, or abusive acts and practices, and other laws; that the agencies should give credit to banks for adopting and adhering to anti-displacement and responsible lending best practices in their CRA activities, and downgrade banks for incidents of harm and displacement of low- or moderate-income and racial and ethnic minority tenants; that incentivizing mixed-income housing developments with a focus on racial and income integration would help address displacement concerns; and that loans to finance rental housing should only receive consideration if they are structured to tangibly improve the lives of tenants and do not permit landlords to pull money away from operations to pay for greater debt service.

Final Rule

For the reasons stated in the preceding discussion of the affordability standard and additional eligibility requirements, the agencies are adopting the component for naturally occurring affordable housing under final § ____.13(b)(2) with revisions. The agencies are not adopting commenter suggestions to restrict CRA consideration for financing provided to institutional investors and private developers, because the basis for doing so is not clear, especially if the affordability requirements of this section are met, and because such parties play an important role in adding to the overall supply of needed affordable housing. Instead, the agencies are relying on the criteria adopted to ensure that the multifamily housing with affordable rents is likely to benefit low- or moderate-income individuals. Similarly, the agencies considered, but are not requiring contracts or land use agreements that ensure a specific level and period of affordability, as these would be challenging for a bank to enforce efficiently. Additionally, the agencies are not including an additional criterion in this component regarding resident displacement and responsible lending best practices. The agencies believe that such a criterion is less needed in the naturally occurring affordable housing context given that such activities will create units or facilitate maintenance of existing units of affordable housing, and examiners will retain the discretion to consider whether an activity reduces the number of housing units affordable to low- or moderate-income individuals. The agencies believe the adopted criteria will appropriately encourage activities beneficial to low- and moderate-income individuals and families.

Section ____.13(b)(3) One-to-Four Family Rental Housing With Affordable Rents in Nonmetropolitan Census Tracts

The Agencies' Proposal

In the NPR, the agencies sought feedback on whether single-family rental housing should be considered under the naturally occurring affordable housing category, provided that it meets the same combination of criteria proposed for multifamily rental housing.[317] This alternative would have expanded the affordable housing category to include single-family rental housing that meets the affordability threshold and the additional eligibility criteria under proposed § ____.13(b)(2)(i) and (ii), respectively. The agencies also sought feedback on whether such an alternative should be limited to rural geographies, or eligible in all geographies.[318] In seeking feedback on the potential expansion to include unsubsidized single-family affordable rental housing, the agencies acknowledged that single-family rental housing can be an important source of affordable housing, especially in geographies, such as rural communities, where multifamily housing is less common.

Comments Received

Many commenters offered views on whether single-family rental housing should be considered under the naturally occurring affordable housing category, provided such housing meets the requirements of proposed § ____.13(b)(2). Some commenters generally opposed expanding the naturally occurring affordable housing proposal to include single-family homes, noting: that this expansion could incentivize investors buying single-family homes to serve as investment properties rather than encouraging homeownership amongst low- or moderate-income individuals and families; that such an expansion could inadvertently reinforce racial segregation and concentrated poverty; and that permanent home mortgage loans for single-family rental housing were already covered as part of the proposed Retail Lending Test.

Most of the commenters that remarked on this alternative supported broadening the eligibility of naturally occurring affordable housing to include single-family rental housing in some or all geographies. For example, one commenter noted that affordable single-family rentals are a critical part of the multipronged approach to address

States Housing Act of 1937 (42 U.S.C. 1437f); the tenant-based program is the housing choice voucher program). *See also* HUD, ''Choice Vouchers Fact Sheet,'' *https://www.hud.gov/topics/housing_choice_voucher_program_section_8.*

[317] *See* 87 FR 33895.

[318] *Id.*

affordable housing in this country and should be included in the affordable housing category.

Imposing higher standards for single-family rental housing. Although several commenters suggested applying the exact same naturally occurring affordable housing criteria to both multifamily and single-family housing, some commenters suggested that activities relating to single-family rentals be held to a higher standard or subject to additional restrictions as compared to activities relating to multifamily naturally occurring affordable housing. Commenters supporting higher standards raised a number of considerations including: that single-family rental housing should be limited to homes that either are eligible for purchase (*e.g.,* lease-to-own), are prioritized for low- or moderate-income families enrolled in first-time homeowner programs through HUD, or are part of a State program that will remain permanently affordable through a community land trust or other vehicle to sustain affordability; that single-family rental housing should be limited to housing owned or developed by a nonprofit organization; and that, if for-profit ownership and development is allowed, there should be mechanisms to ensure that the property is in decent physical condition and that bank financing is not supporting abusive property owners, landlords, management companies, or investors.

Other commenters expressed concerns about investor activity. For example, a commenter suggested that the agencies restrict CRA consideration to properties whose owners own fewer than 50 single-family rental units unless the owner is a nonprofit with a bona fide mission of providing affordable housing. Another commenter recommended that, to prevent speculative activity or corporate ownership, the agencies could exclude from consideration single-family rental housing in any low- or moderate-income or predominantly minority census tract in which more than one-third of the single-family housing stock became rental housing in last five years.

Geographic considerations in recognizing affordable single-family rental activity. A few commenters addressed the agencies' request for comment on whether to limit any inclusion of single-family rental properties in the proposed naturally occurring affordable housing component to properties located in rural areas. The majority of these commenters opposed limiting single-family rentals to rural areas. In this regard, a commenter stated that affordable housing is needed everywhere and, therefore, the category should not be limited to rural communities. A few commenters supported limiting single-family rentals to rural areas, noting the large percentage of occupied rental units in rural areas that are single-family homes. Another commenter suggested eliminating all geographic criteria and allowing single-family rentals to receive CRA consideration anywhere.

Final Rule

The final rule adopts as final § ____.13(b)(3) a component in the affordable housing category for single-family rental housing in nonmetropolitan areas. The component applies in instances where such housing is purchased, developed, financed, rehabilitated, improved, or preserved, and the housing meets the affordability criterion in final § ____.13(b)(2)(i) and at least one of the additional eligibility criteria in final § ____.13(b)(2)(ii). This component is intended to address single-family rental housing with affordable rents in nonmetropolitan areas. As previously noted, the agencies inquired whether the proposed approach to considering naturally occurring affordable housing should be broadened to include single-family rental housing that meets the requirements in proposed § ____.13(b)(2), and if so, whether consideration of single-family rental housing should be limited to rural geographies, or eligible in all geographies. In making this determination, the agencies have considered the views from commenters on this request for feedback.

Standards for single-family rental housing. Currently, the 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, including single-family rental housing. The agencies sought feedback on the potential application of the criteria in proposed § ____.13(b)(2)(i) and (ii) to single-family rental housing because those criteria aim to provide a consistent methodology for determining benefit for low- or moderate-income individuals. After considering commenter feedback, the agencies believe that the revised criteria for naturally occurring affordable housing for multifamily rental housing under § ____.13(b)(2), which include a defined affordability standard and a requirement that rents be determined based on the amounts used by the bank for purposes of underwriting, are suitable for adoption in the single-family nonmetropolitan area rental housing context. The agencies carefully considered commenter suggestions for a more stringent or more lenient affordability standard, and determined that adopting the criteria in final § ____.13(b)(2) for both multifamily rental housing and single-family rental housing in nonmetropolitan areas will provide a clear and consistent option that is likely to benefit low- and moderate-income individuals and families.

Geographic considerations in recognizing affordable single-family rental activity. Although the agencies considered the assertion by some commenters that affordable rental housing is needed in all geographic areas, as noted previously, this component supports consideration only for single-family rental housing in nonmetropolitan areas. The agencies also considered that the composition of the housing stock varies across geographies, and that in some areas, such as in certain nonmetropolitan areas, it may be difficult to develop affordable multifamily rental housing at scale, either in conjunction with a government program or as naturally occurring affordable housing. An agency analysis of data from the 2016–2020 American Community Survey showed that 22 percent of occupied rental units in nonmetropolitan areas are structures with more than 4 units, compared to 47 percent of occupied rental units in metropolitan areas.[319] In reaching their determination, the agencies believe that the final rule approach appropriately balances adding a component specific to affordable single-family rental housing and tailoring it to the unique affordable housing needs in nonmetropolitan areas. The agencies also considered that not including this component could otherwise limit opportunities for affordable housing in nonmetropolitan areas.

This component is designed to address the single-family affordable housing needs in nonmetropolitan areas, including the particular needs in rural areas. Accordingly, although the agencies recognize that single-family affordable housing is important to

[319] Multifamily housing is also less common in rural areas where a smaller 12 percent of occupied rental units are in structures with more than 4 units according to the same data source. Rural areas are conceptually distinct from nonmetropolitan areas, however, and this final rule relies upon the nonmetropolitan area designation. The Census Bureau uses a distinct methodology of designating urban and rural census blocks relative to the Office of Management and Budget's methodology for determining if a county is within a metropolitan statistical area.

addressing the affordable housing needs for low- and moderate-income individuals in metropolitan areas, the agencies have determined not to expand this component to apply to single-family rental housing in metropolitan areas. Such units may still be eligible for consideration under final § ____.13(b)(1) to the extent that the unit(s) and associated loan, investment, or service meet the requirements under that component.

Section ____.13(b)(4) Affordable Owner-Occupied Housing for Low- or Moderate-Income Individuals

The Agencies' Proposal

Proposed § ____.13(b)(3) provided a component for the affordable housing category of community development for ''activities that support affordable owner-occupied housing for low- or moderate-income individuals.'' This component included activities that: (1) ''directly assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing''; or (2) ''support programs, projects, or initiatives that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing.'' [320] Owner-occupied housing referenced in the agencies' proposal included both single-family and multifamily owner-occupied housing.

Activities under proposed § ____.13(b)(3) would have expressly excluded single-family home mortgage loans considered under the Retail Lending Test in proposed § ____.22.[321] Instead, as discussed in the agencies' proposal, activities eligible for consideration under proposed § ____.13(b)(3) included, for example, construction loan financing for a nonprofit housing developer building single-family owner-occupied homes affordable to low- or moderate-income individuals; financing or a grant provided to a nonprofit 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 nonprofit organization to provide long-term affordable homeownership; and financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers. Other activities eligible for consideration under this proposed component include: activities with a governmental or nonprofit organization with a stated purpose of, or that otherwise directly supports, providing affordable housing; and activities conducted by the bank itself, or with other for-profit partners, provided that the activity directly supports affordable homeownership for low- or moderate-income individuals.

The agencies sought feedback on what conditions or terms, if any, should be added to this component to ensure that qualifying activities are affordable, sustainable, and beneficial for low- or moderate-income individuals and communities.

Comments Received

Nearly all commenters that commented on the affordable homeownership component of the NPR expressed support for CRA consideration for such activities. Some of the commenters suggested a different definition for this component under which the financing, construction, or rehabilitation of owner-occupied homes would qualify if: (1) the homes are located in a low- or moderate-income census tract or a distressed or underserved middle-income nonmetropolitan census tract; and (2) the sales price does not exceed four times the area median income. One commenter noted that this definition should explicitly include government programs with a ''stated purpose or bona fide intent'' of providing affordable housing or housing assistance for low-, moderate-, or middle-income individuals.

Many commenters offered specific suggestions regarding the activities that should be eligible for consideration under this component. Commenter suggestions included: that the agencies should explicitly include financing for the rehabilitation or reconstruction of an already owner-occupied home if the owner is a low- or moderate-income individual; that investments and interests in early buyout loans should receive CRA consideration because they enable servicers to work with and buy delinquent loans with government insurance or guarantees without foreclosing on the properties, thereby allowing residents to remain in their homes; and that the agencies should provide CRA consideration for the costs of transporting housing materials to remote areas.

A few commenters encouraged the agencies to use this component to encourage affordable homeownership for specific populations. For example, a commenter suggested that the agencies increase and preserve affordable homeownership for low- or moderate-income individuals from racial and ethnic groups that were subjected to redlining and other discriminatory practices. Similarly, a commenter recommended that the agencies emphasize activities that expand homeownership for first-time buyers who are individuals with disabilities or represent other underserved populations.

Some commenters encouraged the agencies to include specific products or programs in this component of affordable housing. These suggestions include first-look homebuyer programs,[322] home repair programs that help homeowners bring homes into building code compliance, participation in specific pilot programs offered by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government-sponsored enterprises or the GSEs),[323] real estate-owned note sales, education on and resolution of heirs' property titles, low balance loans for homeowners, use of alternative credit models, limited equity housing cooperatives, and property tax abatements to assist low- or moderate-income owners whose taxes have risen rapidly. Other commenters suggested that the agencies provide CRA consideration for activities related to lender fee-for-service payments, investment, grants, and developing fees for service programming by HUD-certified housing counseling agencies. Lastly, some commenters recommended that the agencies encourage banks to partner with nonprofit affordable housing groups to provide or support affordable homeownership options. These commenters explained that nonprofit affordable housing groups—including developers, owners, counselors, and others—provide products and services that are appropriately tailored to low- and

[320] Proposed § ____.13(b)(3).

[321] *See id.*

[322] For example, Freddie Mac's First Look Initiative offers homebuyers and select nonprofit organizations an exclusive opportunity to purchase certain homes prior to competition from investors. *See* Freddie Mac, ''Freddie Mac First Look Initiative,'' *https://www.homesteps.com/homesteps/offer/firstlook.html*.

[323] GSE pilot programs are designed to target a wide range of housing access issues. GSE pilot programs may help renters establish and improve their credit scores, defray or decrease the cost of security deposits for renters, or take other actions to help renters and homeowners. For example, Fannie Mae's Multifamily Positive Rent Payment Reporting pilot program is aimed at helping renters build their credit history and improve their credit score. *See* Fannie Mae, ''Fannie Mae Launches Rent Payment Reporting Program to Help Renters Build Credit'' (Sept. 27, 2022), *https://www.fanniemae.com/newsroom/fannie-mae-news/rent-payment-reporting-program-launch*.

moderate-income borrowers and help guard against predatory or unsustainable homeownership activities.

Final Rule

The agencies are adopting proposed § ____.13(b)(3), renumbered as final § ____.13(b)(4), with clarifying revisions to provide community development consideration for activities that support affordable owner-occupied housing for low- and moderate-income individuals. Specifically, in final § ____.13(b)(4), affordable housing includes ''assistance for low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing, excluding loans by a bank directly to one or more owner-occupants of such housing.'' The agencies believe that adopting this component facilitates consideration of a variety of the affordable housing models suggested by commenters. The agencies also note that some of the activities suggested by commenters, such as use of alternative credit scores, special purpose credit programs, and use of other credit products that assist low- or moderate-income individuals with purchasing a home could be considered responsive credit products under the Retail Services and Products Test, described in the section-by-section analysis of § ____.23. Owner-occupied one-to-four-family home mortgage loans, including but not limited to owner-occupied one-to-four-family home mortgage loans considered under the Retail Lending Test in § ____.22, are excluded from consideration under this component.

Relative to the agencies' proposal, the final rule combines the two prongs (''direct'' support and support for ''plans, programs, and initiatives'') into a single component that covers all forms of assistance for affordable homeownership. By creating a single component, the agencies seek to streamline the requirement and clarify that a bank may receive community development consideration for activities that support any qualifying assistance under the component regardless of whether the support is provided directly to a low- or moderate-income individual or indirectly, through a third-party organization. As a result, under the final rule, a down payment grant provided by a bank to a low- or moderate-income individual is evaluated using the same standards as those standards that apply to a down payment grant to a nonprofit organization that provides affordable housing assistance to low- or moderate-income individuals. This parallel treatment is consistent with the agencies' objectives, including the objective seeking to provide greater clarity and consistency in the application of the regulations, and the criteria in the proposal.

Assistance for low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing. Under final § ____.13(b)(4), activities that assist low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing are considered. The proposal would have recognized activity that ''directly'' assists with these functions. The agencies removed ''directly'' to better align this component with the majority standard outlined in final § ____.13(a)(1)(i)(B)(*1*).

As noted in the proposal, activities under this component could be conducted in conjunction with a variety of financing types. For example, this component would include activities such as construction loan financing for a nonprofit housing developer constructing single-family owner-occupied homes affordable to low- or moderate-income individuals; a grant to a nonprofit organization that provides home rehabilitation and weatherization improvements for low- and moderate-income homeowners; financing or a grant to a nonprofit 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 nonprofit organization to provide long-term affordable homeownership; and financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers.[324]

Furthermore, under this component, eligible activities may include those involving assistance to a government agency or nonprofit organization that provides access to affordable homeownership, and assistance provided by the bank itself, or by other for-profit entities. Accordingly, each of the following may qualify for consideration under final § ____.13(b): participation in first-look homebuyer programs or home repair programs that help homeowners bring homes into building code compliance; a down payment grant offered directly by a bank to help low- or moderate-income individuals purchase a home; an investment in a government bond that finances home mortgage loans for low- or moderate-income borrowers;[325] and activities supporting a program that conducts free home repairs or maintenance for low- or moderate-income homeowners.

Exclusion of loans by a bank directly to owner-occupants. The proposal specifically excluded any home mortgage loans considered under the Retail Lending Test in § ____.22. The agencies were concerned that, as written, the requirement could suggest that a bank might receive consideration for such loans under either performance test, but not both. To minimize confusion and to clarify the agencies' intent, final § ____.13(b)(4) replaces the reference to the Retail Lending Test with language that excludes any loan directly to an owner-occupant, regardless of whether the loan is considered under the Retail Lending Test. Consistent with the proposal, this clarification ensures that banks will not receive CRA consideration under both final § ____.13(b)(4) and final § ____.22 for a single loan.

Section ____.13(b)(5) Mortgage-Backed Securities

The Agencies' Proposal

Under proposed § ____.13(b)(4), the agencies proposed to define standards for investments in mortgage-backed securities related to affordable housing that qualify for community development consideration. Specifically, the agencies proposed that mortgage-backed securities would qualify as affordable housing when the security contained ''a majority of either loans financing housing for low- or moderate-income individuals or loans financing housing that otherwise qualifies as affordable housing under [proposed § ____.13(b)].''[326] This proposed component of affordable housing was intended to be generally consistent with current practice and to recognize that purchases of qualifying mortgage-backed securities that contain home mortgage loans to low- or moderate-income borrowers or that otherwise contain loans that qualify as affordable housing are investments in affordable housing.

The agencies sought feedback on alternative approaches that would create a more targeted definition of qualifying mortgage-backed securities. One alternative approach would be to consider investments in mortgage-

[324] *See* proposed § ____.13(b)(3).

[325] *See* Q&A § ____.12(t)–2.

[326] *See* Q&A § ____.12(t)–2. *See also, e.g.,* Q&A § ____.23(b)–2 (indicating that CRA credit for MBS investments is conferred only if the MBS is ''not backed primarily or exclusively by loans that the same institution originated or purchased.'').

backed securities only in proportion to the percentage of loans in the security secured by affordable properties. 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. Additionally, the agencies sought feedback on whether to limit consideration of mortgage-backed securities to the initial purchase of a mortgage-backed security from the issuer, and not to consider subsequent purchases of the security. This change would have been intended to reduce the possibility of multiple banks receiving CRA consideration for purchasing the same security.

Comments Received

The majority of commenters recognized the important role mortgage-backed security purchases play in creating liquidity for the mortgage market and enabling banks to originate more loans and favored retaining this component of affordable housing. However, many of these commenters supported restrictions on the types of eligible securities as well as the amount of CRA consideration received relative to other activities. Other commenters suggested eliminating consideration for purchases of mortgage-backed securities altogether because of the view that such investments are low impact or add little value to communities.

Scope. Some commenters requested that the agencies clarify or modify the scope of this component. For example, a commenter sought clarification regarding the treatment of purchases of securities collateralized by mortgage loans in low- and moderate-income census tracts. Separately, several commenters recommended that the proposed mortgage-backed securities component include purchases of other affordable housing investment vehicles issued by State housing finance authorities or municipalities, such as mortgage revenue bonds. In contrast, other commenters supported restricting consideration to certain types of purchases of mortgage-backed securities, such as loans or mortgage-backed securities purchased from a certified CDFI, or loans or mortgage-backed securities that meet certain requirements but that are not guaranteed by the Federal Government. Other commenters proposed limitations that would provide CRA consideration only for the first or second purchase of a mortgage-backed security.

Amount of consideration for mortgage-backed securities. The majority of commenters addressing the agencies' request for comment on whether to consider investment in mortgage-backed securities only in proportion to the percentage of loans in the security secured by affordable properties favored the proportional consideration alternative. In contrast, a couple of commenters addressing this alternative opposed using proportional consideration, asserting that it would increase complexity without material benefit to the volume and scope of affordable housing activities in low- or moderate-income communities. Other commenters suggested a hybrid approach whereby full CRA consideration would be granted for investments in mortgage-backed securities comprised of 50 percent or more affordable housing loans and pro rata credit would be granted for investments in mortgage-backed securities comprised of less than 50 percent affordable housing loans. Another commenter suggested that the full value of a mortgage-backed security only be considered when at least 50 percent of the underlying loans were used to finance supportive affordable housing developments.

Other commenters recommended that CRA consideration for purchases of mortgage-backed securities be discounted relative to other community development investments. These commenters suggested that mortgage-backed securities investments be discounted by 50 percent in comparison to more traditional lending or investment in qualified CRA activities because these securities remain liquid and provide comparably less public benefit than other qualifying CRA activities. Similarly, some commenters suggested that the agencies limit consideration for mortgage-backed securities investments to a percentage of a bank's nationwide community development activity, with some of these commenters suggesting either a 20 or 25 percent cap. Other commenters requested that consideration be limited to the percentage of loans to low- or moderate-income individuals.

Other restrictions or limitations. Finally, several commenters suggested that the agencies consider or set a minimum threshold for the time period that a bank must hold the mortgage-backed securities on its books, such as two or more years. Some commenters also opposed limiting mortgage-backed securities consideration to only the initial purchase from the issuer, citing that this limitation would add complexity and could negatively impact the market for mortgage-backed securities.

Final Rule

In the final rule, the agencies are adopting the proposal related to mortgage-backed securities, renumbered as final § ____.13(b)(5) and reorganized to include final § ____.13(b)(5)(i) and (ii), with both substantive and clarifying edits. Specifically, the final rule includes as a component of affordable housing purchases of mortgage-backed securities that are collateralized by loans, a majority of which are not loans that the bank originated or purchased, and which are either home mortgage loans made to low- or moderate-income individuals or loans financing multifamily affordable housing that meets the requirements of final § ____.13(b)(1). For clarity, the two subcategories (home mortgage loans to low- or moderate-income individuals and loans secured by multifamily affordable housing) form two separate prongs under the overall mortgage-backed security component.

The agencies are also revising final § ____.13(b)(5) to confirm that the component only applies to mortgage-backed securities where a majority of the underlying loans are not loans that the bank originated or purchased. This limitation is consistent with current interagency guidance and ensures that banks are not likely to receive consideration under both final § ____.13(b)(5) and the Retail Lending Test in final § ____.22 for the same loan(s).[327]

Section ____.13(b)(5)(i)

Section ____.13(b)(5)(i). Final § ____.13(b)(5)(i) specifies that affordable housing includes purchases of mortgage-backed securities where a majority of the underlying loans are not loans that the bank originated or purchased and ''[a]re home mortgage loans made to low- or moderate-income individuals.'' This provision adopts the proposal to consider purchases of mortgage-backed securities that contain a majority of ''loans financing housing for low- or -moderate income individuals'' (proposed § ____.13(b)(4)). On further review, the agencies determined that ''loans financing housing for low- or -moderate income individuals'' could be read broadly to include single-family loans and multifamily loans. The agencies intended, however, to refer with this language solely to loans secured by

[327] Q&A § ____.23(b)–2.

single-family homes. Thus, final § ____.13(b)(5)(i) refers more specifically to ''home mortgage loans made to low- or moderate-income individuals.'' As discussed further in the section-by-section analysis of § ____.12, ''home mortgage loan'' is defined to mean a ''closed-end home mortgage loan'' or an ''open-end home mortgage loan,'' which are in turn defined to exclude multifamily loans.[328]

The agencies also note that final § ____.13(b)(5)(i) only allows consideration based on the income of the individuals to whom the loans are made and does not allow consideration for mortgage-backed securities solely because the underlying loans are secured by property in low- and moderate-income census tracts. This approach, which is consistent with the agencies' proposal, is intended to maintain the component's focus on low- or moderate-income individuals. The agencies do not believe that providing consideration for mortgage-backed securities where the underlying loans are made to middle- or upper-income individuals residing in low- or moderate-income census tracts is likely to further the agencies' goal of encouraging affordable housing lending to low- and moderate-income individuals.

Section ____.13(b)(5)(ii)

Under final § ____.13(b)(5)(ii), the agencies replaced phrasing that referred to loans that finance housing that ''otherwise qualifies'' as affordable housing with a direct reference to final § ____.13(b)(1). This revision clarifies that, as it relates to multifamily housing, the agencies intend to provide community development consideration only for those mortgage-backed securities where a majority of the underlying loans are secured by multifamily rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with government affordable housing plans, programs, initiatives, tax credits, and subsidies. The agencies believe that this clarification will facilitate consistency in evaluating mortgage-backed securities. The agencies note that purchases of tax-exempt bonds issued by Freddie Mac and Fannie Mae, which finance affordable housing projects, and tax-exempt bond issuances that finance affordable housing projects sponsored by State housing authorities or municipalities, may be eligible for community development consideration under the final rule, provided that the bond is a mortgage-backed security that meets the requirements in final § ____.13(b)(5)(ii).

Amount of consideration for mortgage-backed securities. Under final § ____.13(a) mortgage-backed securities that meet the requirements in final § ____.13(b)(5) (*i.e.,* a majority of the underlying loans are not loans that the bank originated or purchased, and are either home mortgage loans made to low- or moderate-income individuals or loans financing multifamily affordable housing that meets the requirements of final § ____.13(b)(1)) will be eligible to receive consideration for the full value of the security.[329] The agencies carefully considered commenter feedback regarding the amount of consideration that mortgage-backed securities should be eligible to receive under CRA, including ideas for partial consideration of bank investments in mortgage-backed securities. On further deliberation, the agencies are not adopting a partial consideration framework for bank investments in mortgage-backed securities. The agencies believe that the final rule's majority approach for mortgage-backed securities will facilitate compliance and supervision, as it is less complex than other alternatives suggested and considered, and consistent with the majority standard employed in most other categories of community development.[330] While generally aligned with current guidance on bank investments in mortgage-backed securities noted earlier, the final rule will provide greater clarity, transparency, and uniformity in how bank investments in mortgage-backed securities are considered under CRA.

The agencies believe that the requirements in final § ____.13(b)(5), including the majority requirement, the home mortgage loan limitation, and the express tie to final § ____.13(b)(1) for multifamily affordable housing, appropriately balance considerations of current guidance; the benefits of greater consistency and clarity in the treatment of investments in mortgage-backed securities under CRA; and the recognition that purchases of mortgage-backed securities containing home mortgage loans to low- or moderate-income borrowers or loans that finance multifamily affordable housing can improve liquidity, in turn supporting more loans to low- and moderate-income borrowers and more affordable housing development. The agencies remain sensitive to commenter views that mortgage-backed securities are lower in impact and responsiveness to community credit needs than other qualifying affordable housing activities more directly supporting housing for low- or moderate-income individuals. Accordingly, the agencies will continue to monitor the impact of including mortgage-backed securities in the affordable housing category.

Other restrictions or limitations. After carefully considering commenter feedback, the agencies have decided not to limit consideration of mortgage-backed securities to the initial purchase of a mortgage-backed security from the issuer under this component. The agencies sought feedback on limiting consideration to the initial purchase in order to emphasize activities that may more directly serve low- or moderate-income individuals and communities and to reduce the possibility of multiple banks receiving CRA consideration for purchasing the same security. However, the agencies believe that this potential limitation is mitigated as examiners will be able to use information regarding the amount of time a mortgage-backed security was owned by the bank to determine the appropriate amount of consideration. For more information regarding the agencies' use of performance context, see the section-by-section analysis of § ____.21(d).

Complex, Specialized, and Novel Topics in Affordable Housing

As previously noted, the agencies sought feedback on how to ensure that the proposed affordable housing category is clearly defined and appropriately inclusive of activities that support affordable housing for low- or moderate-income individuals, including activities that involve complex, specialized, or novel solutions, such as community land trusts, shared equity models, and manufactured housing. The agencies considered the wide array of commenter responses that identified particular activities that help to further access to affordable housing for low- and moderate-income individuals. However, the agencies have declined to revise the affordable housing category to explicitly list such activities, because the agencies believe that many of the activities identified in comments would be eligible for community development consideration under the various components of the affordable housing category. This outcome is consistent with the agencies' objective for the affordable housing category, which is to create standards and identify

[328] *See* final § ____.12 (defining ''home mortgage loan,'' ''closed-end home mortgage loan,'' and ''open-end home mortgage loan'').

[329] *See* final § ____.13(a)(1)(i)(A)(*2*).

[330] For discussion of the final rule on full and partial credit for community development loans, investments, and services, see the section-by-section analysis of final § ____.13(a).

characteristics that may be used to evaluate a broad range of affordable housing activities and programs, both current and future, and identify those that meet the standards for consideration. The following is a discussion of the ways in which several activities cited by commenters are captured within the various affordable housing components or may otherwise receive consideration under the final rule.

Manufactured housing. In the NPR, the agencies stated that a loan to a resident-owned manufactured housing community with homes that are affordable to low- or moderate-income individuals could be eligible for community development consideration as an activity that supports affordable homeownership for low- and moderate-income individuals. As noted previously, the agencies also requested feedback about the inclusion of manufactured housing in the proposed affordable housing category.

The agencies received several comments related to manufactured housing, and commenters provided feedback on a variety of approaches for affordable manufactured housing eligibility. For example, some commenters supported special consideration of financing for affordable manufactured housing that is on tribal land, while other commenters supported a broader approach to include all loans that finance affordable manufactured housing. Some commenters urged the agencies to provide consideration only for resident-owned manufactured housing communities or to nonprofit organizations that provide land for manufactured housing. In contrast, other commenters urged the agencies to include consideration for for-profit manufactured home communities, with one commenter suggesting that loans to manufactured housing communities with homes that are affordable to low- or moderate-income individuals should not be restricted to only resident-owned communities, because for-profit entities play an essential role in purchasing older communities and making significant infrastructure repairs, such as roads, sewer, and water. Another commenter suggested that community development consideration should be extended for loans to manufactured home dealers that commit to providing more favorable financing terms to low- or moderate-income buyers.

The agencies have considered these comments and recognize that manufactured housing can provide important affordable housing options for low- and moderate-income individuals and families. Nonetheless, the agencies intend and expect that some manufactured housing activity will meet the requirements under a component of affordable housing adopted in the final rule. For example, an acquisition loan made to a manufactured housing community with homes that are affordable to low- or moderate-income individuals could help fill a housing gap and may qualify under final § ___.13(b)(4) as assistance supportive of affordable owner-occupied housing for low- or moderate-income individuals.[331] Alternatively, financing provided to a nonprofit, in conjunction with a government program, to develop manufactured housing and buy land for use as affordable rental housing for low- and moderate-income individuals and families could qualify under final § ___.13(b)(1) (rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy).[332] As discussed further in the section-by-section analysis of final § ___.22(d)(1), below, single-family home mortgage loans meeting the HUD code for manufactured housing are generally reportable under HMDA, and will therefore receive consideration under the Retail Lending Test in final § ___.22.[333]

Shared equity housing programs and community land trusts. In the NPR, the agencies stated that a shared-equity program operated by a nonprofit organization to provide long-term affordable homeownership could be eligible for community development consideration as an activity that supports affordable homeownership for low- and moderate-income individuals.[334] In addition, the agencies stated that 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 the impact review factor for activities that result in a new community development financing product or service under the Community Development Financing Test or the Community Development Financing Test for Limited Purpose Banks, to the extent that it involves a new strategy to meet a community development need.[335]

The NPR also specifically addressed community land trusts, which typically operate a specific type of shared-equity program. The agencies stated that providing financing to, or a grant for a nonprofit community land trust focused on providing affordable owner-occupied housing to low- or moderate-income individuals could be eligible for community development consideration as an activity that supports affordable homeownership for low- and moderate-income individuals.[336] Several commenters noted that activities, such as those conducted in coordination with community land trusts, can prevent displacement of vulnerable residents.

It is the agencies' view that shared equity housing programs, including but not limited to community land trust activities, provide opportunities to support long-term affordable housing. Commenters generally supported qualification of these activities under the affordable housing category, with some commenters noting that such activities can make homeownership affordable for low- or moderate-income individuals who might be otherwise unable to afford to purchase a home. The agencies agree that shared equity housing and community land trusts are important tools to promote homeownership. Although the final rule does not create a separate component or prong for qualification of shared equity housing as affordable housing, the agencies highlight that loans, investments, and services involving shared equity programs and community land trusts may be eligible for consideration under final § ___.13(b)(4), when they involve assistance for low- or moderate-income individuals to obtain affordable owner-occupied housing. As another example, to the extent that a community land trust operates rental housing meeting the requirements under final § ___.13(b)(1) or (2), loans, investments, and services to support such housing would qualify for consideration under the applicable component. Moreover, mortgage loans that allow homeowners to purchase a home through these programs may be considered under the Retail Lending Test in final § ___.22, or under the responsive credit product evaluation in the Retail Services and Products Test in final § ___.23.[337]

Accessory dwelling units (ADUs). Several commenters requested consideration for banks supporting development of ADUs under the affordable housing category. For example, commenters requested

[331] Final § ___.13(b)(4) is discussed in greater detail in the section-by-section analysis of § ___.13(b)(4), below.

[332] Final § ___.13(b)(1) is discussed in greater detail in the section-by-section analysis of § ___.13(b)(1), below.

[333] *See* HUD Manufactured Home Construction and Safety Standards, 24 CFR part 3280.

[334] 87 FR 33884, 33897 (June 3, 2022).

[335] *See* 87 FR 33915.

[336] *See* 87 FR 33897.

[337] *See* final § ___.22.

consideration for loans extended to finance ADUs that are intended to help low- and moderate-income homeowners develop an income-producing property that could offset the cost of a mortgage or rising property taxes, or to encourage affordability by creating additional housing supply.[338] One commenter suggested that the agencies provide community development consideration to ADUs and small multifamily buildings and asked the agencies to clarify that banks can receive consideration for loans to support improvements and repairs to existing dwellings, including for small dollar loans and to install accessibility features.

As adopted under final § ____.13(b), certain activities related to ADUs could be considered affordable housing, such as those that contribute to the provision of housing affordable to low- and moderate-income individuals and families. For example, a loan to a nonprofit organization that supports the creation of an ADU on the property of a low- or moderate-income homeowner could qualify under final § ____.13(b)(4). Alternatively, a loan or investment in a fund operated in conjunction with a government program to support the construction of ADUs could qualify under final § ____.13(b)(1), if the resulting ADUs were rental housing for low- or moderate-income individuals (and not considered under the Retail Lending Test).

Land banks. The NPR did not specifically address the consideration of land banks under the various prongs of the affordable housing category, and a number of commenters requested that the agencies explicitly address land banks and land bank-related activities in the final rule. Commenters stated that land bank-related activities often help to address the need for affordable housing for low- and moderate-income individuals and in low- and moderate-income communities. The agencies recognize that land banks, which are typically established by a government entity or a nonprofit organization, can help to facilitate the development of affordable housing by acquiring and holding land until some future time when it can be developed as affordable housing. The agencies acknowledge that many of these activities could be considered under the affordable housing category if they have the bona fide intent and are specifically structured to provide affordable housing for low- and moderate-income individuals, and the agencies believe that these activities could qualify under several components of the affordable housing category under the final rule. For example, a loan to a land bank created by a government entity to hold land for the development of affordable rental housing could qualify under final § ____.13(b)(1). Alternatively, a loan to a land bank operated by a nonprofit organization for the purpose of acquiring land on which to develop and sell single-family housing to low- and moderate-income individuals could qualify under final § ____.13(b)(4).

Special purpose credit programs. In the proposal, the agencies sought feedback on whether special purpose credit programs[339] should be listed as an example of a responsive credit product or program that facilitates mortgage and consumer lending targeted to low- or moderate-income borrowers under the Retail Services and Products Test.[340] Several commenters instead recommended qualification for these activities under the affordable housing category of community development. In response to these comments, the agencies note that under the final rule, special purpose credit programs can be considered in the evaluation of responsive credit products and services pursuant to final § ____.23(c)(2)(v). In addition, although specific special purpose credit programs are not expressly listed as qualifying programs under the affordable housing category in final § ____.13(b), the agencies recognize that it would be possible for the objectives of specific special purpose credit programs to align with one or more affordable housing category components, and in such cases, these activities may be eligible for consideration within the affordable housing category of community development. For example, a grant to a nonprofit who is implementing a special purpose credit program that provides down payment assistance to low- or moderate-income individuals may qualify for consideration under final § ____.13(b)(4).

Down payment assistance. In the NPR, the agencies stated that financing or grants for organizations that provide down payment assistance to low- or moderate-income homebuyers could be eligible for community development consideration as an activity that supports affordable homeownership for low- and moderate-income individuals under proposed § ____.13(b)(3).[341] Several commenters suggested that the agencies provide consideration for activities that provide down payment assistance to low- and moderate-income individuals. Nonetheless, the agencies note that direct grants and other programs offered by banks that help low- and moderate-income homebuyers make a down payment are eligible for consideration as an activity that supports affordable homeownership for low- and moderate-income individuals under final § ____.13(b)(4), as long as the down payment assistance is not provided as a loan by the bank directly to the owner-occupant of the home.

Other suggested housing programs. Commenters requested that the agencies explicitly address many additional activities, including but not limited to home repair for low- and moderate-income individuals and families, supportive housing models, and first-look homebuyer programs. The agencies have considered these recommendations and acknowledge that there are many types of investments, loans, and services provided by banks in connection with such activities that may qualify under the affordable housing category of community development. As previously noted, many activities recommended by commenters would qualify under one or more of the five affordable housing components adopted in final § ____.13(b), when the activity meets the qualifying criteria and thereby supports affordable housing for low- and moderate-income individuals and families. In addition, to provide increased certainty on what community development activities will qualify for CRA consideration, pursuant to final § ____.14, the agencies will maintain a publicly available, non-exhaustive illustrative list of examples of community development activities that qualify for CRA consideration, including examples of qualifying affordable housing activities. The list will be periodically updated. Final § ____.14 also provides a formal confirmation process through which any bank could request a determination as to whether a proposed community development activity would be eligible for CRA consideration.

[338] Accessory dwelling units or ADUs are additional living quarters on single-family lots that are independent of the primary dwelling unit. *See* HUD, Office of Policy Development and Research, ''Accessory Dwelling Units: Case Study'' (June 2008), *https://www.huduser.gov/portal/publications/adu.pdf.*

[339] *See* HUD, ''Office of General Counsel Guidance on the Fair Housing Act's Treatment of Certain Special Purpose Credit Programs That Are Designed and Implemented in Compliance with the Equal Credit Opportunity Act and Regulation B'' (Dec. 6, 2021), *https://www.hud.gov/sites/dfiles/GC/documents/Special_Purpose_Credit_Program_OGC_guidance_12-6-2021.pdf.*

[340] 87 FR 33966.

[341] *See* 87 FR 33897.

Section ____.13(c) Economic Development

Current Approach

Under the current regulation, community development is defined to include ''[a]ctivities that promote economic development by financing businesses or farms that meet the size eligibility standards of the U.S. Small Business Administration Development Company (SBDC) or Small Business Investment Company (SBIC) programs or have gross annual revenues of $1 million or less.'' [342] Under the current Interagency Questions and Answers, activities qualify as economic development if they meet both a ''size'' test and a ''purpose'' test.[343]

Size test. An institution's loan, investment, or service meets the ''size'' test if it finances, directly or through an intermediary, businesses or farms that either meet, as noted, the size eligibility standards of the SBDC or SBIC programs, or have gross annual revenues of $1 million or less.[344] The term ''financing'' is considered broadly and includes technical assistance that readies a business that meets the size eligibility standards to obtain financing.[345]

Currently, small business loans and small farm loans that meet the definition of ''loans to small businesses'' or ''loans to small farms,'' based on the Call Report definitions—loans with original amounts of $1 million or less to businesses and loans with original amounts of $500,000 or less to farms [346]—are generally evaluated as retail loans and not as community development loans. Loans that exceed these amounts, as applicable, can be considered as community development loans if the business or farm borrower either meets the size eligibility standards of the SBDC or SBIC programs or has gross annual revenues of $1 million or less.

Purpose test. A bank's loans, investments, or services can meet the ''purpose'' test if they ''promote economic development'' by supporting either:

(1) Permanent job creation, retention, and/or improvement:

- For low- or moderate-income persons, in low- or moderate-income census tracts, in areas targeted for redevelopment by Federal, State, local, or tribal governments;
- By financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms; or
- Through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance; [347] or

(2) Federal, State, local, or tribal economic development initiatives that include provisions for creating jobs or improving access by low- or moderate-income persons to jobs or to job training or workforce development programs.[348]

The agencies will presume that loans, investments, or services in connection with the following specific government programs promote economic development, thereby satisfying the purpose test: SBDCs, SBICs, USDA Rural Business Investment Companies [349] (RBICs), New Markets Venture Capital Companies,[350] NMTC-eligible Community Development Entities [351] (CDEs), or CDFIs that finance small businesses or small farms.[352]

Currently, an intermediate small bank that is not required to report small business or small farm loans may opt to have its small business and small farm loans considered as community development loans, as long as they meet the definition of community development. An intermediate small bank that opts to have such small business and small farm loans considered as community development loans cannot also choose to have these loans evaluated under the current lending test.[353]

The Agencies' Proposal

The agencies proposed several revisions to the economic development category of community development that were intended to provide clarity to stakeholders about the activities that qualify under this category and to encourage activities supportive of small businesses and small farms. Specifically, the agencies proposed that the economic development category of community development would comprise three types of activities:

- Activities undertaken consistent with Federal, State, local, or tribal government plans, programs, or initiatives that support small businesses, as defined in the plans, programs, or initiatives. This prong expressly included lending to, investing in, or providing services to an SBDC, SBIC, New Markets Venture Capital Company, qualified CDE, or RBIC (proposed § ____.13(c)(1)).
- 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 (proposed § ____.13(c)(2)); or
- 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 (proposed § ____.13(c)(3)).

Gross annual revenue threshold for small businesses and small farms under economic development. The agencies proposed alternative size standards for defining small businesses and small farms, as discussed in the section-by-section analysis of § ____.12.[354] Specifically, the agencies proposed a gross annual revenue threshold for the businesses and farms supported under proposed § ____.13(c)(2) and (3) of $5 million or less. For government-related support of small businesses and small farms, the size standards of the relevant government plan, program, or initiative would apply, with the proposed $5 million gross annual revenue threshold applying in the absence of a definition in the plan, program, or initiative. As discussed in the proposal, the $5 million size standard was intended in part to align the meaning of small business and small farm across the CRA regulation, including under the proposed Retail Lending Test, with the definition of small business under the CFPB's Section 1071 Proposed Rule, subsequently adopted in the Section 1071 Final Rule.

Purpose of job creation, retention, and improvement for low- and moderate-income individuals under economic development. Under the proposal, the current purpose test described above would not be required for loans, investments, and services to qualify as supporting economic development, as long as the proposed criteria in

[342] *See* current 12 CFR____.12(g)(3). *See also* 13 CFR 120.10 (SBDC program) and 13 CFR part 107 (SBIC program).

[343] *See* Q&A § ____.12(g)(3)–1.

[344] *See id.*

[345] *See id.*

[346] *See* current 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).

[347] *See* Q&A § ____.12(g)(3)–1.

[348] *See id.*

[349] *See* 7 CFR 4290.50.

[350] *See* 13 CFR part 108.

[351] *See* 26 U.S.C. 45D(c).

[352] *See* Q&A § ____.12(g)(3)–1.

[353] *See* Q&A § ____.12(h)–3.

[354] *See* final § ____.12 (''small business'' and ''small farm'' definitions); *see also, e.g.,* final § ____.22(d) and the accompanying section-by-section analysis.

proposed § ____.13(c)(1), (2), or (3) were met. The agencies requested feedback on whether the proposed economic development category should retain a separate component of economic development to consider activities that support job creation, retention, and improvement for low- and moderate-income individuals. Moreover, the agencies sought feedback on whether activities conducted with businesses or farms of any size and that create or retain jobs for low- or moderate-income individuals should be considered. Additionally, the agencies requested feedback on criteria that could be included to demonstrate that the activities satisfied this component and that ensure activities are not qualified solely because they offer low wage jobs.

Evaluation of direct loans to small businesses and small farms. As discussed in greater detail in the section-by-section analysis of § ____.22, the agencies proposed that a bank's reported loans to small businesses and small farms, regardless of the loan amount, generally would be evaluated under the proposed Retail Lending Test.[355] Relatedly, under proposed § ____.13(c), the agencies proposed that reported loans directly to small businesses and small farms would not be included in the economic development category of community development and, therefore, would not be considered in the proposed Community Development Financing Test. Consistent with current guidance, the agencies proposed that intermediate banks would retain flexibility to have certain retail loans—small business, small farm, and home mortgage loans—be considered as community development loans. This option was proposed to 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 (under HMDA or CRA).[356]

The agencies proposed this approach to reflect the agencies' belief that loans to small businesses and small farms are primarily retail lending products for banks, and therefore would be more appropriately considered under the proposed Retail Lending Test. Under the proposed Retail Lending Test, described in detail in the section-by-section analysis of § ____.22 below, small business loans and small farm loans would be evaluated based on the distribution metrics and would not be subject to additional requirements such as the current community development criterion for economic development.[357] Accordingly, the proposed revisions to the economic development category of community development were designed to emphasize other activities that would promote access to financing for small businesses and small farms, as discussed in greater detail below. However, as also discussed further below, the agencies also sought feedback on whether the proposed approach to evaluating direct small business and small farm lending solely under the Retail Lending Test would sufficiently recognize activities that support job creation, retention, and improvement for low- or moderate-income individuals and communities.

Under the proposal, for retail loans evaluated under the proposed Retail Lending Test, the agencies proposed to transition from the current CRA definitions of small business loans and small farm loans to the definitions of loans to small businesses and small farms with gross annual revenues of $5 million or less—with the focus on the size of the small business or small farm, not the size of the loan. Hence, whereas currently, as noted, small business and small farm loans are generally evaluated under the lending test if they are loans with origination amounts of $1 million or less to a business (of any size) and loans with origination amounts of $500,000 or less to a farm (of any size),[358] small business and small farm lending evaluated under the proposed Retail Lending Test would consider loans of any size, as long as they were to businesses or farms with gross annual revenues of $5 million or less.

As proposed, the transition to this evaluation approach for small business and small farm lending would be based on the availability of data under the CFPB Section 1071 Final Rule on small business loan data collection. In the interim, to evaluate small business and small farm loans under the Retail Lending Test, the agencies proposed to use the current definitions of small business loan and small farm loan.[359] The agencies sought feedback on this aspect of the proposal and on whether to continue considering bank loans to small businesses and small farms that currently qualify under the economic development criteria as community development loans during the period between when the final rule becomes applicable and when the agencies begin to use section 1071 data for bank CRA evaluations.

Comments Received

Many commenters provided a variety of views on the proposal overall and offered feedback on the issues on which the agencies specifically requested comment, as discussed in further detail below. Several commenters expressed general support for the proposed changes to the economic development category and the proposed components. Many commenters expressed concerns, however, that the proposed changes to the economic development category would limit the activities that would have qualified under the current rule for this category and/or limit the range of small businesses that could be supported. Generally regarding a ''size'' and ''purpose'' test for the economic development category of community development, multiple commenters supported retaining the current size and purpose tests because, in these commenters' view, these tests highlight women- and minority-owned businesses. A commenter suggested that the ''size'' test and ''purpose'' test be retained but that a qualifying activity under the economic development category should be required to satisfy only one of these tests, not both.

Comments discussed below address the following topics regarding the proposed economic development category of community development: (1) proposed size standards for small

[355] *See* proposed § ____.22(a); *see also, e.g.,* final § ____.22(d) and the accompanying section-by-section analysis.

[356] *See* proposed § ____.22(a)(5)(iii); *compare with* Q&A § ____.12(h)—3 (small business, small farm, home mortgage, and consumer loan consideration for intermediate small banks).

[357] As further discussed in the section-by-section analysis of final § ____.42, under the current rule, for each census tract in which a bank (other than a small bank) originated or purchased a small business or small farm loan, the bank must report the aggregate number and amount of the loans with an amount at origination of: (1) $100,000 or less; (2) more than $100,000 but less than $250,000; and (3) more than $250,000. *See* current 12 CFR ____.42(b)(1)(i) through (iii). These banks must also report small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less (based on the revenue size used by the bank in making the credit decision). *See* current 12 CFR ____.42(b)(1)(iv). Subject to changes discussed in the proposal pertaining to the transition to using section 1071 data, the proposed Retail Lending Test distribution metrics would evaluate a bank's small business loans and small farm loans to businesses and farms with gross annual revenues of less than $1 million. The proposal also would evaluate loans to small businesses and small farms of more than $250,000 but less than or equal to $1 million, and of $250,000 or less. *See* proposed § ____.22(d); *see also* final § ____.22(e) and the accompanying section-by-section analysis. *See also, e.g.,* current 12 CFR ____.12(g)(3) and Q&A § ____.12(g)(3)–1.

[358] *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).

[359] *See* 12 CFR ____.12(v) (defining small business loan) and (w) (defining small farm loan).

businesses and small farms; (2) the proposal to eliminate the existing ''purpose'' test for qualifying economic development activities; (3) criteria to demonstrate job creation, retention, and improvement; and (4) the proposed evaluation of direct loans to small businesses and small farms. As relevant, comments on these topics are also included in the section-by-section analysis of the individual components of the final rule (final § ____.13(c)(1) through (3)).

Gross annual revenue threshold for small businesses and small farms under economic development. Numerous commenters addressed the proposal to include a gross annual revenue threshold for businesses and farms that could be considered under the economic development category. Some commenters generally supported the proposed size threshold of gross annual revenues of $5 million or less for businesses and farms, with some asserting the proposed size threshold would allow a greater number of small businesses to be supported under this category. A few commenters supported the $5 million gross annual revenue threshold but suggested that support for intermediaries that target the smallest businesses (with gross annual revenues of $1 million or less) should receive enhanced credit, while another commenter expressly supported using the $5 million gross annual revenue threshold for the intermediary prong (proposed § ____.13(c)(2)).

On the other hand, many commenters opposed or expressed concerns about the proposed size thresholds for small businesses and small farms. Commenters generally expressed concerns that the proposed approach would eliminate credit or stifle growth for many businesses, including minority-owned businesses and mid-sized companies, and would limit or omit many projects that impact low- and moderate-income areas or individuals. A commenter asserted that the proposed $5 million gross annual revenue threshold failed to account for the significant positive impact larger businesses have on job creation, retention, and improvement. Some commenters suggested maintaining the current ''size'' standards to qualify activities that support small businesses and small farms under the economic development category, with some expressing concerns that activities directly supporting small businesses that meet the size eligibility standards established by the SBA and affiliated programs (but that have gross annual revenues of greater than $5 million), as well as support for the financial intermediaries assisting these businesses, would no longer qualify under this proposed economic development category. A commenter asserted that setting a specific revenue threshold for small businesses fails to recognize differences among businesses across different industries and suggested that the agencies adopt a business size index and standard like the one used by the SBA.[360] A few commenters asserted that the proposed threshold of $5 million in gross annual revenues would be too low. A few other commenters expressed concern that the proposal did not provide a clear rationale for the proposal to use a $5 million gross annual revenues threshold for small businesses and farms supported under the proposed economic development category. One commenter recommended that banks of any size should be allowed to receive consideration for loans to any small business or small farm loan, regardless of gross annual revenue, under any category of community development.[361]

Some commenters asserted that the proposed threshold of $5 million in gross annual revenues for small businesses and small farms would be too high. A commenter suggested that the size standard should be $1 million gross annual revenues or less, consistent with current CRA small business loan reporting, without consideration for the size standards established by the SBA and affiliated programs and noted that most small, minority-owned, and women-owned businesses have gross annual revenues of $1 million or lower. Several commenters indicated that a $5 million gross annual revenue threshold would create a disincentive for banks to support very small businesses and minority-owned businesses. Another commenter suggested that a size standard of $750,000 in gross annual revenues would target an appropriate business size, particularly in rural areas, but also supported retaining the flexibility to use the size standards established by the SBA for economic development loans.

A few commenters suggested that, if the agencies adopt the small business and small farm gross annual revenue threshold as proposed, exceptions should also be adopted. A commenter suggested that activities that support minority-owned businesses, including those with more than $5 million in gross annual revenues, should also qualify without having to document job creation, retention, or improvement. Another commenter similarly suggested that any loan or investment in a certified minority business enterprise should qualify.

Purpose of job creation, retention, and improvement for low- and moderate-income individuals under economic development. The agencies received many comments related to the proposal to eliminate the ''purpose'' test from the economic development category of community development. Some commenters supported the expansion of possible eligible loan purposes; for example, a commenter favorable noted that the removal of the jobs-focused ''purpose'' test would enable banks to receive CRA consideration for making loans to small businesses or farms for new equipment or facilities that could support their growth. Another commenter asserted that the proposal would allow a greater number of small businesses to be supported, expressing the view that the ''purpose'' test required by current CRA regulations under the economic development definition limited support for some small businesses, particularly sole proprietors that generally do not create jobs for low- and moderate-income individuals, and therefore do not meet the current ''purpose'' test standard. A commenter stressed that an important reason to retain the existing ''purpose'' test is that it provides consideration for jobs to low- and moderate-income individuals and communities as well as areas targeted for revitalization.

Many commenters supported retaining job creation, retention, and improvement as a component of the economic development category. Some commenters raised concerns that the proposed approach to evaluate loans to small businesses and farms under the Retail Lending Test would not sufficiently recognize job creation, retention, and improvement benefits for low- and moderate-income individuals. Commenters expressed concern that eliminating the current purpose test focused on job creation, retention or improvement for low- and moderate-income individuals and would disincentivize banks from investing in certain funds, programs, and other activities that focus on these objectives. A commenter noted that retaining the purpose requirement would improve transparency and noted that they did not believe demonstrating that a loan's purpose is to create, retain, or improve jobs is difficult. Several commenters highlighted that the requirements for qualifying a Public Welfare Investment

[360] *See, e.g.,* SBA, ''Table of Size Standards'' (effective March 17, 2023), *https://www.sba.gov/document/support-table-size-standards.*

[361] This commenter specifically suggested merging the proposed economic development category with the proposed revitalization category. *See* proposed § ____.13(e).

(PWI) include demonstrating that the investment is designed ''primarily'' to promote the public welfare, including the welfare of low- or moderate-income communities or families (such as by providing housing, services, or jobs)[362] and that the emphasis on job creation should be similarly retained in the economic development category of community development under CRA. A few commenters expressed concerns about the possibility of materially different standards for community development investments versus permissible PWIs.

Many commenters also suggested that the economic development category include consideration for loans and investments to small businesses and small farms that demonstrate job creation, retention, and improvement not only for low- and moderate-income individuals, but also in low- and moderate-income areas and areas targeted for redevelopment by Federal, State, local, or tribal governments, consistent with current guidance.[363] Several commenters suggested that loans to or investments in any size small business or small farm that could demonstrate job creation, retention, or improvement for low- and moderate-income individuals should be considered. One of these commenters also suggested that additional consideration should be given to activities that support businesses owned by persons of color, women or veterans, and small family-owned farms. Finally, a commenter suggested that if the jobs-focused requirement were not included in the economic development category, then it should be considered as part of the impact review for the Community Development Financing Test.[364]

In contrast, some commenters viewed a separate component for activities supporting job creation, retention, or improvement as unnecessary. For example, a commenter thought that the proposed approach for considering direct loans to small businesses and small farms under the Retail Lending Test was simpler and that other proposed components for the economic development category would support job creation and retention.

Criteria to demonstrate job creation, retention, and/or improvement for low- or moderate-income individuals. Commenters also provided input on criteria that could be included to demonstrate that the purpose of an activity is job creation, retention, or improvement for low- or moderate-income individuals. Many commenters highlighted the CRA Interagency Questions and Answers and noted that banks have successfully followed this guidance to provide examiners with information that demonstrates the purpose of the activity to be job creation, improvement, or retention and that this approach should be sufficient. A commenter suggested any documentation about the type of job, training offered or outreach to low- and moderate-income individuals or areas should be considered.

Commenters provided suggestions on resources that a bank can use to demonstrate that the purpose of an activity is for job creation, retention, or improvement for low- or moderate-income individuals. For example, suggestions included relying on the recipient's credit profile, public websites, such as glassdoor.com, and criteria established by the HUD Community Development Block Grant Program.[365] A commenter suggested that if the anticipated or documented wages exceed 80 percent of area median income, the location of the job should be considered, particularly if the company has committed to hire from a low- or moderate-income or underserved area. This commenter did not support the development of a prescriptive standard or requirement for documentation, however, and suggested that a bank should be allowed to demonstrate, with or without documentation from the business, that the activity is likely to create or retain jobs.

Many commenters on this topic offered specific views on criteria that could be considered to evaluate the quality of the job. Commenters offered suggestions examiners should consider, such as the type of job, compensation, access to job training and other support for career advancement as well as quality specific factors, such as whether the job provides at least three employee benefits including health insurance, dental insurance, 401(k) or other retirement plan, sick leave, vacation leave, and disability, as well as consideration of whether the job offers at least a living wage and cited the ''living wage calculator'' developed by the Massachusetts Institute of Technology.[366] A commenter suggested using the same standards for assessing job quality as the Community Economic Development Program within the Office of Community Services at the U.S. Department of Health and Human Services[367] to ensure that activities are not given credit if they offer only low wage jobs.

Several commenters did not support considering wages provided by the job as a measure of job quality. These commenters asserted that all jobs are valuable and should be considered regardless of the wages offered and indicated that jobs that offer lower wages may still be important entry level jobs. Additionally, a commenter noted that jobs created by small businesses provide important opportunities in historically marginalized communities and stated that the importance of creating jobs of all salary levels should be recognized.

Evaluation of direct loans to small businesses and small farms. Commenters had differing views on whether loans made by banks directly to small businesses and small farms should be considered under the economic development category of community development or should only be considered under the Retail Lending Test, as proposed. Some commenters raised concerns that the proposed approach to evaluate loans to small businesses and farms under the Retail Lending Test would not sufficiently recognize job creation, retention, and improvement benefits for low- to moderate-income individuals. For example, a commenter supported continuing to include loans to small businesses and small farms that satisfy the size and purpose tests as community development loans, asserting that considering them under the Retail Lending Test would fail to incentivize small business lending. Another commenter expressed concerns that this approach would limit community development activities not associated with government programs, such as activities undertaken through nonprofit affiliates of CDFIs, that CDFIs can leverage to meet economic development goals without some of the challenges of participating in a government program.

On the other hand, some commenters suggested that a bank should have the option of choosing whether to have a loan to a small business or small farm

[362] *See* 12 U.S.C. 24(Eleventh) (OCC), 12 U.S.C. 338a (Board), 12 CFR 345.12(g)(1) through (4), (h)(1), (i)(1), and (t)(1) (FDIC).

[363] *See* Q&A § ____.12(g)(3)–1.

[364] *See* proposed §§ ____.15 and ____.24, discussed in the section-by-section analyses of final §§ ____.15 and ____.24.

[365] *See* 24 CFR 570.208(a)(4). The comment cited HUD Office of Block Grant Assistance, ''Basically CDBG,'' *https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-3-Nat-Obj.pdf.*

[366] *See* Massachusetts Institute of Technology, ''Living Wage Calculator,'' *https://livingwage.mit.edu/.*

[367] *See* U.S. Dept. of Health & Human Svcs., Office of Community Svcs., ''Community Economic Development (CED),'' *https://www.acf.hhs.gov/ocs/programs/ced.*

considered either under the proposed Community Development Financing Test or the proposed Retail Lending Test. A commenter recommended that the proposed flexibility for intermediate banks to have certain retail loans considered community development loans should be extended to large banks with under $10 billion in assets. A few commenters suggested that, in general, loans to small businesses or small farms should be considered under the proposed Community Development Financing Test if they have a purpose of community development.

Some commenters asserted that the proposed approach would sufficiently recognize loans to small businesses and small farms and that may also support job creation, retention, and improvement for low- or moderate-income individuals or communities. A commenter asserted that the proposed approach would be more inclusive of all small business lending compared to the current approach, noting that only loans to small businesses that are greater than $1 million and that also satisfy the size and purpose test qualify as community development loans. Another commenter expressed the view that removing the requirement that activities demonstrate job creation, retention, and improvement for low- and moderate-income individuals would incentivize banks to provide more support to micro-businesses.

Commenters provided several other suggestions for how direct lending to small businesses and small farms that demonstrates job creation, retention or improvement for low- and moderate-income individual could be considered if not included in the economic development category. A few commenters suggested that the agencies include a qualitative review of loans considered under the Retail Lending Test to determine whether they demonstrate job creation, retention, or improvement for low- and moderate-income individuals and communities. Another commenter suggested that only loans to small businesses and small farms that demonstrate job creation, retention, or improvement for low- and moderate-income individuals or areas should be considered under the proposed Retail Lending Test. This commenter further recommended that, of those loans, only loans that can demonstrate the creation of ''good jobs,'' supporting economic mobility, such as those that provide apprenticeships or shared equity, should qualify.

A few commenters suggested that the agencies eliminate the exclusion set forth in proposed § ____.24(a)(2)(i) for considering retail loans with a community development purpose under the Community Development Financing Test with commenters suggesting that this could produce unintended results once the agencies replace the CRA definition of ''small business loan'' with a definition based on the CFPB's Section 1071 Final Rule. One of the commenters explained that many community development loans are made to special purpose, startup, or nonprofit entities that do not have gross annual revenues of more than $5 million. The commenter suggested that the proposed Retail Lending Test would incentivize banks to distribute their small business loans in a particular way but would not provide incentives for banks to make small business loans that satisfy the community development definition, which can be especially impactful loans. The commenter further explained that there would be no ''double counting'' of small business loans if the Community Development Financing Test allowed for certain small business loans to qualify as community development loans, since the Retail Lending Test and the Community Development Financing Test would evaluate different aspects of the same qualifying small business loan.

A commenter suggested that, for direct loans to small businesses and small farms, job creation, retention, or improvement should be considered as part of a qualitative review under the proposed Retail Services and Products Test for large and intermediate banks [368] and suggested that for small banks, this criterion could be considered as part of the qualitative review under the Retail Lending Test. Another commenter also suggested that for large banks, job creation, retention, and improvement could be considered as part of a qualitative review under the proposed Retail Services and Products Test, but for intermediate and small banks it could be considered as part of a qualitative review under the Retail Lending Test.

Final Rule

Overview

The agencies are adopting, with revisions, the proposed economic development category in § ____.13(c). As finalized, the provisions for this category are intended to provide greater clarity, to promote activities that support small businesses and small farms, and to recognize the role of intermediaries that provide assistance to small businesses and small farms.

Final § ____.13(c) establishes three components for the economic development category. For clarity and overall organization of this section, the final rule includes section headers for each of these three components. Under the final rule, the three components are:

- *Government-related support for small businesses and small farms* (final § ____.13(c)(1)), which includes activities undertaken in conjunction or in syndication with Federal, State, local, or tribal governments and comprises two subcomponents:
  - Loans, investments, and services other than direct loans to small businesses and small farms (final § ____.13(c)(1)(i)); and
  - Direct loans to small businesses and small farm (final § ____.13(c)(1)(ii)).
- *Intermediary support for small businesses and small farms* (final § ____.13(c)(2)), which provides for support to small businesses or small farms through intermediaries.
- *Other support for small businesses and small farms* (final § ____.13(c)(3)), which addresses for other assistance to small businesses or small farms, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms.

Relative to the proposal, the final rule broadens the scope of eligible activities under the economic development category and expands the range of small businesses and small farms that could be supported, while providing greater clarity to stakeholders regarding the economic development category. Each component of the final rule is discussed in turn in the section-by-section analysis below.

Section ____.13(c)(1) Government-Related Support for Small Businesses and Small Farms

The Agencies' Proposal

Under proposed § ____.13(c)(1), activities ''undertaken consistent with Federal, [S]tate, 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'' would be considered community development loans as discussed in greater detail below.[369] Consistent with current interagency

[368] Under the proposal, small banks and intermediate banks would not be subject to the proposed Retail Services and Products Test. See proposed § ____.21(b)(2) and (3). As discussed in the section-by-section analysis of § ____.21, the agencies proposed that small banks would be evaluated under the performance standards for small banks under proposed § ____.29(a), but could opt to be evaluated under the Retail Lending Test. *See* proposed § ____.21(b)(3); *see also* final § ____.21(a)(3).

[369] Proposed § ____.13(c)(1).

guidance,[370] this proposed provision was intended to encourage support for highly responsive activities that are relevant to small businesses and small farms, as well as coordination among banks, government agencies, and other program participants. The proposed gross annual revenue threshold of $5 million or less for qualifying businesses or farms would not be required for activities that support business or farms through these government plans, programs, or initiatives, or through the specified entities. Instead, the size standards used by the respective government plans, programs, or initiatives to qualify business or farms as small would apply.[371]

The agencies also proposed to specify that lending to, investing in, or providing services to an SBDC, SBIC, New Markets Venture Capital Company, qualified CDE, or RBIC would qualify as economic development. With certain technical differences, this aspect of the proposal generally would memorialize existing guidance which presumes that activities with these entities promote economic development.[372] By including this list in the proposed regulation, the agencies intended to provide greater clarity and encourage the continued participation in, and support of, programs offered through these key providers of small business and small farm financing.

Comments Received

Several commenters supported § ____.13(c)(1) as proposed, with multiple commenters specifically supporting the agencies' inclusion of SBDCs in this component of the economic development category. A few commenters supported relying on the size standards used by the respective government programs to qualify activities, with a commenter noting that the proposal to allow consideration for activities that meet the size standards of the applicable government program would allow support for some larger businesses and would accommodate some level of intentional job creation. Commenter feedback also included a suggestion that the agencies include an express ''presumption'' of qualification for CRA credit for activities in connection with SBDCs, SBICs, RBICs, New Markets Venture Capital Companies, as well as Federal, State, local, or tribal government plans or programs.[373] Commenters also suggested that loans and investments should be considered if they finance, either directly or through an intermediary, businesses or farms that either meet the size eligibility standards of the SBDC or SBIC programs or have $5 million in gross annual revenues or less.

On the other hand, a commenter objected to the proposal to rely on the small business and small farm size standards of the applicable government plan, program, or initiative, asserting that government programs often do a poor job of targeting businesses owned by low- and moderate-income individuals. This commenter urged the agencies to adopt a $5 million maximum gross annual revenue threshold for small businesses and farms under this component, asserting that this would be important for consistency in small business and small farm size standards across the regulation.

A few commenters expressed concerns about the presumption of qualifications for SBICs. For example, one of these commenters raised doubts as to how well SBICs serve targeted groups and suggested that SBICs should not automatically garner CRA credit.

Final Rule

The agencies are finalizing proposed § ____.13(c)(1) with revisions to the proposed activities undertaken with government plans, programs or initiatives for specificity and clarity. Final § ____.13(c)(1) adopts ''Government-related support for small businesses and small farms'' as the paragraph header for this component; this provision encompasses loans, investments, or services that are undertaken in conjunction or in syndication with Federal, State, local, or tribal government plans, programs, or initiatives. Such loans, investments, or services can be made or provided directly or indirectly to or in small businesses or small farms, as described below.

The final rule under § ____.13(c)(1) replaces the proposed rule text referencing activities undertaken ''consistent with'' Federal, State, local, or tribal government, plans, programs, or initiatives with the phrase ''in conjunction or in syndication with'' these plans, programs, or initiatives. In this way, the final rule emphasizes the intended link between loans, investments, or services that will qualify as economic development under this prong with Federal, State, local, or tribal government, plans, programs, or initiatives. The final rule adds ''in syndication with'' for clarity, to refer to those loans extended to a single borrower by a group of entities. The agencies believe that qualifying activities in conjunction with or in syndication with government plans, programs, or initiatives helps ensure that activities are responsive to the credit needs of small businesses and small farms, in alignment with the goals of CRA. In this regard, the agencies believe that government plans, programs, or initiatives are general indicators of community needs, and thus provide a mechanism for ensuring that activities are intentional and support the needs of small businesses and small farms. In addition, the nexus to government plans, programs, and initiatives provides transparency regarding program requirements and certainty for qualification, which the agencies believe is important for all stakeholders.

As noted above and as described below, final § ____.13(c)(1) is organized into two subcomponents: loans, investments, and services other than direct loans to small businesses and small farms (final § ____.13(c)(1)(i)); and direct loans to small businesses and small farms (final § ____.13(c)(1)(ii)).

Section ____.13(c)(1)(i) Loans, Investments, and Services Other Than Direct Loans to Small Businesses and Small Farms

The final rule in § ____.13(c)(1)(i) provides that loans, investments, and services, excluding direct loans to small businesses and small farms, that are undertaken in conjunction or in syndication with Federal, State, local, or tribal governments are eligible for consideration as economic development. Consistent with the proposal, under final § ____.13(c)(1)(i), loans, investments, and services may support small businesses or small farms in accordance with how small businesses and small farms are defined in the applicable plan, program, or initiative. If the government plan, program, or initiative does not identify

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

[371] *See id.*

[372] *See* Q&A § ____.12(g)(3)–1 (stating that ''the agencies will presume that any loan or service to or investment in a SBDC, SBIC, [RBIC], New Markets Venture Capital Company, New Markets Tax Credit-eligible [CDE], or [CDFI] that finances small businesses or small farms, promotes economic development'').

[373] As noted earlier in this section-by-section analysis, the proposal specifies that ''[e]conomic 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, . . . including lending to, investing in, or providing services to an [SBCD] (13 CFR 120.10), [SBIC] (13 CFR 107), New Markets Venture Capital Company (13 CFR 108), qualified [CDE] (26 U.S.C. 45D(c)), or [RBIC] (7 CFR 4290.50).'' *See also* Q&A § ____.12(g)(3)–1.

a standard for the size of the small businesses or small farms supported by the plan, program, or initiative, the small businesses or small farms supported must meet the definition of small business or small farm in final § ____.12. Also consistent with the proposal, loans to, investments in, or services provided to the following are presumed to meet the criteria of final § ____.13(c)(1)(i): SBICs; New Markets Venture Capital Companies; qualified CDEs; and RBICs.

Under final § ____.13(c)(1)(i), for example, an investment in a microloan program operated by a local government could be considered provided that this activity met the required criteria. The agencies are finalizing the provision regarding certain Federal programs to memorialize current interagency guidance and, as noted in the proposal, provide greater clarity and encourage the continued participation in, and support of, plans, programs or initiatives offered through these key providers of small business and small farm financing.[374]

The agencies understand that some commenters oppose the express presumption of qualification for activities in connection with SBICs because of concerns regarding how well SBICs serve certain groups of business owners, but the agencies believe that it is important to recognize them in the final rule because they offer an opportunity for banks to provide an important source of capital to grow small businesses.[375] The agencies note that specifying SBICs and other entities in the final rule provides greater clarity and certainty about the types of loans, investments and services that may receive consideration under this subcomponent.

The final rule also provides consistency for stakeholders with the current framework. As noted, this subcomponent of the economic development final rule generally memorializes current interagency guidance, which provides that any loan or service to or investment in an SBDC, SBIC, RBIC, New Markets Venture Capital Company, NMTC-eligible CDE, or CDFI that finances small businesses or small farms, is presumed to promote economic development. [376] As the proposal, final § ____.13(c)(1)(i) does not mention CDFIs, as activities with CDFIs are considered under a separate category of community development in the final rule.[377]

Size eligibility standard under final § ____.13(c)(1)(i). As noted, for this subcomponent of economic development, the agencies are adopting a size standard for businesses or farms that are supported by government plans, programs, or initiatives that aligns with relevant size standards for small businesses and small farms intended to be the beneficiaries of the applicable government plan, program, or initiative. The size standard could be lower or higher than the $5 million gross annual revenue threshold that would otherwise apply under the category, or it could be expressed in terms of employee size or some other measure. However, if the government plan, program, or initiative does not define a size standard for small businesses or small farms that it supports then the gross annual revenue consistent with the small business and small farm definitions in § ____.12 (gross annual revenue of $5 million or less), would apply.

The agencies are not adopting a maximum gross annual revenue threshold of $5 million for all small businesses and small farms under § ____.13(c)(1)(i) because the agencies believe that standards vary across different government plans, programs, and initiatives to address various community development and small business or farm needs; the standards in the final rule are designed to accommodate the ways in which these plans, programs, and initiatives may be tailored to respond to community needs. The agencies understand that government plans, programs, and initiatives will likely identify the standard for the size of business or farm supported and believe it is appropriate to maintain flexibility. However, for clarity, the final rule provides that, in the absence of a size standard established by the government program, plan, or initiative, the business or farm supported by the government program, plan, or initiative must meet the definition of ''small business'' or ''small farm'' as defined in § ____.12.

The agencies considered the feedback provided by commenters advocating for a higher or lower threshold for various reasons, including views that the proposed approach would eliminate credit or stifle growth for many businesses or would create a disincentive for banks to support very small businesses and minority-owned businesses. The agencies, however, believe the size standards established by the government program or as provided in the definition for small business and small farms in § ____.12 will capture activities that support a broad range of small businesses and small farms, while providing clarity. The agencies also note that support for small businesses and small farms under final § ____.13(c)(2) and (3) is more targeted, to small businesses and small farms with gross annual revenues of $5 million or less, which the agencies believe will appropriately focus those activities on smaller businesses. In addition, the impact and responsiveness review under final § ____.15 includes as a review factor support for small businesses or small farms with gross annual revenues of $250,000 or less.[378]

Section ____.13(c)(1)(ii) Direct Loans to Small Businesses and Small Farms

The agencies are adopting a second subcomponent in final § _.13(c)(1)(ii) to provide consideration of certain direct loans to small businesses and small farms. Specifically, under final § ____.13(c)(1)(ii), the economic development category of community development would include loans by a bank directly to businesses or farms, including, but not limited to, loans in conjunction or syndicated with an SBDC or SBIC, that meet the following size and purpose criteria:

- *Size eligibility standard.* The loans must be to businesses and farms that meet the size eligibility standards of the SBDC or SBIC programs or that meet the definition of small business or small farm in § ____.12 (final § ____.13(c)(1)(ii)(A)).
- *Purpose test.* The loans must have the purpose of promoting permanent job creation or retention for low- or moderate-income individuals or in low- or moderate-income census tracts (final § ____.13(c)(1)(ii)(B)).

The agencies considered broad commenter feedback that loans made to small businesses and small farms should be considered under economic development and that a ''size'' and ''purpose'' test should be retained for various reasons. The agencies understand commenter concerns that certain loans to small businesses do have a community development purpose and should be considered as community development loans. The agencies are also sensitive to expressed concerns about the potential reduction in qualifying loans if direct lending to small businesses is not included in the economic development category of the final rule. As stated in the proposal, the

[374] *See* Q&A § ____.12(g)(3)–1.

[375] *See generally,* SBA, ''The Small Business Investment Company (SBIC) Program Overview'' (Oct. 1, 2018), *https://www.sba.gov/sites/sbagov/files/2019-02/2018%20SBIC%20Executive%20Summary.pdf.*

[376] *See* Q&A § ____.12(g)(3)–1.

[377] *See* final § ____.13(k) and the accompanying section-by-section analysis.

[378] *See* final § ____.15(b)(6) and the accompanying section-by-section analysis.

agencies believe that loans to small business and small farm are generally more suitable for consideration under the Retail Lending Test. However, the agencies have carefully considered the many comments on this issue, and believe there are certain loans to small businesses and small farms that would align with the goals of community development.

The first eligibility criterion—that the loans are made in conjunction or in syndication with a government plan, program, or initiative—is the same standard that applies to activities under final § ____.13(c)(1)(i) that are not direct loans to small businesses and small farms. As stated previously, the agencies believe that this criterion helps to demonstrate that the loans are responsive to identified community needs and support articulated community development goals. In addition, this criterion will increase certainty and transparency by setting a clear standard for determining that an activity qualifies as community development. This provision further specifies that loans in conjunction or syndication with SBDCs and SBICs, and that meet the size and purpose criteria, are considered to qualify as economic development under final § ____.13(c)(1)(ii). As similarly discussed in the section-by-section analysis of final § ____.13(c)(1)(i), the agencies believe that noting these programs in the rule text provides helpful clarity and transparency, as well as assurance that loans in conjunction or syndication with these programs, which serve an important role within the ecosystem of small business and small farm lending, will continue to qualify as economic development under the final rule.

Size eligibility standard. On consideration of the comments on a size eligibility standard for economic development and further deliberation, the agencies are adopting a size eligibility standard for direct loans to small businesses or small farms that aligns with the current CRA framework's size standard, discussed above—namely, the size standards of the SBDC or SBIC programs—in addition to including loans supporting businesses of gross annual revenues of $5 million or less. The agencies believe that adopting these size standards for direct lending to small businesses under the economic development category of community development will provide consistency with the current CRA framework, which will foster certainty and predictability for banks engaging in this lending.

Purpose test. The agencies are also adopting a purpose test to qualify certain direct loans to small businesses and small farms under final § ____.13(c)(1)(ii)(B). As previously noted, loans that may be considered to be economic development under final § ____.13(c)(1)(ii) must have the purpose of promoting permanent job creation or retention for low- or moderate-income individuals or in low- or moderate-income census tracts. The agencies carefully considered commenter feedback on a purpose test for qualifying economic development activities. As discussed above, many commenters supported retaining job creation, retention, and improvement as a component of the economic development category. The agencies acknowledge feedback indicating that the current purpose test is helpful for encouraging jobs-focused activities, and have deliberated further on commenter concerns that the proposed approach to evaluate loans to small businesses and farms under the Retail Lending Test might not sufficiently recognize job-related activities benefiting low- and moderate-income individuals and communities. At the same time, the agencies have considered feedback that elimination of the purpose test provides greater flexibility and opens up the possibility of more activities meeting a wider range of small business and small farm credit needs to qualify as economic development.

On balance, the agencies determined it appropriate to retain consideration of direct loans to small businesses and small farms, in conjunction or syndication with a government plan, program, or initiative, and to apply a purpose test to this subcomponent of economic development, which is intended generally to align with the current purpose test and to be responsive to suggestions and concerns raised by commenters. Recognizing the benefits that commenters have noted of removing the purpose test from the economic development category of community development, however, the agencies are not applying the purpose test to final § ____.13(c)(1)(i) or (c)(2) or (3).

In adopting the purpose test for permanent job creation and retention for final § ____.13(c)(1)(ii)(B), the agencies sought to recognize the contributions of small businesses and small farms in communities, particularly with respect to long-term job opportunities for low- or moderate-income individuals. In addition to considering prior stakeholder feedback and comments on the proposal, the agencies considered their own supervisory experience regarding the complexities involved under the current purpose test in determining whether small business and small farm loans support permanent job creation, retention, or improvement for low- or moderate-income individuals and low- or moderate-income census tracts. In addition, the agencies considered feedback that eliminating the purpose test from the final rule on economic development entirely could result in different standards for community development investments versus PWIs.[379]

The purpose test adopted in final § ____.13(c)(1)(ii)(A) requires that the loan proceeds are applied for the purpose of promoting permanent job creation or retention for low- or moderate-income individuals or in low- or moderate-income census tracts. As noted, loans that are made by a bank directly to small businesses or small farms in conjunction or in syndication with an SBDC or SBIC presumptively qualify under this prong but are not the exclusive loans that qualify; other loans that are made in conjunction or in syndication with other government programs, plans, or initiatives and that meet the size and purpose criteria could also qualify. For example, an SBA 7(a) loan[380] extended for the purpose of purchasing new long-term machinery and that would allow a small business to hire additional employees could qualify, provided it also met other required criteria. A loan to support a facility improvement in conjunction with a State loan guarantee program associated with the State Small Business Credit Initiative could qualify provide it met all necessary criteria.[381] A working capital loan in conjunction with a State program that is for the purpose of retaining employees could qualify provided other required criteria are met. However, loans that fund general business operations would be less likely to qualify without additional information on whether the loan proceeds would be applied for the purpose of job creation or retention. The agencies believe that the purpose test under the final rule aligns appropriately with the current purpose test, with clarifying modifications discussed below, to provide continued encouragement of banks in extending

[379] The agencies have noted comments on the proposal related to PWIs, and will continue to be aware of intersections between the CRA and PWI frameworks in supervising banks.

[380] *See* SBA, ''7(a) Loans,'' *https://www.sba.gov/funding-programs/loans/7a-loans*.

[381] *See* U.S. Dept. of Treasury, ''State Small Business Credit Initiative,'' *https://home.treasury.gov/policy-issues/small-business-programs/state-small-business-credit-initiative-ssbci.*

loans to small businesses and small farms as a community development activity.

In keeping with current guidance, the purpose test in the final rule focuses on job-related benefits for low- or moderate-income individuals and low- or moderate-income census tracts.[382] Other items mentioned in the guidance—areas targeted for redevelopment by Federal, State, local, or tribal governments; intermediaries supporting small businesses and small farms; and technical assistance to small business and small farms—are incorporated elsewhere in the final rule provisions regarding community development.[383]

As explained above, under the current purpose test, a loan for the purpose of job improvement could qualify under economic development as long the loan met other criteria. The agencies are not adopting ''job improvement'' as a factor under the purpose test in this final rule. Although the agencies did not receive comments specific only to ''job improvement'' in feedback concerning the purpose test or economic development in general, based on supervisory experience, the agencies believe that difficulties arise in demonstrating and determining whether a loan promotes job improvement, presenting challenges to establishing predictable and workable standards for both compliance and supervision. In addition, the amount of time, resources, and expertise needed to fairly evaluate the quality of jobs could be overly burdensome for both the bank and examiners. However, job improvement is closely tied to workforce development and training programs and the agencies believe in the importance of the contributions these programs make into communities. Therefore, the final rule provides that workforce development or training programs can be considered community development as a community supportive service pursuant to § ____.13(d), discussed in more detail in the section-by-section analysis of § ____.13(d).

Relatedly, the final rule does not incorporate particular standards regarding the quality of jobs for low- and moderate-income individuals, including wage levels and other wage-related considerations. The agencies considered views and suggestions offered by commenters on this topic, and have determined that it would be difficult to address job quality in the rule in a manner that would effectively and consistently account for the many diverse types of small businesses and small farms in different industry sectors.

The agencies believe that the final rule's purpose test, focused on job creation and retention, will provide greater clarity relative to the current purpose test, thereby facilitating bank lending under this subcomponent of the final rule on economic development, and improved consistency and transparency in the agencies' evaluations of this lending.

Consideration of Loans to Small Businesses and Small Farms Under the Retail Lending Test and Community Development Financing Test

Final § ____.13(c)(1)(ii) recognizes certain direct loans to small businesses and small farms that benefit local communities and have specific community development goals, but that are not evaluated under the Retail Lending Test.[384] In addition, the final rule provides that certain direct loans by banks to small businesses or small farms may be considered under both the Community Development Financing Test and the Retail Lending Test, if they qualify for consideration under both tests. This approach is a change from the current rule where, as discussed above, loans to businesses with an origination amount of $1 million or less and loans to farms with an origination amount of $500,000 or less generally are evaluated only under the lending test, while loans that exceed the applicable loan amount can be considered as a community development loan if they meet the current size and purpose test. However, unlike under the current rule, which provides that the same loan cannot be counted as both a retail loan and a community development loan, the final rule allows small business and small farm loans to qualify under both the Retail Lending Test and Community Development Financing Test. This is also different from the agencies' proposal, which would have considered reported loans made directly to small businesses and small farms under the Retail Lending Test.

The agencies believe that this approach is appropriate because the Retail Lending Test and Community Development Financing Test generally focus on a different aspect of a bank's direct lending to small businesses and small farms: in general, under the Retail Lending Test's distribution analysis, the share of loans (based on loan count) to small businesses and small farms at different revenue levels is considered,[385] while under the Community Development Financing Test, the dollar volume of loans is considered, as well as their impact and responsiveness.[386] With respect to direct loans to small businesses and small farms that qualify as economic development under final § ____.13(c)(1)(ii), the agencies believe that this approach allows for a holistic evaluation of bank engagement in this lending.

Section ____.13(c)(2) Intermediary Support for Small Businesses and Small Farms

The Agencies' Proposal

Under proposed § ____.13(c)(2), the second component of the proposed economic development category would comprise ''[s]upport 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.'' This provision was intended to promote and facilitate access to capital for smaller businesses and farms. The agencies proposed to use the same gross annual revenue standard for small businesses and farms in this provision as in other parts of the proposal for simplicity and consistency.

The current regulation and interagency guidance on community development activities does not specifically address financial intermediaries that increase access to capital for small businesses and small farms; proposed § ____.13(c)(2) was intended to respond to stakeholder feedback emphasizing, and the agencies' recognition of, the importance of these intermediaries. Examples of financial intermediaries that the agencies intended this provision to cover included 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.

Comments Received

Many commenters provided a range of views on proposed § ____.13(c)(2),

[382] *See* Q&A § ____.12(g)(3)–1.

[383] *See id. See also, e.g.,* final § ____.13(e) and (j)(2) (revitalization or stabilization activities in targeted census tracts and in Native Land Areas, respectively), (c)(2) (intermediary support for small businesses and small farms), and (c)(3) (other assistance for small businesses and small farms).

[384] For discussion of the standards for evaluating loans under the Retail Lending Test, see the section-by-section analysis of § ____.22.

[385] *See* final § ____.22(e) and the accompanying section-by-section analysis. The agencies note that, consistent with the proposal, the dollar volume of small business and small farm lending would be considered in the Retail Lending Volume Screen of the final rule. *See* final § ____.22(c) and the accompanying section-by-section analysis.

[386] *See* final § ____.24 and the accompanying section-by-section analysis.

including a variety of suggestions for revisions. Some commenters expressly supported proposed § ____.13(c)(2) without any further suggestions for additions or clarifications. Several commenters suggested that CDFIs be considered an eligible financial intermediary under this component. Several other commenters raised concerns that the removal of the current ''size'' test and ''purpose'' test would result in certain financial intermediaries being excluded from the economic development category and that this would limit access to capital for small businesses. Some of these commenters suggested including support for financial intermediaries or loan funds that are not licensed or certified by the SBA but that lend to or invest in small businesses that meet the size eligibility standards of the SBA's SBIC or SBDC programs (which might exceed $5 million in gross annual revenues). Another commenter similarly and more specifically requested that the agencies include in the definition of economic development financial intermediaries that lend to, invest in, or provide technical assistance to businesses that: (1) have more than $5 million in gross annual revenues but still meet the size eligibility standards of the SBDC or SBIC Programs; and (2) support permanent job creation, retention, and/or improvement for low- and moderate-income individuals, in low- and moderate-income areas, or in areas targeted for redevelopment.

Some commenters who supported retaining job creation, retention, or improvement suggested that the final rule should clearly include consideration of investments and loans to financial intermediaries that support small business and small farms for the demonstrable purposes of job creation, retention, or improvement for low- and moderate-income individuals. Another commenter suggested that this component should also consider loans and investments made to CDFIs to support small businesses with less than $5 million gross annual revenues, as these also help to create jobs. A commenter suggested that consideration for loans and investments to Community Action Agencies [387] be presumed to advance economic development through workforce development, indicating that workforce development has been central to the creation and function of these entities.[388] Another commenter suggested that the proposal for financial intermediary support should also recognize loans and investments made to support projects using NMTCs,[389] as well as activities that support economic development initiatives of universities and local chambers of commerce.

Some commenters emphasized that many financial intermediaries that are not certified SBICs, are minority-led and women-led and that such entities play an important role in providing access to capital for minority- and women-owned businesses. One of these commenters noted that many of these companies that fund small businesses in underserved communities face challenges becoming SBICs and suggested that the agencies provide consideration for non-SBICs that are owned by minorities and women as long as these companies adhere to SBIC net worth and after-tax income size limits. Another commenter suggested that loans to minority-owned small businesses should be presumed to promote economic development and receive CRA credit.

An additional commenter similarly suggested that the agencies should clarify that banks can receive credit for economic development activities that include investments and loans in a minority-owned small business or minority-owned financial intermediaries and that, at a minimum, these activities should count for credit if they achieve impact outcomes like job creation, retention, or improvement for low- to moderate-income persons or areas. Other feedback included concerns that, without more clarifications about the intended coverage of proposed § ____.13(c)(2), banks would tend to favor activities with SBICs under proposed § ____.13(c)(1), and that this would disadvantage minority-owned enterprises and first-time fund managers. At least one commenter supported coverage of activities with financial intermediaries that are not SBICs in the economic development category if these activities create, retain or improve jobs. A commenter suggested that this prong also include investments in Qualified Opportunity Funds that include low- and moderate-income census tracts in designated Opportunity Zones.[390]

On a technical note, a commenter requested that the term ''support'' in the proposed regulatory text be further clarified to mean loans, investments, and services to financial intermediaries. Another commenter stated that the proposal did not specifically address financial intermediaries that increase access to capital for small businesses, asserting that determining business size later in the process would be inappropriate. Both industry and community group stakeholders have stressed the importance of financial intermediaries, such as loan funds, in providing access to financing for small businesses that are not ready for traditional bank financing. In addition, some commenters recommended clarifying that the size of the small business or small farm be determined at the time of the investment by the financial intermediary, noting that because the purpose of these investments is to support the growth of the business.

Final Rule

For the reasons discussed below, the agencies are finalizing proposed § ____.13(c)(2) to include in the economic development category intermediaries that support small businesses and small farms; however, the final rule expands the type of intermediaries considered under this component and adopts several revisions for clarity and consistency with other prongs in the economic development category. Additionally, the final rule provides examples of the types of support an intermediary can provide to a small business or small farm. Specifically, final § ____.13(c)(2) provides that loans, investments, or services provided to intermediaries that lend to, invest in, or provide assistance, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms can be considered under economic development.

The final rule broadens the types of intermediaries that may be considered under this category beyond financial intermediaries, by removing the word ''financial'' from the description of this category. Instead, under the final rule, non-financial intermediaries such as business incubators and small business assistance providers can be considered along with financial intermediaries such as nonprofit revolving loan funds. The agencies intend that the expansion of the types of intermediaries that can be included under this component will

[387] *See* Economic Opportunity Act of 1964, tit. II, Public Law 88–452, 78 Stat. 516–24 (1964).

[388] *See* Q&A § ____.12(g)(3)–1 (providing that activities are considered to promote economic development if they support ''Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by low- or moderate-income person to jobs or to job training or workforce development programs'').

[389] *See, e.g.,* Internal Revenue Service (IRS), LMSB–04–0510–016, ''New Markets Tax Credits'' (May 2010), *https://www.irs.gov/pub/irs-utl/atgnmtc.pdf.*

[390] *See, e.g.,* IRS, ''Opportunity Zones,'' FS–2020–13 (updated Apr. 2022), *https://www.irs.gov/newsroom/opportunity-zones* (discussing both Opportunity Zones and Qualified Opportunity Funds).

help address commenter concerns about some intermediaries that could be covered under the current rule potentially being excluded under the proposal, such as those that support primarily support businesses with gross annual revenue above $5 million, and better ensure recognition of the range of intermediaries providing support for small businesses and small farms. The agencies intend that many of the intermediaries that could be considered under the current rule would continue to qualify under this component if they support small businesses and farms through loans, services, and investments. The agencies recognize that there are many types of intermediaries, including those that support minority-owned small businesses, as mentioned by commenters, and that financial intermediaries play a critical role in providing access to capital for small businesses and small farms when traditional bank financing might not be possible. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

To address commenter requests for clarification regarding the coverage of the proposed financial intermediary prong, the agencies note that, consistent with the proposal, the intermediaries under final § ____.13(c)(2) are distinct from intermediaries that provide government-related support to small businesses and small farms under final § ____.13(c)(1)(i); this allows for non-SBIC and other non-government-related intermediaries to be included in the economic development category. The agencies also recognize that intermediaries can provide support to businesses or farms of all sizes; however, consistent with the proposal, support for intermediaries under final § ____.13(c)(2) is focused on intermediary lending to, investments in, and services to businesses and farms with gross annual revenues of $5 million or less.[391] The agencies believe that, for non-government-related aspects of economic development, a gross annual revenue threshold of $5 million for supported businesses and farms will foster clarity regarding the availability and consistency in application. The agencies also believe that this size standard will allow support for a wide range of financing, including the smallest businesses. For further discussion of the definition of the definition of small business and small farm in the final rule, see final § ____.12 (''small business'' and ''small farm'') and accompanying section-by-section analysis.

The final rule also clarifies that ''support'' for intermediaries means loans, investments, or services provided to intermediaries that lend to, invest in, or provide assistance to small businesses or small farms. As noted, in response to commenter concern that the term ''support'' in the proposal was not clear. Examples of activities that could be considered under this category are provided in the final rule and include financial counseling, shared space, technology, or administrative assistance.

The agencies did not adopt in the final rule a specific criterion for the point in time when the size of the small business or small farm should be determined, as suggested by some commenters. However, the agencies generally believe that this determination should be based on the size of the small business or small farm at the time of the activity undertaken by the intermediary.

The agencies also decline to specify that CDFIs are considered an eligible financial intermediary under this prong. The agencies recognize that CDFIs are important financial intermediaries, but rather than list them as qualified intermediaries for multiple community development categories, the agencies have adopted in the final rule that a bank will receive community development consideration if a loan, investment, or service involves a CDFI as specified under final § ____.13(k). In addition, the final rule establishes, as an impact and responsiveness review factor, consideration of whether a loan, investment, or services supports a CDFI.[392]

The agencies decline to include in this prong investments in Qualified Opportunity Funds that support projects in designated Opportunity Zones.[393] The agencies do not believe that such activities are specifically designed or structured to support small businesses and small farms and therefore, loans or investments in Qualified Opportunity Funds would not likely meet criteria for economic development. However, the activity may qualify for community development credit under other categories of community development, such as revitalization and stabilization under § ____.13(e), so long as the activity meets the criteria for the relevant community development category.

Section ____.13(c)(3) Other Support for Small Businesses and Small Farms

The Agencies' Proposal

Proposed § ____.13(c)(3) would have established a third prong of the economic development category: ''[p]roviding 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.'' This provision would have included services such as ''shared space, technology, or administrative assistance'' and codified current guidance highlighting these services.[394] The agencies proposed this provision in recognition that some small businesses and small farms might not be prepared to obtain traditional bank financing and might need technical assistance and other services, including technical assistance and services provided directly by a bank, to obtain credit in the future.

Comments Received

Commenters on proposed § ____.13(c)(3) broadly supported it. A commenter asserted that this component would fill a gap in needed services for small businesses and small farms and play a critical role in helping a small business and small farm grow and thrive. Another commenter suggested including consideration in this economic development category for financial literacy training, community-owned real estate financing, and financial products and programs for immigrant and immigrant-owned businesses.

Final Rule

For the reasons discussed below, the final rule adopts, with clarifying edits, proposed § ____.13(c)(3) to provide clarity regarding support for small

[391] The standards for banks to receive full credit for these loans, investments, and services are discussed further in the section-by-section analysis of final § ____.13(a). *See, e.g.,* final § ____.13(a)(1)(i)(B)(*3*).

[392] For further discussion of the final rule provisions on CDFIs, see the section-by-section analysis of final § ____.13(k) and final § ____.15(b)(4).

[393] *See* IRS, ''Opportunity Zones,'' FS–2020–13 (Aug. 2020; updated Apr. 2022) (discussing both Opportunity Zones and Qualified Opportunity Funds), *https://www.irs.gov/newsroom/opportunity-zones.*

[394] *See* Q&A § ____.12(g)(3)–1 (providing that loans, investments, or services are considered to ''promote economic development'' if they ''support permanent job creation, retention, and/or improvement . . . through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance'').

businesses and small farms that is not provided through intermediaries. Specifically, final § ____.13(c)(3) states that assistance, such as financial counseling, shared space, technology, or administrative assistance, provided to small businesses and small farms can be considered economic development. To distinguish these activities from government-related support and intermediary support, these activities are referred to as ''other support for small businesses and small farms'' under the final rule, and are intended to include such services that are provided directly by a bank.

The agencies made several clarifying edits to the proposal for this component in the final rule. First, the agencies removed ''technical'' from the rule text out of recognition that providing access to space or technology goes beyond technical assistance and that this term might be applied and understood inconsistently. Second, the agencies removed the $5 million gross annual revenues when referring to small businesses and small farms because these terms are defined in final § ____.12 (discussed further in the section-by-section analysis of final § ____.12). Finally, the agencies removed ''primary purpose'' to reference the level of support to businesses or farms to be consistent with the majority standard as described in final § ____.13(a), discussed further in the section-by-section analysis of final § ____.13(a).

The agencies acknowledge commenter feedback that some small businesses and small farms may not be in a position to obtain traditional bank financing and, as such, may need assistance to obtain credit in the future. The agencies believe that providing CRA consideration for assistance that supports small businesses and small farms will afford banks with recognition for the positive role they play in facilitating small business and small farm credit access. The agencies have noted through past experience that banks can play an important role in supporting, and directly providing the types of assistance that help small businesses and small farms obtain financing, which in turn strengthens small businesses and small farms,[395] fostering their growth and durability.

In response a commenter's suggestion that banks should receive consideration for providing financial literacy training, community-owned real estate financing, and financial products and programs for immigrant and immigrant-owned businesses, the agencies note that financial counseling is specified as an example of the type of assistance that could be considered under final § ____.13(c)(3). Additionally, the final rule provides that banks may receive community development consideration for other types of financial literacy programs under final § ____.13(l), discussed further in the section-by-section analysis of § ____.13(l). The other items suggested by the commenter could also be considered under the economic development category, or other community development categories, assuming that the activities meet the appropriate criteria.

Evaluation Approach Prior to Section 1071 Data Availability

The Agencies' Proposal and Comments Received

The agencies sought feedback on whether loans made directly by banks to small businesses and small farms that are currently evaluated as community development loans should continue to be considered community development loans until these loans are assessed as reported loans under the Retail Lending Test. Most commenters who opined on this question asserted that loans to small businesses and small farms should be considered community development loans during this transition period. For example, a commenter suggested that current guidance should be used to qualify loans to small businesses and small farms under the Community Development Finance Test until loans are evaluated as reported loans under the proposed Retail Lending Test.[396] Similarly, a few commenters suggested that loans larger than $1 million to small businesses and small farms should be considered community development loans, as they are currently, until section 1071 data are available, and these loans are evaluated as reported loans under the proposed Retail Lending Test.[397] A few commenters suggested that during the transition period, banks should have the option of having loans evaluated under the proposed Community Development Financing Test or under the proposed Retail Lending Test. Another commenter suggested that banks should always have the option to report small business loans as community development loans if the economic development criteria are met.

Other commenters expressed concern with allowing banks to receive community development credit for loans that will be considered under the Retail Lending Test once section 1071 data are available and used in CRA evaluations. A commenter suggested that a bank should not be allowed to have these loans considered as community development loans only if the majority of the bank's examination cycle took place before the final rule was implemented. Along the same lines, a commenter expressed concern that evaluating loans to small businesses and small farms as community development activities until they are assessed as reported loans under the Retail Lending Test could allow banks to receive credit for the same activity multiple times, and suggested that the loans should count only once, unless there is some change or expansion of the activity, such as an increased loan amount or new loan payment deferment option.

Final Rule

The agencies appreciate feedback from commenters regarding whether to continue to evaluate loans to small businesses and small farms as community development loans, if such loans meet the current specified criteria, prior to the availability of section 1071 data. The agencies considered the comments, including those that suggested providing banks the option to select consideration for these loans under either the proposed Community Development Financing Test or proposed Retail Lending Test during this interim period, or continuing to evaluate the loans under current interagency guidance until the CFPB section 1071 data are available and the reported loans can be evaluated under the proposed Retail Lending Test. On further consideration of this issue, the agencies have determined that continuing with the current evaluation approach or developing an interim approach for evaluating loans to small businesses and small farms loans during the interim period between the applicability date for final § ____.13(c) and availability and use in CRA evaluations of section 1071 data is not necessary. As discussed above regarding final § ____.13(c)(1)(ii), the final rule provides consideration of certain direct loans to small businesses and small farms as community development loans. This approach would enable certain government-related direct loans to businesses and farms that meet the criteria in final § ____.13(c)(1)(ii)

[395] *See, e.g.,* OCC, ''Community Development Loan Funds: Partnership Opportunities for Banks,'' Community Development Insights (Oct. 2014), *https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-insights/pub-insights-oct-2014.pdf*; Financial Services Forum, ''Supporting Historically Underserved Communities,'' *https://fsforum.com/our-impact/supporting-underserved-communities.*

[396] Q&A § ____.12(g)(3)–1.

[397] *Id.*

considered under economic development as soon as this provision of the final rule becomes effective. The agencies believe that this approach will provide greater clarity and reduce potential confusion and complexity during the interim period rather than continuing to apply current standards for considering loans to small businesses and small farms to be community development loans.[398] The agencies note that, except for certain loans to small businesses and small farms as explained above, most lending to small businesses and small farms will be evaluated under the Retail Lending Test, and that the definitions for small business and small farm loans are subject to the final rule's transition amendments.[399]

Regarding the concern expressed by a commenter that evaluating loans to small businesses and small farms as community development until such loans are assessed under the Retail Lending Test would allow banks to get credit for the same activity multiple times, the agencies acknowledge, as discussed above, that some loans to small businesses and small farms that meet the criteria under final § ____.13(c)(1)(ii) will be considered under both the Retail Lending Test and Community Development Financing Test. However, the agencies do not believe that this would result in double counting because the final rule provides that different aspects of such loans would be considered under the applicable test.

Workforce Development and Job Training

The current regulations do not mention workforce development and training programs in the definition of community development [400] (including the economic development category of that definition [401]), but the Interagency Questions and Answers provide that loans, investments, and services supporting these activities for businesses and farms that meet the ''size'' test discussed above are considered to ''promote economic development.'' [402] The agencies proposed to consider workforce development and job training program activities under the community supportive services category of community development and this was generally supported by commenters who opined on this issue. Therefore, the agencies are adopting workforce development and job training as proposed as a community supportive services category under final § ____.13(d). See the section-by-section analysis of community supportive services in final § ____.13(d) below for additional discussion of the comments received and final rule.

Additional Issues

The agencies received other comments related to the economic development category. A few commenters suggested adding certain types of activities to those that could be considered for CRA credit under the economic development category. For example, a commenter suggested that loan referrals made by banks to CDFIs for small business loans should qualify and also suggested that loan referrals made by banks to non-bank lenders or fintech companies that have a mission of economic development that is consistent with the goals of the CRA should also qualify as economic development; this commenter asserted that partnerships between traditional and non-traditional lenders could increase access to capital for low-income geographic areas.

A few commenters suggested that if loans to small business and small farms are considered under the proposed Retail Lending Test, loans to minority-owned small businesses should nonetheless be considered separately as a qualifying activity under the economic development category of community development. Lastly, a commenter stated that the agencies' proposal was innovative but suggested that training for nonprofit organizations could be needed, as activities that are currently considered as community development might be considered under different performance tests.

The agencies decline to add a prong to the economic development category under final § ____.13(c) to provide specific consideration for additional types of activities, such as loan referrals made by banks to CDFIs or those made by banks to nonbank lenders, as suggested by commenters. The agencies understand from commenters that partnerships between traditional and nontraditional lenders are important because of the potential to increase capital to small businesses and small farms. As discussed further in the section-by-section analysis of final § ____.23(c), such activities may qualify for consideration under the Retail Services and Products Test as such activities may help facilitate responsive credit products and programs.[403]

Regarding commenter suggestions that loans to minority-owned small businesses should be considered separately as a qualifying activity under the economic development category of community development, the agencies note that the final rule adopts a provision that certain direct loans to small businesses and small farms, which includes direct loans made to minority-owned small businesses, will be considered under the economic development category. *See* the section-by-section analysis of final § ____.13(c)(1)(ii) above. Additionally, the agencies have adopted an impact factor described in final § ____.15 for activities that benefit small businesses with gross annual revenue under $250,000, which will serve to highlight activities with smaller businesses, which would include minority-owned businesses with gross annual revenue under $250,000. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

The agencies appreciate commenter feedback regarding the potential need for examiner training as the proposed approach to the evaluation of certain activities that would currently be considered only under community development may be considered under a different test or multiple tests. The agencies will take this feedback under advisement as the agencies develop implementation plans.

Section ____.13(d) Community Supportive Services

Current Approach

The CRA regulations currently define community development to include ''community services targeted to low- or

[398] For a discussion of the final rule's incorporation of loans to small businesses and small farms into the economic development category of community development, see the section-by-section analysis of final § ____.13(c)(1)(ii). For a discussion of the final rule's consideration of small business and small farm lending under the Retail Lending Test, see the section-by-section analysis of final § ____.22(d).

[399] The final rule's transition amendments will amend the definitions of ''small business'' and ''small farm'' to instead cross-reference to the definition of ''small business'' in the CFPB section 1071 regulation. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB section 1071 regulatory definition of ''small business.'' This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB section 1071 regulation. The agencies will provide the effective date of these amendments in the **Federal Register** once section 1071 data are available.

[400] *See* 12 CFR ____.12(g).

[401] *See* 12 CFR ____.12(g)(3).

[402] *See* Q&A § ____.12(g)(3)–1.

[403] *See* final § ____.23 and the accompanying section-by-section analysis.

moderate-income individuals,'' [404] but the regulations do not further define community services. The Interagency Questions and Answers provide several examples of community services and characteristics of those services to assist institutions in determining whether the service is ''targeted to low- or moderate-income individuals.'' [405] Interagency guidance also clarifies that ''investments, grants, deposits, or shares in or to . . . [f]acilities that . . . provid[e] community services for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's shelters, and alcohol and drug recovery centers'' are considered community development investments eligible for CRA credit.[406]

The Agencies' Proposal

In proposed § ____.13(d), the agencies replaced the current community development category of ''community services targeted to low- or moderate-income individuals'' with ''community supportive services.'' [407] Specifically, incorporating and building on aspects of current guidance noted above, proposed § ____.13(d) defined community supportive services as ''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.''

The agencies proposed to consider workforce development and job training program activities under the community supportive services category of community development, rather than under economic development (where workforce development and job training programs are generally considered today). Existing guidance regarding economic development generally limits what can be considered an economic development activity (including workforce development and job training) to support for small businesses meeting certain size standards.[408] Under the proposal to consider these activities under the reconfigured ''community supportive services'' category, activities that support workforce development and job training programs would receive consideration if the program's participants are low- or moderate-income individuals, without regard to the size of any business associated with the activity.[409]

The agencies also proposed to build on current guidance by both clarifying and expanding upon a non-exclusive list of examples of community services and characteristics of those services that banks can use to demonstrate that a program or organization primarily serves low- or-moderate income individuals. Seven of the eight examples in proposed § ____.13(d) reflected current guidance with certain technical edits, as follows:

- Activities conducted with a nonprofit 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- or moderate-income individuals (proposed § ____.13(d)(1));
- Activities conducted with a nonprofit organization located in and serving low- or moderate-income census tracts (proposed § ____.13(d)(2));
- Activities conducted in low- or moderate-income census tracts and targeted to the residents of the census tract (proposed § ____.13(d)(3));
- 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 (proposed § ____.13(d)(4));
- Services provided to students or their families through a school at which the majority of students qualify for free or reduced-price meals under the USDA's National School Lunch Program (proposed § ____.13(d)(5));
- Services that have a primary purpose of benefiting or serving individuals who receive or are eligible to receive Medicaid (proposed § ____.13(d)(6)); and
- 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 the proposed rule). Examples include, but are not limited to, HUD's section 8, 202, 515, and 811 programs or the USDA's section 514, 516, and Supplemental Nutrition Assistance programs (proposed § ____.13(d)(8)).[410]

The agencies also proposed an additional example not reflected in current guidance: 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.[411] This proposed example reflected a suggested additional example raised in the Board CRA ANPR that received wide stakeholder support.[412]

Comments Received

The agencies received comments on the community supportive services proposal from many different commenter types, raising a wide range of issues. Most of these commenters generally supported the agencies' proposal. A few commenters, for example, expressed that the community development services proposal would elevate the importance of community services and provide more clarity about what types of activities are included. In contrast, a commenter that disagreed with the proposal stated that the proposal would create unnecessary confusion and complexity and limit flexibility. This commenter expressed the view that the current community services definition should be retained, asserting that it better allows banks to tailor the provision of services to the specific needs of each community.

Regarding the general definition of community supportive services in proposed § ____.13(d), many commenters expressed their support for including ''health'' or ''healthcare services.'' Several commenters also expressed support for the proposal to include workforce development and job training as community supportive services. A few of these commenters noted that doing so could allow banks to receive credit for supporting activities in connection with a wider range of businesses than under the current CRA framework.

Commenters also shared views on the list of examples in proposed § ____.13(d)(1) through (8). For example, a commenter that expressed support for the proposal to include ''[a]ctivities conducted with a nonprofit organization located in and serving low- or moderate-income census tracts,'' [413] noted that these types of organizations often serve the community in which they are

[404] *See* 12 CFR ____.12(g)(2).

[405] *See* Q&A § ____.12(g)(2)–1.

[406] Q&A § ____.12(t)–4.

[407] The proposed term ''community supportive services'' encompassed different activities than those proposed under the concept of ''community development services,'' which is described further in the section-by-section analysis of § ____.25(d) (proposed Community Development Services Test), below, and generally refers to volunteer service hours that meet any one of the community development purposes in final § ____.13.

[408] *See* proposed § ____.13(d); *compare with* 12 CFR ____.12(g)(3) and Q&A § ____.12(g)(3)–1.

[409] *See id.*

[410] Q&A § ____.12(g)(2)–1.

[411] Proposed § ____.13(d)(7).

[412] *See* 85 FR 66410, 66446 (Oct. 19, 2020). The example was also adopted in the illustrative list published with the OCC 2020 CRA Final Rule.

[413] Proposed § ____.13(d)(2).

located. With respect to proposed § ____.13(d)(7), regarding activities that benefit or serve individuals who receive or are eligible to receive Federal disability assistance, many civil rights and consumer advocacy groups for individuals with disabilities requested that the agencies also explicitly include vocational rehabilitation services and Medicaid-waiver funded home and community-based services. One commenter stated that, as not all individuals with disabilities receive Federal benefits, the agencies should consider including other activities that support individuals with disabilities, such as a loan to upgrade equipment in a public library to accommodate low- and moderate-income disabled individual patrons.

Commenters also encouraged the agencies to add a variety of examples to the list in § ____.13(d)(1) through (8). For instance, a few commenters suggested adding activities that promote digital inclusion or digital literacy, indicating that those activities can improve access to important community services. Additional examples suggested included, among others: food access and sustainability projects; activities that house the homeless; higher education career courses or programming; activities that support service members, veterans, and their families; and activities that support consumers with limited English proficiency.

Final Rule

As discussed in more detail below, the final rule revises the general definition of ''community supportive services'' in proposed § ____.13(d) to provide greater clarity about the meaning of this community development category. The final rule also adopts the non-exhaustive list of examples in § ____.13(d)(1) through (8) generally as proposed, with certain technical revisions.

Specifically, the final rule defines ''community supportive services'' as activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services programs, and housing services programs. The definition in proposed § ____.13(d) is thus revised by replacing the phrase ''general welfare activities that serve or assist low- or moderate-income individuals'' with ''activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals.'' As noted in the proposal, the agencies believe that adopting a community supportive services category that revises the existing ''community services'' category and associated guidance will provide clearer standards in the regulation for identifying the kind of activities that qualify as community development. Upon further consideration and in light of comments received, the agencies are concerned about potential confusion as to what constitutes ''general welfare activities'' in the proposed provision. The final rule's revised language focusing on the ''health, stability, or well-being'' of low- or moderate-income individuals is intended to better achieve the agencies' goal of providing clarity in outlining the kinds of activities that are eligible for consideration under this category, accounting for the types of benefits and services that many commenters highlighted.

The agencies are adopting as proposed the community supportive services listed in the proposed general definition—childcare, education, workforce development and job training programs, health services programs, and housing services programs; these are intended to be illustrative of the kinds of services that can meet the criterion of assisting, benefiting, or contributing to the health, stability, or well-being of low- or moderate-income individuals and, as noted above, were generally supported by commenters. As also discussed above, considering workforce development and job training activities under the community supportive services category of community development clarifies that bank support for workforce development and job training, whose participants are low- or moderate-income individuals, is eligible for CRA consideration, regardless of the size of the businesses that may be associated with those activities.

The final rule also adopts the non-exclusive list of examples of community supportive services in § ____.13(d)(1) through (8), generally as proposed, with certain revisions as follows:

- Proposed § ____.13(d)(1) is revised to refer to activities that are ''conducted with a mission-driven nonprofit organization.'' This change in final § ____.13(d)(1) reflects that the final rule adopts a new definition of ''mission-driven nonprofit organization'' in § ____.12, in order to support the term's use across multiple provisions in § ____.13. As noted in the section-by-section analysis of § ____.12 above, the final definition is intended to be consistent with the types of organizations that the agencies proposed would be partners with banks in conducting community development.
- Proposed § ____.13(d)(2) through (5) are adopted generally as proposed, with non-substantive technical edits to align the regulatory text structure.
- Proposed § ____.13(d)(6), referencing activities that ''*have a primary purpose of benefiting or serving individuals* who receive or are eligible to receive Medicaid'' (emphasis added) is revised to reference activities that ''*Primarily benefit or serve individuals* who receive or are eligible to receive Medicaid'' (emphasis added), with no substantive change intended. This revision is a conforming change consistent with proposed § ____.13(a) that eliminates proposed references to the phrase ''primary purpose of community development,'' as discussed in the section-by-section analysis of § ____.13(a).
- Proposed § ____.13(d)(7) and (8) are revised to add the term ''primarily,'' so that, as adopted, they refer to activities that ''Primarily benefit or serve individuals who receive or are eligible to receive'' Federal disability assistance (final § ____.13(d)(7)) and ''Primarily benefit or serve recipients of government assistance plans, programs, or initiatives . . . .'' (final § ____.13(d)(8)). This addition is intended to provide consistency with the language in final § ____.13(d)(6) described above, and to align with the agencies' intent to provide examples of activities that are specifically focused on benefiting or serving the individuals described in these examples.

As discussed above, the examples in § ____.13(d)(1) through (6) and (8) are adapted from existing guidance to promote clarity and consistency regarding the types of services that could be considered to be targeted to low- or moderate-income individuals. The agencies believe that the adopted examples will facilitate banks' ability to document and demonstrate that a program or organization assists, benefits, or contributes to the health, stability, or well-being of low- or moderate-income individuals as set forth in § ____.13(d). For example, with respect to § ____.13(d)(2), the agencies believe that qualified activities performed in conjunction with ''a nonprofit organization located in and serving low- or moderate-income census tracts'' are likely to assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals due to the geographic location and service-orientation of the nonprofit organization on low- or moderate-income census tracts. Accordingly, the agencies believe that this example will facilitate banks' identification of qualified community supportive services and opportunities to serve needs in their communities.[414]

In adopting the example in proposed § ____.13(d)(7), related to activities for individuals receiving or eligible to receive Federal disability assistance, the agencies understand that many disability programs are means-tested, and that and research has found that households that include any working-age people with disabilities are more likely to have substantially lower incomes than those without any disabilities.[415] Accordingly, the agencies believe that the example in § ____.13(d)(7) will serve as another key proxy for activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, and will facilitate banks' ability to identify clear and consistent examples of community supportive services.

The agencies also considered and appreciate additional examples of community supportive services offered by commenters, including additional suggestions noted above to supplement § ____.13(d)(7) regarding other activities that benefit or serve individuals with disabilities. As discussed above, the list of examples in § ____.13(d)(1) through (8) is non-exclusive. The agencies believe that the list of examples adopted in the final rule address a wide range of qualified community supportive services and do not believe that it would be possible or practicable to capture every kind of community supportive service in the regulation. The agencies note that, to the extent that any other activity meets the general definition set forth in § ____.13(d), it would be considered a community supportive service. While the agencies are not adding mention of specific additional community supportive services activities to the final rule, the agencies will take commenters' recommended examples under advisement as the agencies develop the illustrative list anticipated by § ____.14(a).

[414] Final § ____.13(d)(2) is distinguishable from final § ____.13(d)(1). Section ____.13(d)(1) references the narrower defined term of mission-driven nonprofit organizations, but is not geographically focused; while § ____.13(d)(2) references nonprofit organizations more broadly, but is focused on particular census tracts. Both examples are intended to facilitate banks' ability to identify and document that an activity is a qualified community supportive service.

[415] *See, e.g.,* William Erickson, Camille Lee, and Sarah von Schrader, ''2021 Disability Status Report: United States,'' Cornell University Yang-Tan Institute on Employment and Disability, 40 (2023), *https://www.disabilitystatistics.org/report/pdf/2021/2000000.*

Section ____.13(e) Through (j) Place-Based Community Development

Current Approach

The current regulation defines ''community development'' to include ''activities that revitalize or stabilize'' the following four types of geographic areas:

- Low- or moderate-income census tracts;
- Designated disaster areas;
- Distressed nonmetropolitan middle-income census tracts; and
- Underserved nonmetropolitan middle-income census tracts.[416]

The Interagency Questions and Answers further elaborate on revitalization and stabilization activities in these geographic areas.[417] With respect to low- and moderate-income census tracts, designated disaster areas, and distressed nonmetropolitan middle-income census tracts, current guidance states that revitalization and stabilization activities are those that help to ''attract new, or retain existing, businesses or residents'' in that geographic area.[418] Current guidance for the same three targeted geographic areas also states that an activity will be presumed to revitalize or stabilize a geographic area if the activity is consistent with a government plan for the revitalization or stabilization of the area.[419]

[416] 12 CFR ____.12(g)(4). The current regulation provides that distressed or underserved nonmetropolitan middle-income census tracts are ''designated by [the Board, FDIC, and OCC] based on—(A) Rates of poverty, unemployment, and population loss; or (B) Population size, density, and dispersion.'' 12 CFR ____.12(g)(4)(iii). The regulation further provides that ''[a]ctivities revitalize and stabilize [census tracts] designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.'' *Id.*

[417] *See* Q&A § ____.12(g)(4)(i)–1 (regarding low- or moderate-income census tracts), Q&A § ____.12(g)(4)(ii)–2 (regarding designated disaster areas), Q&A § ____.12(g)(4)(iii)–3 (regarding distressed nonmetropolitan middle-income census tracts), and Q&A § ____.12(g)(4)(iii)–4 (regarding underserved nonmetropolitan middle-income census tracts). Activities considered to revitalize and stabilize a designated disaster area must also be ''related to disaster recovery.'' *See* Q&A § ____.12(g)(4)(ii)–2.

[418] *See* Q&A § ____.12(g)(4)(i)–1 (regarding low- or moderate-income geographies), Q&A § ____.12(g)(4)(ii)–2 (regarding designated disaster areas), and Q&A § ____.12(g)(4)(iii)–3 (regarding distressed nonmetropolitan middle-income census tracts). The ''attract new or retain existing businesses or residents'' language is not in the guidance on revitalization and stabilization activities for underserved nonmetropolitan middle-income census tracts. *See* Q&A § ____.12(g)(4)(iii)–4.

[419] *See* Q&A § ____.12(g)(4)(i)–1 (regarding low- or moderate-income census tracts), Q&A § ____.12(g)(4)(ii)–2 (regarding designated disaster areas), and Q&A § ____.12(g)(4)(iii)–3 (regarding distressed nonmetropolitan middle-income census tracts).

Further, in designated disaster areas and distressed nonmetropolitan middle-income census tracts, current guidance specifies that examiners will consider all activities that revitalize or stabilize a census tract but give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods.[420] In determining whether an activity revitalizes or stabilizes a low- or moderate-income census tract, in the absence of a Federal, State, local, or tribal government plan, guidance instructs examiners to evaluate activities based on the actual impact on the census tract, if that information is available.[421] If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income census tract.[422]

Regarding underserved nonmetropolitan middle-income census tracts, current guidance focuses on clarifying the regulatory provision stating that activities in census tracts designated by the agencies as underserved based on ''population size, density, and dispersion'' are considered to be revitalization and stabilization activities ''if they help to meet essential community needs, including needs of low- and moderate-income individuals.'' [423] To this end, the Interagency Questions and Answers state that activities such as ''financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services'' in underserved nonmetropolitan middle-income census tracts will be evaluated to determine whether they meet essential community needs.[424] The guidance also provides several examples of projects that may be considered to meet essential community needs, such as hospitals, industrial parks, rehabilitated sewer lines, mixed-income housing, and renovated schools—as long as the population served includes

[420] *See* Q&A § ____.12(g)(4)(ii)–2 (regarding designated disaster areas) and Q&A § ____.12(g)(4)(iii)–3 (regarding distressed nonmetropolitan middle-income census tracts).

[421] *See* Q&A § ____.12(g)(4)(i)–1.

[422] *See id.*

[423] 12 CFR ____.12(g)(4)(iii)(B).

[424] Q&A § ____.12(g)(4)(iii)–4.

low- and moderate-income individuals.[425]

Overview of the Proposal

The agencies' proposal replaced the current revitalization and stabilization activities component of the community development definition with six separate categories of activities:

- Revitalization activities undertaken in conjunction with a government plan, program, or initiative;[426]
- Essential community facilities activities;[427]
- Essential community infrastructure activities;[428]
- Recovery activities in designated disaster areas;[429]
- Disaster preparedness and climate resiliency activities;[430] and
- Qualifying activities in Native Land Areas.[431]

Each of the proposed categories included requirements to benefit residents of targeted geographic areas, as discussed in more detail below, and thus are referred to as ''place-based categories'' (and the activities defined within the categories as ''place-based activities'') throughout this **SUPPLEMENTARY INFORMATION**. Each of the proposed place-based categories also generally shared three other common required eligibility criteria (with adjustments specific to certain categories). Specifically, relevant activities must:

- Benefit or serve residents of the targeted geographic area, including low- or moderate-income individuals;
- Not displace or exclude low- or moderate-income individuals; and
- Be conducted in conjunction with a Federal, State, local, or tribal government plan, program, or initiative that includes an explicit focus on benefiting or serving the targeted geographic area.

These criteria are generally referred to as ''place-based criteria'' throughout this **SUPPLEMENTARY INFORMATION**. By refining and further clarifying the current regulation and guidance regarding the revitalization and stabilization category of community development, the agencies intended to provide greater certainty about what activities are considered to revitalize and stabilize communities, and thus be considered community development.

This section-by-section analysis first discusses the three place-based criteria noted above, including general comments received and general revisions made in the final rule. An analysis of each of the six place-based community development categories follows, under which specific final place-based criteria provisions and revisions are discussed. As will be discussed below, the final rule generally retains the three common place-based criteria proposed for each of the six place-based categories, with some modifications. The analysis of the place-based criteria below generally follows the order of the proposal; as discussed under the analysis of each of the specific place-based categories, the final rule reorganizes the common place-based criteria to establish a consistent parallel structure across the categories.

Benefits or Serves Residents, Including Low- or Moderate-Income Individuals, of Targeted Geographic Areas

The Agencies' Proposal

Across all place-based categories, the agencies proposed that activities supported by a bank's loans, investments, or services would be considered community development only in relation to particular geographic areas. Specifically, revitalization activities in conjunction with a government plan, program or initiative, essential infrastructure activities, essential community facilities activities, and disaster preparedness and climate resiliency activities would be community development under the proposal if they benefited or served residents, including low- or moderate-income residents, of one or more ''targeted census tracts,'' defined in proposed § ____.12 to mean low- or moderate-income census tracts and distressed or underserved nonmetropolitan middle-income census tracts.[432] Similarly, essential community facilities, essential infrastructure, and disaster preparedness and climate resiliency activities would also be required to be ''conducted in'' targeted census tracts.[433]

Under the proposal, recovery activities in designated disaster areas qualified in census tracts of all income levels, provided that the activities benefited or served residents, including low- or moderate-income residents, in an area subject to a Federal Major Disaster Declaration (excluding Major Disaster Categories A and B).[434] Activities in Native Land Areas would qualify as community development if they were ''specifically targeted to and conducted in Native Land Areas'' and ''benefited residents of Native Land Areas, including low- or moderate-income residents.''[435]

The agencies also proposed requirements regarding the beneficiaries of place-based activities—specifically, that they benefit or serve residents of the relevant targeted geographic area, including low- or moderate-income residents. The express inclusion of ''low- or moderate-income residents'' incorporated an emphasis on benefits for low- and moderate-income individuals reflected in the current regulation and guidance on revitalization and stabilization activities, as well as the CRA statute.[436] The agencies sought feedback on how place-based activities can focus on benefiting residents in targeted census tracts and ensure that the activities benefit low- or moderate-income residents.

Comments Received

Commenters offered various views on how to focus place-based activities on benefiting residents in targeted geographic areas, and how to ensure that the activities benefit low- or moderate-income residents. Comments specific to whether activities should be directly conducted in targeted geographic areas are generally discussed under the section-by-section analyses for the respective place-based categories, where applicable. Several commenters suggested that the agencies adopt quantitative measures for evaluating benefits, such as requiring a majority of the beneficiaries to be low- or moderate-income in the targeted geographic area, or requiring a majority of beneficiaries to be low- or moderate-income minorities. Some commenters recommended that data on benefits to low- and moderate-income residents

[425] *See id.*

[426] *See* proposed § ____.13(e).

[427] *See* proposed § ____.13(f).

[428] *See* proposed § ____.13(g).

[429] *See* proposed § ____.13(h).

[430] *See* proposed § ____.13(i).

[431] *See* proposed § ____.13(k).

[432] *See* proposed § ____.13(e) (revitalization activities), (f) (essential community facilities activities), (g) (essential community infrastructure activities), and (i) (disaster preparedness and climate resiliency activities). For further discussion of the definition of ''targeted census tract,'' see the section-by-section analysis of § ____.12 (''targeted census tract'').

[433] *See* proposed § ____.13(f) (essential community facilities activities), (g) (essential community infrastructure activities), and (i) (disaster preparedness and climate resiliency activities).

[434] *See* proposed § ____.13(h)(1).

[435] *See* proposed § ____.13(l). The definition of ''Native Land Area'' is discussed further in the section-by-section analysis of § ____.12.

[436] *See, e.g.,* 12 CFR ____.12(g)(4); Q&A § ____.12(g)(4)(i)–1 (regarding low- or moderate-income geographies), Q&A § ____.12(g)(4)(ii)–2 (regarding designated disaster areas), Q&A § ____.12(g)(4)(iii)–3 (regarding distressed nonmetropolitan middle-income census tracts), and Q&A § ____.12(g)(4)(iii)–4 (regarding underserved nonmetropolitan middle-income census tracts); 12 U.S.C. 2903(a) and 2906(a)(1).

should be part of community development data submissions, such as documentation regarding the number and percent of low- and moderate-income persons in the census tract(s) of the target area and a narrative explaining how the activity would benefit them, or other evidence of community benefit such as job creation, living wages, fair lease payments, or sound land-use planning practices. In contrast, a commenter suggested that the agencies also allow for consideration of activities where benefits to low- or moderate-income individuals are not readily quantifiable, but otherwise demonstrable. This commenter cautioned that ''means testing'' would complicate community development financing and might not be possible, potentially discouraging bank investment, but suggested that projects located in low- and moderate-income or distressed census tracts were likely to serve residents of those tracts and others in the area.

Some commenters suggested requiring community input to demonstrate that activities benefit residents, including low- or moderate-income residents, of targeted census tracts. For instance, commenters recommended that banks document (and the agencies consider) public feedback provided by community groups; public attestations; or community benefit agreements (CBAs). Several commenters recommended that examiners use their judgment to determine whether qualifying activities benefit low- and moderate-income residents, indicating, for example, that different types of activities will warrant different types of evidence to demonstrate benefit to low- and moderate-income residents. Other commenters suggested that a statement from a bank's public or nonprofit organization partners could provide evidence of a place-based activity's impact on low- and moderate-income communities.

Final Rule

The final rule generally retains the three common place-based criteria proposed for each of the six place-based categories, with some modifications. Generally applicable language and revisions are addressed here, with category-specific language described under each category below in this section-by-section analysis.

Consistent with the proposal, each of the final place-based categories adopts a specific focus on targeted geographic areas, discussed in each of the section-by-section analyses of the place-based categories below. Under the final rule, the geographic area focus for each category is as follows:

- For revitalization or stabilization (§ ____.13(e)), essential community facilities (§ ____.13(f)), essential community infrastructure (§ ____.13(g)), and disaster preparedness and weather resiliency (§ ____.13(i)): ''targeted census tracts.'' Consistent with the proposal, targeted census tracts are defined in final § ____.12 as low- and moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts;
- For recovery of designated disaster areas (§ ____.13(h)): ''areas subject to a Federal Major Disaster Declaration, excluding Major Disaster Categories A and B''; and
- For qualified activities in Native Land Areas (§ ____.13(j)): ''residents of Native Land Areas.'' [437]

For each place-based category, the final rule also adopts substantially as proposed the place-based criterion that activities benefit or serve residents, including low- or moderate-income individuals, in the targeted geographic areas, including the proposed criterion that revitalization activities in Native Land Areas must have ''substantial benefits for low- and moderate-income residents.'' [438] The final rule revises the proposed language of this criterion, with no substantive change intended, to reference ''low- or moderate-income individuals'' rather than ''low- or moderate-income residents,'' which aligns with usage of the word ''individuals'' in the definitions of low-income and moderate-income in final § ____.12 and is generally consistent with usage of the term ''low- or moderate-income individuals'' throughout the rule. As discussed in the proposal, this criterion establishes a consistent expectation that residents in the relevant targeted geographic areas will benefit from the qualifying activity and that the residents benefiting from the activity will include low- and moderate-income individuals. To further the purposes of CRA, the agencies believe it important that loans, investments, and services considered in a bank's community development performance evaluation support place-based activities that provide direct benefit to the people living in targeted geographic areas rather than solely supporting redevelopment these geographic areas more generally. Together with the other common place-based criteria discussed in more detail below, the agencies believe that this criterion will ensure a strong connection between activities and community needs.

The agencies have considered, but are not adopting, additional quantitative standards or criteria in final § ____.13(e) through (j), including a requirement that a majority of the beneficiaries of a qualifying activity in the proposed (and final) targeted geographic areas be low- or moderate-income individuals, minorities, or other underserved individuals. The agencies understand and appreciate the concerns giving rise to commenter suggestions for more precisely defining qualifying community development activities to focus on these individuals and communities. For this reason, as noted in the proposal, the agencies also considered a criterion that place-based activities benefit or serve solely low- or moderate-income individuals.

On further consideration, however, the agencies believe that the final criterion (''benefits or serves residents, including low- or moderate-income residents'' [439]) is appropriately adaptable, providing needed flexibility to address the wide range of community development needs that may exist in the areas targeted in the proposed and final rule's place-based community development categories. Rather than adding quantitative limitations or other parameters to this proposed criterion, the agencies intend, in adopting this criterion generally as proposed, to maintain flexibility for activities to meet multiple types of community needs in the areas targeted by place-based activities—while also requiring the inclusion of low- or moderate-income individuals as beneficiaries. This flexibility remains particularly important in distressed and underserved nonmetropolitan middle-income census tracts, which can have fewer low- or moderate-income residents. The agencies further believe that this criterion, as adopted, is consistent with the CRA statute, which is focused on meeting the credit needs of an entire community, including low- and moderate-income needs.[440] In addition,

[437] The term ''Native Land Area'' is separately defined in section § ____.12 and discussed in detail in the accompanying section-by-section analysis.

[438] *See* proposed § ____.13(l)(1)(i)(A) (''revitalization activities in Native Land Areas'') and final § ____.13(j)(2)(ii) (revised to refer to ''revitalization or stabilization activities in Native Land Areas'').

[439] The final rule adopts different language for revitalization or stabilization activities in Native Land Areas, which must benefit or serve residents of Native Land Areas, ''*with substantial benefits for* low- or moderate-income individuals'' (emphasis added). *See* final § ____.13(j)(2)(ii), discussed in the section-by-section analysis of § ____.13(j).

[440] *See* 12 U.S.C. 2903(a) and 2906(a)(1).

the agencies note that, under the majority standard discussed in the section-by-section analysis of § ____.13(a), loans, investments, or services supporting placed-based community development may receive community development consideration only if the majority of the beneficiaries are, or the majority of the dollars benefit or serve, residents of the targeted geographic areas.[441]

The agencies are also not adopting additional criteria, recommended by some commenters, for demonstrating and evaluating the benefits of place-based activities, such as through suggested data points or requiring community input. On further deliberation, the agencies are concerned that requiring specific ways of demonstrating benefits to residents could add complexity and burden, potentially dissuading banks from supporting place-based activities. The agencies further believe that maintaining some flexibility in the regulation is necessary to accommodate varying community needs and relationships that banks have with communities. At the same time, the agencies recognize that data and community input could be helpful in demonstrating and evaluating benefits of activities to residents of targeted geographic areas, including low- and moderate-income individuals; the final rule does not preclude banks and examiners from using an array of useful information in this regard.

As was noted by commenters, examiner judgment will continue to have a role in agency determinations regarding whether activities benefit residents of targeted geographic areas, including low- or moderate-income individuals. However, by adopting the criterion requiring activities to benefit or serve residents, including low- or moderate-income individuals, in combination with other place-based criteria, the agencies intend to clarify expectations and to promote consistency in application across place-based categories of community development.

Prohibits Displacement or Exclusion of Low- or Moderate-Income Individuals

The Agencies' Proposal

The agencies proposed that eligible place-based activities could not lead to the displacement or exclusion of low- or moderate-income residents in relevant geographic areas.[442] For example, the proposal noted that, if a project to build commercial development to revitalize an area involved demolishing housing occupied by low- or moderate-income individuals, then the project would not meet this criterion and loans, investments, or services supporting it would be ineligible for CRA credit. In proposing this criterion, the agencies sought to ensure that qualifying activities do not have a detrimental effect on low- or moderate-income individuals or communities or on other underserved communities. The agencies sought feedback on how considerations about whether an activity would displace or exclude low- or moderate-income residents should be reflected in the rule.

Comments Received

Most commenters supported requiring that qualifying place-based activities not displace or exclude low- and moderate-income residents. Many of these commenters asserted that the anti-displacement and anti-exclusion criterion should be extended to other categories of community development, with a number of commenters advocating for an extension of the criterion to the proposed category for affordable housing under proposed § ____.13(b), including the naturally occurring affordable housing prong in proposed § ____.13(b)(2).[443]

A variety of commenters asserted that the criterion should be strengthened, and offered suggestions for demonstrating or measuring non-displacement and non-exclusion for activities supported by a bank's loans, investments, or services. Suggestions included, for example, that a bank:

- Demonstrate compliance with tenant protections, local health and habitability codes, civil rights and other relevant laws;
- Conduct due diligence to determine whether a project involves any concerns relating to eviction, harassment, complaints, rent increases, or habitability violations;
- Demonstrate that projects did not reduce affordable housing units or displace small businesses or farms;
- Evidence support for resident retention through lending in low- and moderate-income communities or minority communities to ensure non-displacement of those communities; or
- Provide attestations from public sector or nonprofit partners that displacement did not occur, or require other documentation of the community engagement process.

Other commenters focused on gentrification concerns more expressly. For example, commenters recommended that the agencies: (1) consider whether an activity would promote gentrification and displacement of existing low- and moderate-income residents through increased rents.; (2) recognize both physical displacement, such as in the proposal's example of affordable housing being demolished to create housing serving higher-income households, and more general displacement from inflationary pressures caused by rapid growth or gentrification; and (3) closely evaluate the demographics of financial institutions' financing practices in relation to gentrification. Other commenters indicated that impact on minorities within identified census tracts should be accounted for, or that the agencies should expand CRA discrimination downgrade criteria to include incidents of displacement of, or harm to, low- and moderate-income communities and/or minorities.

Some commenters supported the goal of preventing displacement but suggested that the proposed criterion was too broad and thus might inadvertently disqualify activities that would otherwise align with community development goals. Accordingly, some commenters recommended that the criterion be revised to, for instance: (1) allow for activities that result in displacement, if mitigation of displacement is incorporated into the project, such as voluntary agreements that provide for compensation, alternative housing in or near the relevant community, or other similar benefits to displaced residents; (2) provide other carve-outs from the criterion, such as for temporary relocations or limited displacement; or (3) include only involuntary or forced displacement, to permit, for example, voluntary relocation from climate-impacted areas.

Other commenters opposed the proposal to include an anti-displacement or anti-exclusion criterion as part of place-based community development activities, with some explicitly opposed to a criterion disallowing exclusion of low- and moderate-income individuals. Some of these commenters expressed concern about an undefined, overbroad, or subjective standard, with some suggesting that the proposed criterion would be difficult to demonstrate and for examiners to evaluate. A commenter suggested that meeting this criterion

[441] *See* final § ____.13(a)(1)(i)(B)(*4*) through (*6*).

[442] *See* proposed § ____.13(e)(2) (revitalization), (f)(2) (essential community facilities), (g)(2) (essential community infrastructure), (h)(2) (recovery in designated disaster areas), proposed (i)(2) (disaster preparedness and climate resiliency), and (l)(1)(i)(B) and (l)(2)(i) (Native Land Areas).

[443] *See* proposed § ____.13(b), discussed above.

would be especially difficult in advance of, or shortly after the completion of, the activity, and indicated that banks might not be able to predict or control the long-term effects of projects. This commenter asserted that the proposal would add inconsistency and uncertainty to CRA evaluations and potentially chill beneficial community development projects in low- or moderate-income communities.

Several commenters suggested that the agencies omit the displacement and exclusion prohibition and instead weigh the overall impact of activities on targeted census tracts (and other relevant geographic areas, as applicable). For example, commenters suggested that activities could have larger community benefits even if some displacement results, such as a commercial mixed-use project that results in some displacement of low- and moderate-income residents but includes housing for low- and moderate-income residents. A commenter also suggested that the proposed anti-displacement criterion was inconsistent with the criterion that a project be ''in conjunction with'' a government plan, indicating that government revitalization plans sometimes involve the removal of apartment buildings that have sub-standard units.

Final Rule

In the final rule, the agencies are adopting a revised version of the proposal to include a place-based criterion that activities may not ''directly result in the forced or involuntary relocation of low- or moderate-income individuals'' in the targeted geographic areas. This criterion is designed to ensure that qualifying activities do not have a direct detrimental effect on low- or moderate-income individuals or communities in the relevant targeted geographic areas. The agencies believe that qualifying place-based community development activities that deny such populations the benefits of those activities through forced or involuntary relocation out of the targeted geographic area would be inconsistent with the purpose of the CRA to encourage banks to help serve the credit needs of their communities, including low- or moderate-income populations.

The agencies have considered and are persuaded by comments that refinements to the proposed criterion are appropriate so as not to disqualify responsive community development activities that align with the purpose of the CRA. In particular, the agencies have considered concerns raised by some commenters based on their view of the breadth of the proposed standard. The agencies recognize, for example, that otherwise qualifying disaster recovery or disaster preparedness activities with widespread benefits for a community could involve voluntary relocation residents due to environmental conditions such as an increased risk of significant flooding. Therefore, the agencies have revised the proposal to focus the final rule's criterion on prohibiting activities that would result in the forced or involuntary physical displacement of low- or moderate-income individuals as a direct result of the activity.

The final rule's criterion on displacement does not include the proposal's specific prohibition on ''exclud[ing]'' low- and moderate-income residents. As noted above, the final rule includes a criterion that place-based activities must benefit or serve residents of a targeted geographic area, including low- or moderate-income individuals (with revitalization or stabilization activities in Native Land Areas requiring ''substantial benefits for low- or moderate-income individuals''[444]). Given that the requirement to benefit or serve a targeted geographic area must include low- or moderate-income individuals (and therefore cannot exclude those individuals), on further consideration, the agencies believe that the exclusion language is redundant. However, the agencies do not intend a substantive change relative to the proposal. Thus, if low- or moderate-income individuals were not able to access or benefit from an activity, then the activity would not include low- or moderate-income individuals and therefore would not qualify as community development under the final rule.

Under the final rule, ''forced or involuntary relocation'' could encompass both overt activities such as demolishing a building, as well as actions directly resulting in conditions for remaining in place being infeasible or undesirable, such as uninhabitable conditions. Accordingly, under the final rule, a project that involves demolishing a multifamily building in which low- or moderate-income individuals reside, thereby forcibly removing residents, would not qualify as community development under the place-based categories. In contrast, projects involving relocation of individuals could conceivably qualify as community development where residents agree to voluntary relocation. Regarding the concern that the proposed anti-displacement standard could conflict with government plans, the agencies believe that the revisions to the proposal—to focus on ''forced or involuntary relocation''—will help mitigate this concern by adding greater specificity to the provision. For example, if a government plan involves demolishing a building that has suffered substantial hurricane damage, and all tenants are willing to relocate, the relocation of those tenants would not be disqualifying under this place-based criterion.

Additionally, the final rule states that activities may not ''directly'' result in forced or involuntary relocation. Accordingly, to be disqualified, an activity must directly relate to the involuntary relocation. For example, if a commercial development project to revitalize an area involved demolishing housing occupied by low- or moderate-income individuals, this project would directly result in the relocation of those occupants. Depending on the facts and circumstances, if the relocation were forced or involuntary, then the loans, investments, or services supporting the project would be ineligible for CRA consideration. In contrast, while the agencies note commenter feedback regarding future market pressures on rents and other costs resulting from neighborhood redevelopment and share these concerns, the agencies do not believe such pressures generally would directly result in forced or involuntary relocation, and thus generally would not be disqualifying under the final criterion. Further, the agencies believe that evaluating the impact of a particular project on the broader market in the future, such as the possibility of general rent increases across the market, could be challenging or speculative, resulting in inconsistencies in application and decreased certainty as to which projects may qualify as community development.

For similar reasons, the agencies are not incorporating specific displacement and relocation mitigation options as part of this criterion in the final rule. The agencies are concerned that doing so could create a need for a complex set of parameters regarding appropriate mitigation for otherwise qualifying activities. Further, determining when mitigation efforts are sufficient in all cases could be difficult or impracticable, as facts and circumstances can vary widely.

Likewise, on further consideration, the agencies are not adopting additional commenter-recommended standards or criteria to measure or otherwise demonstrate or determine whether an activity displaces residents. As with the above place-based criterion to benefit or

[444] *See* final § ____.13(j)(2)(ii).

serve residents of a targeted geographic area, including low- and moderate-income individuals, the agencies are concerned that specific evidentiary requirements or required methods to demonstrate or determine whether an activity displaces residents could add complexity and burden, potentially dissuading banks from engaging in place-based activities. The agencies further recognize that the range of circumstances and contexts of potentially qualifying projects could have implications for whether specific measures pertaining to displacement determinations are appropriate, and might not be foreseeable.

The agencies have also considered commenter suggestions to incorporate this particular criterion into other community development categories, but believe that this criterion is most appropriate for place-based activities. The agencies believe that the criterion is appropriate specifically for place-based activities to ensure that activities designed to benefit a targeted geographic area do not have direct detrimental impacts on the residents the activities are intended to serve. Further, the relocation impacts of a particular activity can be more easily identified relative to a particular targeted geographic area, which are well-defined in, and the focus of, place-based community development activities in the final rule. Regarding comments encouraging expansion of the criterion to the affordable housing category, particularly naturally occurring affordable housing in § ____.13(b)(2), the agencies note that, under the final rule, this type of affordable housing is designed to create units or facilitate maintenance of existing units of affordable housing, and examiners will retain discretion to consider whether an activity reduces the number of housing units affordable to low- or moderate-income individuals. This design thus indirectly includes anti-displacement guardrails.[445] The criterion is also less appropriate for other community development categories, such as community supportive services and financial literacy, that are unlikely to result in the direct relocation of residents.[446]

Regarding comments that the rule should permit downgrades for activities that result in displacement, the agencies note that under the final rule, as currently, evidence of illegal credit practices is the basis of a rating downgrade.[447] The agencies have given serious consideration to the types of practices that should result in a ratings downgrade, in light of significant comments on this topic. For further discussion of the types of practices that can lead to a ratings downgrade under the final rule, see the section-by-section analysis of final § ____.28(d). The agencies also emphasize that, under the final rule, no place-based activity directly resulting in forced or involuntary relocation of low- or moderate-income individuals will qualify as community development, so no bank may receive community development consideration for loans, investments, or services supporting those activities.

Finally, the agencies are not removing this criterion from the final rule or revising the rule to weigh overall impacts to a market, such as net benefits of an activity to a particular market, accounting for displacement. The agencies have considered comments suggesting removal or revision in this regard, but believe that granting consideration for loans, investments, or services that support projects directly resulting in forced or involuntary relocation of low- or moderate-income residents of targeted geographic areas, even in conjunction with a government plan, would be inconsistent with the express focus of the CRA on the needs of low- or moderate-income populations.

Overall, the agencies believe that the final criterion as adopted offers a more precise standard relative to the proposal that appropriately balances encouraging activities that provide community benefits to residents of a targeted geographic area, including low- and moderate-income residents of targeted geographic areas, while discouraging activities that have detrimental effects on the residents of those targeted geographic areas, including low- or moderate-income individuals. The agencies recognize commenter concerns that the proposed rule was overbroad or could be difficult to evaluate, and believe that the final rule regulatory text on this criterion more accurately expresses the intent of the proposal and will be more practicable to establish than the proposed language.

Conducted in Conjunction With a Government Plan, Program, or Initiative

The Agencies' Proposal

The agencies proposed that activities eligible under the place-based community development categories would need to be undertaken ''in conjunction with a [F]ederal, [S]tate, local, or tribal government plan, program, or initiative'' that, for most proposed placed-based activities, would have to include ''an explicit focus'' on benefiting the relevant targeted geographic area.[448] The agencies sought feedback on whether any or all place-based definition activities should be required to be conducted in conjunction with a government plan, program, or initiative and include an explicit focus of benefiting the targeted geographic area. In addition, the agencies sought feedback on appropriate standards for government plans, programs, or initiatives and asked about alternative options for determining whether place-based activities meet identified community needs.

Comments Received

Some commenters supported the proposed common criterion to require that place-based community development be conducted in conjunction with a government plan, program, or initiative. These comments included, for example, a commenter asserting that banks' lending should be aligned with government efforts to ensure investments reach underserved communities and have the highest impact, and expressing the view that the proposed language ''in conjunction with'' would ensure that alignment. Several commenters supportive of the proposed criterion suggested adding other criteria as well, such as showing that a plan, program, or initiative has broad community support, to ensure that the government plan, program or initiative is responsive to community needs, or involves consultation and partnership with community- and faith-based organizations in targeted communities to determine how best to tailor activities. Commenter recommendations also included that banks should have to demonstrate that the underlying government plan or program includes goals and standards appropriately aligned with a community development category under CRA; and that qualifying plans should be included in an official government document that is readily available to the public and has

[445] For further discussion, see final § ____.13(b)(2) and the accompanying section-by-section analysis.

[446] *See* final § ____.13(d) and (k), respectively, and the accompanying section-by-section analyses.

[447] *See* current 12 CFR ____.28(c), proposed § ____.28(d), and final § ____.28(d).

[448] *See* proposed § ____.13(e) (revitalization), (f)(3) (essential community facilities), (g)(3) (essential community infrastructure), (h)(3) (recovery in designated disaster areas), (i)(3) (disaster preparedness and climate resiliency), and (l)(1)(i) (revitalization in Native Land Areas). Proposed § ____.13(l)(2)(ii) (essential community facilities and essential community infrastructure in Native Land Areas) and (l)(3)(ii) (disaster preparedness and climate resiliency in Native Land Areas) did not include the ''explicit focus'' language.

been subject to a formal community review process.

However, a majority of commenters opposed or expressed concerns about requiring place-based activities to be conducted in conjunction with a government plan, program, or initiative as proposed, with some commenters suggesting eliminating the requirement altogether, or expanding the government plan, program, or initiative criteria to include other options for defining eligible activities. Some commenters viewed the criterion as too limiting, given that communities do not always have government plans, programs, or initiatives in place for community development. Commenters stated, for example, that: local governments in areas most in need of stabilization and revitalization, including small towns and rural areas, might not always have a plan, program, or initiative for the targeted census tract; consolidated plans developed at the State level often do not target rural areas at the census tract level; the requirement could prevent activities where banks are unable to find a government partner or to know in advance if one will be available for a prospective project; and, more generally, the requirement could lead to a contraction rather than an expansion of community development activities. A few commenters expressed concern that the proposed criterion would exclude impactful activities with nonprofit organizations or in the private sector that are not associated with a formal government plan but could effectuate the same community development purposes. A commenter expressed concern that banks could be penalized for supporting activities in areas without a plan and suggested that, at a minimum, the agencies should instead require only that an activity be conducted ''consistent with'' such a government plan, program, or initiative. Particularly regarding the proposed disaster preparedness and climate resiliency category of community development,[449] a commenter suggested that if the government plan requirement were retained, the final rule should clarify that plans developed by local utilities are included.

Other commenters asserted that government plans that do exist do not always match community goals or, similar to comments mentioned above, may unevenly address community needs. For instance, a commenter suggested that a local agency plan or initiative might not be responsive to needs of modest-income residents or minorities, or might be harmful to their interests. With respect to climate activities, a number of commenters argued that government plans may be inadequate or slow to respond to community needs. A few commenters noted that government programs regarding climate change often lack a racial justice focus.

Some commenters supported broadening this criterion to include place-based activities in partnership with not only governments, but also local community organizations with plans, programs, or initiatives, particularly organizations that have knowledge of, and a successful record of working within, the relevant community; or, similarly, community-led plans and plans conducted in conjunction with community development organizations and nonprofit organizations that benefit low- and moderate-income individuals and communities. For example, a commenter recommended that bank lending and investment in low- and moderate-income communities working with mission-driven lenders should receive community development consideration. Another commenter emphasized the importance of including in any criterion the activities of Black developers or community organizers that engage in place-based activities outside of government plans—as long as such activities still meet the explicit focus of benefiting the targeted census tract, including low- and moderate-income residents.

Other commenters suggested that place-based activities should instead simply qualify as community development if clearly supported by documentation that the activity meets a need in the community. For example, a commenter expressing concern regarding the level of required government engagement advocated for giving banks more flexibility to engage with non-government partners in projects that also met community needs, without the need to have a government plan in place. Several commenters suggested that the key qualification standard for place-based activities should be whether intended beneficiaries are low- and moderate-income census tract residents or other low- and moderate-income individuals.

Some commenters supported the agencies' goals to create clear standards for qualification of place-based activities, but recommended alternatives to a requirement that place-based activities be conducted in conjunction with a government plan, program, or initiative. For example, several commenters suggested that, rather than requiring a nexus to a government, plan, program, or initiative, the final rule should incorporate impact scoring to boost consideration of activities undertaken in conjunction with a government plan, or that government plans should serve as evidence that an activity is responsive to local needs.

A few commenters recommended a qualitative approach to assessing the value of place-based activities to the community, such as through examiner analysis of performance context or a CBA to determine community needs and whether activities respond to them. Additionally, a few commenters suggested that the agencies consider activities with a race-conscious objective or develop a ranking of activities that emphasize working in conjunction with government plans, programs, and initiatives that have a race conscious objective.

Final Rule

The final rule adopts the proposed criterion that activities be conducted in conjunction with a government plan, program, or initiative, with revisions to: (1) broaden the criterion to include activities undertaken in conjunction with a mission-driven nonprofit organization; and (2) to generally delete the word ''explicit'' where applicable when referencing the focus of the government plan on the relevant community development activity in a particular geographic area.[450] Accordingly, the final rule generally adopts as a criterion that activities be undertaken in conjunction with a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on, for example, ''revitalizing or stabilizing targeted census tracts.''[451]

In general. As discussed in the proposal, the agencies intend this criterion to achieve several objectives. First, the criterion will help ensure that place-based activities are responsive to identified community needs. Government plans, programs, or initiatives provide a mechanism for ensuring that activities are intentional

[449] *See* final § ____.13(i), discussed in detail in the accompanying section-by-section analysis.

[450] As noted, the ''explicit focus'' language for the government plan, program, or initiative appeared the provisions for all proposed placed-based categories of community development, other than essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency activities in Native Land Areas.

[451] *See* final § ____.13(e)(1)(i) (revitalization and stabilization), (f)(1) (essential community facilities), (g)(1) (essential community infrastructure), (h)(1)(i) (disaster recovery), and (i)(1) (disaster preparedness and weather resiliency). The ''explicit focus'' language is adopted regarding qualifying activities in Native Land Areas. *See* final § ____.13(j)(2)(i) and (j)(3)(i).

and support articulated community development goals, with a specific tie to the relevant geographic areas. The agencies believe that these plans, programs, and initiatives are general indicators of community needs. As discussed in more detail below, expanding the criterion to plans, programs, and initiatives of mission-driven nonprofit organizations will provide another mechanism to ensure a nexus between an activity and community needs in a particular geographic area, given these organizations' knowledge and record of working within, and with residents of, targeted geographic areas. Including mission-driven nonprofit organizations in the criterion also will help address commenter feedback that government plans, programs, and initiatives are not always available or are not always responsive to or inclusive of all of the needs in a particular geographic area.

Second, the final rule is intended to improve consistency, certainty, and transparency, which will give banks and other stakeholders more upfront clarity on how activities may qualify, prior to banks engaging in those activities. The criterion will increase consistency relative to current practice, where standards are complex and vary across geographic areas, including related to how banks can rely on a government plan to demonstrate qualification.[452] The rule will also increase certainty and transparency in that this criterion sets forth a clear standard for determining whether a place-based activity qualifies as community development and a bank's community development loans, investments, or services supporting it could receive community development consideration.

Finally, the agencies believe that the final rule will provide additional clarity relative to current guidance by permitting consideration for activities in conjunction with a program or initiative, even if not part of a plan. The agencies believe that the adopted criterion will allow for consideration of activities related to a wide range of government plans, programs, and initiatives, including those found in all types of communities within the targeted geographic areas of the place-based community development categories. For example, a grant to support a park in a low-income census tract could qualify if undertaken in conjunction with a citywide government program or initiative to expand green space in low- or moderate-income areas, even if support for that park is not outlined in a particular plan. The final rule does not further specify the kinds of plans, programs, or initiatives that meet the criterion, nor the types of government entities, as these can vary by community and Federal, State, or local law.

Mission-driven nonprofit organization plan, program, or initiative. The final rule broadens the proposed criterion to include activities undertaken in conjunction with plans, programs, or initiatives of not only governments, but also mission-driven nonprofit organizations. (For a more detailed discussion of the definition of mission-driven nonprofit organization, see the section-by-section analysis of § ____.12 (''mission-driven nonprofit organization'')). In reaching a determination on this final rule provision, the agencies considered commenter views that the proposed government plan, program, or initiative criterion is too narrow or limited. The agencies are persuaded by points raised by some commenters that not all communities have government plans, programs, or initiatives in place or that plans may vary in their level of application to different geographic areas. The agencies also considered comments that government plans do not always match the goals of all members of the community. Further, the agencies considered commenter views that the proposed requirement for activities to be conducted in conjunction with a government plan, program, or initiative could exclude impactful activities that are not associated with a formal government plan but that could also bring benefits to residents of a targeted geographic area.

As defined in the final rule, mission-driven nonprofit organizations have knowledge of geographic areas that are the focus of place-based activities under the final rule, and a successful record of working within and with residents of these areas to meet community needs. Further, these organizations can be identified and evaluated through demonstrable and consistent standards (as discussed in more detail in the section-by-section analysis of § ____.12).

The agencies believe that expanding this criterion to include mission-driven nonprofit organizations will facilitate community partnerships between banks and these organizations. Moreover, the agencies believe that this expansion is consistent with ensuring that activities remain place-based and benefit or serve residents of targeted census tracts, designated disaster areas, and Native Land Areas, as applicable. In addition, the agencies believe that many commenters' specific suggestions will be addressed through this revision, such as suggestions to broaden the rule to allow for qualifying activities in connection with community organizations or community plans, programs, or initiatives.

The agencies also recognize commenter suggestions to include activities with a range of organizations and entities, such as Black developers, community organizers, or other specific groups other than government entities, for determining qualification under the place-based categories. While not specifically included in the final rule, the agencies believe that the revised adopted criterion will both allow for and encourage partnerships with many such organizations. The final rule does not expand this criterion to include all private sector partners, as the agencies believe that these entities can have varying goals and missions that do not always align with the goals of CRA. Instead, by adding mission-driven nonprofit organizations as defined in the final rule, the agencies believe that the final rule will appropriately broaden the kinds of plans, programs, and initiatives that can count for place-based activities, while continuing to ensure a focus on activities that are aligned with the goals of CRA.

Additional considerations. The agencies have carefully considered but are not adopting further revisions related to commenter feedback regarding whether to require this criterion; the appropriate standards for this criterion; and alternative options. This includes comments suggesting additional requirements for this criterion such as demonstrations related to formal community review; advocating for a more qualitative approach emphasizing examiner judgment for assessing the value of place-based activities to the community in lieu of this criterion; or suggesting that proposed government plans, programs, or initiatives be a method for demonstrating that an activity meets community needs rather than a requirement.

Regarding comments that any plan be included in a publicly available

[452] For example, under current guidance an activity in a distressed nonmetropolitan middle-income geography is presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan (*see* Q&A § ____.12(g)(4)(iii)–3), while an activity in a low- or moderate-income census tract is presumed to revitalize or stabilize the area if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. 1391) and is consistent with the board's strategic plan, or if the activity has received similar official designation as consistent with a Federal, State, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income census tract. *See* Q&A § ____.12(g)(4)(i)–1.

document and/or be subject to formal community review process, or requiring community inputs as an additional criterion, the agencies are concerned that specific requirements of these types could be overly burdensome and limiting, and dissuade banks from engaging in place-based activities. However, the agencies expect that many government plans, programs, and initiatives will involve a public input process.

Regarding comments advocating for a more qualitative approach or that a government plan, program, or initiative be considered on an evidentiary rather than a mandatory basis, the agencies believe that including the adopted criterion—expanded to allow for activities in conjunction with mission-driven nonprofit organization plans, programs, and initiatives—is important to ensuring that activities qualifying under place-based community development categories are strongly linked to relevant local community needs in the targeted geographic areas.

In addition, as noted regarding other place-based criteria discussed above, the agencies recognize commenter feedback to consider activities with a race-conscious objective or to develop a ranking that favors encouraging work in conjunction with government plans, programs, and initiatives that are ''racially-conscious.'' While these provisions are not included in the final rule, the agencies intend that the revised adopted criterion provides standards for ensuring that a broad range of residents in targeted geographic areas benefit and are served by place-based activities. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION**. On balance, the agencies believe the adopted criterion achieves an appropriate balance between a flexible standard that will ensure that place-based activities are designed to benefit or serve residents of targeted geographic areas, while also promoting clarity and consistency about eligible place-based activities.

''*Explicit focus*'' *and* ''*in conjunction with*''*—in relation to a plan, program, or initiative.* Other than for plans, programs, or initiatives related to activities in Native Land Areas,[453] the final rule removes the term ''explicit'' from the proposed regulatory text, which would have required that the ''explicit focus'' of the government plan, program, or initiative be on, for example, revitalizing targeted census tracts.[454] The agencies recognize that plans, programs, or initiatives may cover broader range of community development needs than those related to a specific category of place-based activities. In addition, the agencies are concerned that too narrow a focus on the specific wording in the type of plan, program, or initiative could potentially and inadvertently disqualify otherwise eligible activities that align with the community development goals of CRA. The agencies do not intend that removal of the word ''explicit'' has any substantive implications for the requirement that a plan, program, or initiative under this criterion include a focus on, for example, revitalizing or stabilizing a targeted census tract, or on disaster preparedness or weather resiliency activities in a targeted census tract. For further discussion of the inclusion of ''explicit focus'' in the final rule provisions on activities in Native Land Areas, see the section-by-section analysis of § ____.13(j).

Finally, the agencies considered feedback to change the proposed requirement that an activity be ''in conjunction with'' a government plan, program, or initiative, to ''consistent with'' a plan, program, or initiative, but determined that ''consistent with'' would not provide sufficient clarity in determining when an activity meets the required standard. The agencies believe that finalizing a requirement for activities to be ''in conjunction with'' a government or mission-driven nonprofit organization plan, program, or initiative will provide greater clarity relative to current guidance by expressly connecting the eligible activity to the applicable plan, program, or initiative. Currently, as noted, standards are complex and vary across the targeted geographic areas, including guidance related to how banks can rely on a government plan to demonstrate that an activity helps to attract or retain residents. Under the final rule, a uniform standard will apply to all activities, with flexibility to cover a range of government and nonprofit entities, as well as varying types of plans, programs, and initiatives.

Regarding comments that any plan be included in a publicly available document and/or be subject to formal community review process, or requiring community inputs as an additional criterion, the agencies are concerned that a specific requirement in the regulation could be overly burdensome and limiting, and dissuade banks from engaging in place-based activities. However, the agencies expect that many government plans, programs, and initiatives will involve a public input process.

Section ____.13(e) Revitalization or Stabilization Activities

The Agencies' Proposal

In proposed § ____.13(e), the agencies proposed a category of community development for revitalization 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.[455] The plan, program, or initiative would also specifically need to include the targeted census tracts, although the goals of a plan, program or initiative could include stabilization or revitalization of other geographic areas.

In addition to the targeted geographic focus and government plan, program, or initiative common criterion, the agencies proposed that activities under this category would need to meet the two other common place-based elements: proposed § ____.13(e)(1) required activities to benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts, while proposed § ____.13(e)(2) required that activities not displace or exclude low- or moderate-income residents in the targeted census tracts. Proposed § ____.13(e) also provided several representative examples to clarify the type of activities that could be considered under this category, including adaptive reuse of vacant or blighted buildings, brownfield redevelopment, or activities consistent with a plan for a business improvement district or main street program.

The agencies proposed to exclude housing-related activities from the category of revitalization activities in proposed § ____.13(e). Currently, pursuant to interagency guidance, activities that support housing for middle- and upper-income residents can receive community development credit if they revitalize or stabilize a distressed nonmetropolitan middle-income census tract or a designated disaster area, with greater weight given to activities that are most responsive to community needs, including needs of low- or moderate-income individuals or

[453] *See* final § ____.13(j)(2)(i) and (j)(3)(i).

[454] *See* proposed § ____.13(e).

[455] *See* proposed § ____.12 (defining ''targeted census tract'' to mean: ''(1) A low-income census tract or a moderate-income census tract; or (2) A distressed or underserved nonmetropolitan middle-income census tract'').

neighborhoods.[456] Based in part on prior stakeholder feedback 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,[457] the agencies proposed that, under the ''affordable housing'' category of community development in § ____.13(b), as discussed above, activities that promote housing exclusively for middle- or upper-income residents would not be eligible for CRA credit as affordable housing, regardless of the type of geographic area benefited.[458] The agencies considered that additional clarity could come from qualifying most housing-related community development activities under the affordable housing category. The agencies also recognized that affordable housing activities are often components of government plans, programs, and initiatives to revitalize communities, and therefore sought feedback on whether housing-related revitalization activities should be considered under the affordable housing category or the revitalization activities category, and under what circumstances.

Comments Received

Comments regarding the three common place-based criteria are discussed above. Remaining comments on proposed § ____.13(e) primarily focused on the agencies' request for feedback on whether certain housing activities should be considered eligible under the revitalization category of community development. Many commenters supported including consideration for housing activities under § ____.13(e), consistent with current guidance.[459] Some commenters asserted that these activities are central to overall community revitalization efforts, without specifying which housing activities should be included. A commenter suggested that limiting housing activities to the affordable housing category would create uncertainty for banks considering mixed-use revitalization projects that include both affordable housing and commercial revitalization. A few commenters suggested that affordable housing should be allowed to count under categories such as revitalization and climate resiliency, but should not be double-counted, as counting twice could lead to decreases in investment. A commenter suggested that housing should be included as an eligible revitalization activity and should be counted in all geographic areas, while another commenter stated that limiting consideration of housing activities under the revitalization category to activities serving high poverty or high vacancy geographic areas may not be necessary, as pockets of distress exist in otherwise prosperous communities.

Some commenters seeking to include housing under § ____.13(e) expressed support for including a variety of types of housing activities under the revitalization category as a crucial component of comprehensive, equitable neighborhood revitalization. Suggestions included, for example, eligibility for activities that support: (1) the construction or rehabilitation of owner-occupied homes (including condominiums and cooperatives), if the homes are in certain census tracts and the sales price is capped; (2) rehabilitation or reconstruction of owner-occupied homes if the owner is low-, moderate-, or middle-income; (3) the disposition, rehabilitation, or replacement of vacant and foreclosed homes, to create new opportunities for affordable homeownership for low- and moderate-income households; (4) supportive housing development, operation, and services in any geographic area, because the need for supportive housing outweighs supply (citing the impact of supportive housing due to lack of stable affordable housing with wrap-around services); and (5) home repair and mitigation activities for low- and moderate-income homeowners.

Other commenters supported including mixed-income or mixed-used housing under the revitalization category. For example, a commenter suggested that mixed-income and mixed-use housing developments should qualify: (1) if in low- and moderate-income census tracts, and (2) if in higher-cost areas, and rent is limited to 60 percent of the area median income. This commenter suggested that high-cost neighborhoods are often the least accessible to low- and moderate-income individuals, but because these neighborhoods often offer the greatest access to jobs, higher performing schools, transportation, and other necessities, increasing access to these neighborhoods should be considered a revitalization activity. A few commenters recommended including housing developments that have onsite or co-located childcare and early education programs as eligible revitalization activities.

Alternatively, several commenters stated that place-based revitalization activities and housing activities should be separately considered under the rule, or with limited exceptions. For example, a commenter suggested that considering housing activities solely as part of the affordable housing category would help clarify whether disparities in non-housing resources and investments are being adequately addressed, which this commenter asserted is particularly important because affordable and subsidized housing is often concentrated in low-resourced areas. A few commenters similarly indicated that areas targeted for revitalization activities are often areas where low-income housing is already concentrated, and housing activities undertaken as part of revitalization efforts can risk perpetuating economic and racial segregation. A commenter generally supportive of qualifying housing activities outside of the revitalization category also supported an exception for housing being removed or demolished as part of a broader community revitalization effort.

Commenters also addressed proposed § ____.13(e) beyond the question of whether to include housing. For example, a commenter expressed the view that the proposed rule's definitions of revitalization and stabilization activities would help direct more of the benefits of CRA-focused investment to low- and moderate-income communities and individuals. Another commenter suggested that any community revitalization plan or activity should include assurances that low- and moderate-income households will be able to remain in the neighborhood and enjoy the benefits of revitalization (through CBAs, support of community land trusts, or inclusionary zoning).

A few commenters suggested certain activities that should be considered revitalization activities, such as broadband; sustainability projects including those related to food access, food and water source protection; renewable energy investments; and private investment in land banking activities.

Final Rule

The agencies are adopting proposed § ____.13(e), reorganized for clarity and consistency with the structures of other place-based categories, and further modified as described below. The final rule makes a technical revision to the name of the proposed community development category from

[456] *See* Q&A § ____.12(g)(4)–2.

[457] *See* 87 FR 33884, 33904 (June 3, 2022). Stakeholder feedback considered for the proposal also included that revitalization or stabilization activities do not always provide direct benefits to low- or moderate-income individuals. *See id.* at 33902.

[458] *See* proposed § ____.13(b).

[459] *See* 12 CFR ____.12(g)(4) and Q&A § ____.12(g)(4)–2.

''revitalization'' to ''revitalization or stabilization'' for consistency with the current regulation and to reflect the agencies' intent to retain the concept of ''stabilization'' in this community development category. Final § ____.13(e)(1) provides the general definition of the types of activities included in this category of community development. These activities must also meet specific place-based eligibility criteria in § ____.13(e)(i) through (iii). Final § ____.13(e)(2) adds a new provision for mixed-use revitalization or stabilization projects.

Section ____.13(e)(1) In General

Similar to the proposal, under final § ____.13(e)(1), revitalization or stabilization comprises activities that support revitalization or stabilization of targeted census tracts, including adaptive reuse of vacant or blighted buildings, brownfield redevelopment, support of a plan for a business improvement district or main street program, or any other activity that supports revitalization or stabilization. Final § ____.13(e)(1) incorporates the technical revision from ''revitalization'' to ''revitalization or stabilization'' and other non-substantive edits.

Consistent with the proposal, the final rule incorporates some aspects of existing guidance for revitalization and stabilization, but no longer focuses eligibility of activities on the extent to which an activity helps to attract or retain residents or businesses in targeted geographic areas. Consistent with prior stakeholder feedback and as noted in the proposal, the agencies have determined that the standard in current interagency guidance that an activity ''attract new, or retain existing, businesses or residents'' has proven difficult for banks, community groups, and the agencies to apply, resulting in inconsistent outcomes. Under the ''attract or retain'' standard, banks and other stakeholders lacked upfront clarity about which loans, services, or investments would be eligible for consideration, and the standard also sometimes allowed for development that did not align with the purpose of the CRA, such as housing for higher-income individuals, without benefits to low- or moderate-income individuals. Thus, the final rule focuses instead on revitalization and stabilization activities benefiting or serving targeted census tracts, and includes the other place-based criterion discussed in detail above. As further discussed below, the agencies believe that final § ____.13(e) will provide stakeholders with a better upfront understanding of the types of activities that will qualify as revitalization and stabilization, and result in more consistency in community development consideration for loans, investments, and services supporting these activities.

The final rule adopts the proposed focus on activities in targeted census tracts, in alignment with current guidance. The agencies considered commenter suggestions to qualify revitalization or stabilization activities in all geographic areas, but believe that the geographic nexus to targeted census tracts—defined in final § ____.12 to include low-income census tracts, moderate-income census tracts, or distressed or underserved nonmetropolitan middle-income census tracts—is an important standard to align the final rule with a longstanding geographic focus of CRA implementation, consistent with the CRA's emphasis on communities of need. The agencies believe that final § ____.13(e) will allow activities to qualify across a range of community types with varying needs, including distressed and underserved nonmetropolitan middle-income census tracts without significant low- or moderate-income populations, as well as more densely populated metropolitan census tracts with a greater concentration of low- or moderate-income individuals.

The examples of revitalization or stabilization in the final rule (as described above, adaptive reuse of vacant or blighted buildings, brownfield redevelopment, and support of a plan for a business improvement district or main street program) are drawn from current guidance and intended to clarify the types of activities that might be considered eligible under this category. However, these illustrative examples are intended to be non-exhaustive; the final rule clarifies that eligible activities include ''any other activity that supports revitalization or stabilization.'' The agencies recognize commenter suggestions to include specific activities under the revitalization or stabilization category, such as food access, renewable energy projects, or other sustainability projects, and believe that many of these types of projects could be included for consideration within this category upon meeting the required criteria. For example, a project to build a new supermarket within a low- or moderate-income census tract of a small town would qualify as a revitalization or stabilization activity if the activity met the required criteria. Similarly, the agencies recognize commenter support for including land banking and disposition of vacant or foreclosed land under revitalization, and believe that these activities would qualify provided they met other criteria in § ____.13(e), as these are often central elements of neighborhood redevelopment efforts.

The agencies note that some activities raised by commenters might qualify in other categories; for example, broadband is provided as an example under final § ____.13(g) regarding essential community infrastructure. Other activities suggested by commenters might qualify under final § ____.13(b) regarding affordable housing, such as financing that assists low- or moderate-income individuals to rehabilitate or reconstruct their owner-occupied homes (excluding loans by a bank directly to one or more owner-occupants of such housing),[460] or alternatively, the financing of a supportive housing development and operation that meets applicable requirements in § ____.13(b).[461] In response to comments suggesting co-located childcare and early education should qualify, the agencies believe this activity may, depending on the circumstances, qualify as a community supportive service (final § ____.13(d)) or an essential community facility (final § ____.13(f)), provided the activity meets all relevant criteria.

Section ____.13(e)(1)(i) Through (iii) Place-Based Criteria

The final rule adopts the three proposed common place-based eligibility criteria for revitalization or stabilization activities, reorganized to be in a consistent parallel order across all place-based categories, and with the revisions described in the discussion of the place-based criteria above in this section-by-section analysis. Accordingly, under the final rule, revitalization or stabilization activities are those that: are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on revitalizing or stabilizing targeted census tracts (final § ____.13(e)(1)(i)); benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts (final § ____.13(e)(1)(ii)); and do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts (final § ____.13(e)(1)(iii)).

As noted, the reasons for adopting these final criteria, and for revisions to

[460] *See* final § ____.13(b)(4) and the accompanying section-by-section analysis.

[461] *See* final § ____.13(b)(1) and (2) and the accompanying section-by-section analyses.

the proposed criteria, are collectively discussed above in this section-by-section analysis. With respect to the revitalization or stabilization category in particular, the agencies note that final § ____.13(e)(1)(iii) is revised from the proposal to prohibit activities that directly result in forced or involuntary relocation of low- and moderate-income individuals in targeted census tracts. Accordingly, the agencies are not incorporating into the final rule a commenter suggestion that community revitalization plans include assurances that low- and moderate-income households will not be displaced. The agencies believe that adopting the common place-based criteria, combined with the majority standard set forth in § ____.13(a),[462] will adequately ensure that qualifying revitalization or stabilization activities benefit and serve the residents of targeted tracts, including low- and moderate-income individuals.

Section ____.13(e)(2) Mixed Use Revitalization or Stabilization Project

On consideration of feedback regarding whether housing-related revitalization activities should be considered under the revitalization category, the agencies are adopting a provision that brings certain mixed-used revitalization or stabilization projects under the revitalization and stabilization category of community development. Specifically, § ____.13(e)(2) incorporates into this community development category projects to revitalize or stabilize targeted census tracts that include both commercial and residential components, if: (1) the project meets all other criteria in § ____.13(e)(1), including all place-based criteria (final § ____.13(e)(2)(i)); and (2) more than 50 percent of the project is non-residential, as measured by the percentage of total square footage or dollar amount of the project (final § ____.13(e)(2)(i)).

The final rule is designed to take into account some commenters' views that mixed-use housing can be central to revitalization projects. However, the agencies do not intend to include in this category projects that are primarily comprised of housing, particularly mixed-use developments with housing that is targeted to middle- or upper-income individuals, including such projects in low- or moderate-income census tracts. The agencies have considered that this type of development might not clearly benefit existing residents of the targeted census tracts, particularly low- or moderate-income residents, and can sometimes lead to displacement of existing residents. On further consideration of comments, the agencies are adopting this revision to better allow for needed comprehensive redevelopment efforts in targeted census tracts that involve mixed-use properties comprised of some, but not primarily, housing.

The agencies considered several alternative thresholds for the percentage of a mixed-use comprehensive redevelopment project that can be residential for the project to qualify as under § ____.13(e), and are adopting a threshold requiring that more than 50 percent of the project must be non-residential as measured by the percentage of total square footage or dollar amount of the project (corresponding to a threshold of 50 percent or lower for the residential component of the project). The agencies believe that the adopted percentage threshold provides appropriate additional flexibility for mixed-use development under the final rule's revitalization and stabilization category. In this regard, the agencies considered that a lower residential percentage threshold would exclude several types of mixed-use projects central to overall community revitalization efforts. On the other hand, the agencies believe that activities inclusive of a higher percentage threshold of housing within a project (*i.e.,* above 50 percent) are more appropriately considered under the affordable housing category in section § ____.13(b), as those projects are primarily housing.

An example of housing activity that could qualify under final § ____.13(e)(2), as long as all criteria are met, would be a main street mixed-use project to revitalize a series of vacant buildings to include 60 percent commercial space and 40 percent apartments serving middle-income residents. An example that would not qualify under § ____.13(e)(2) would include a condominium project that is 100 percent apartments that are affordable exclusively to higher-income residents in a targeted census tract. Likewise, the agencies recognize comments regarding supportive housing in any geographic area, and reconstruction or rehabilitation of owner-occupied homes in low- or moderate-income census tracts or distressed or underserved middle-income census tracts. These activities may qualify as affordable housing (final § ____.13(b)) and would qualify under § ____.13(e) if they meet criteria as part of a comprehensive mixed-use revitalization project. Banks subject to the rule are permitted to qualify activities under any applicable category, but those activities may count only once for the purposes of calculating the Community Development Financing Metric.

Section ____.13(f) Essential Community Facilities

Current Approach and the Agencies' Proposal

Currently, in low- or moderate-income census tracts, distressed nonmetropolitan middle-income census tracts, and designated disaster areas, bank support for community facilities and infrastructure generally can receive community development consideration to the extent that these activities help to attract or retain residents or businesses.[463] However, among these three geographic areas, these activities are only explicitly mentioned in current guidance for distressed nonmetropolitan middle-income areas[464] (with guidance on designated disaster areas mentioning ''essential community-wide infrastructure'' but not facilities[465]). Regarding underserved nonmetropolitan middle-income census tracts, as noted earlier, the current CRA regulation provides that activities qualify for community development consideration in these areas ''if they help to meet essential community needs, including needs of low- and moderate-income individuals.''[466] To clarify this provision, the Interagency Questions and Answers states that activities such as ''financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services'' in underserved nonmetropolitan middle-income census tracts will be evaluated to determine whether they meet essential community needs.[467]

[462] For a detailed discussion of the majority standard in relation to when community development loans, investments, and services are eligible for full or partial credit, see the section-by-section analysis of final § ____.13(a).

[463] *See* Q&A § ____.12(g)(4)(i)—1 (regarding low- or moderate-income census tracts), Q&A § ____.12(g)(4)(ii)—2 (regarding designated disaster areas), and Q&A § ____.12(g)(4)(iii)—3 (for distressed nonmetropolitan middle-income census tracts).

[464] *See* Q&A § ____.12(g)(4)(iii)—3 (''Qualifying activities may include, for example, . . . activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents.'').

[465] *See* Q&A § ____.12(g)(4)(ii)—2.

[466] 12 CFR ____.12(g)(4)(iii)(B).

[467] Q&A § ____.12(g)(4)(iii)—4. As also noted, the guidance provides several examples of projects that may be considered to meet essential community needs in underserved nonmetropolitan middle-income census tracts, such as hospitals, industrial parks, rehabilitated sewer lines, mixed-income housing, and renovated schools—as long as the

The agencies' proposal aimed to provide more clarity, certainty, and consistency regarding CRA consideration for activities that support essential community facilities and infrastructure. To this end, proposed § ____.13(f) (essential community facilities) and proposed § ____.13(g) (essential community infrastructure, discussed further below in this section-by-section analysis) built on the current Interagency Questions and Answers to clarify that essential community facilities and essential community infrastructure would be considered community development if they were conducted in and benefit or serve residents of targeted census tracts, defined in proposed § ____.12 to mean low- or moderate-income census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts.

Specifically, the agencies proposed a category of community development for essential community facilities, defined as activities that provide financing or other support for public facilities that provide essential services generally accessible by a local community. Proposed § ____.13(f) included the following non-exhaustive examples of the types of facilities that would fall into this category: schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers. The proposal further defined essential community facilities as activities conducted in targeted census tracts (as defined in proposed § ____.12) that also meet the other place-based criteria discussed above: that activities benefit or serve residents, including low- or moderate-income residents (proposed § ____.13(f)(1)); that activities do not displace or exclude low- or moderate-income residents in the targeted census tracts (proposed § ____.13(f)(2)); and that an activity that finances or supports essential community facilities must be conducted in conjunction with a Federal, State, local, or tribal government plan that includes an explicit focus on benefiting or serving the targeted census tracts (proposed § ____.13(f)(3)).

Comments Received

Most commenters offering feedback on the agencies' proposal regarding essential community facilities were generally supportive. A few commenters supported the agencies' decision not to propose the current requirement that community facilities must also attract or retain businesses and residents.

population served includes low- and moderate-income individuals. *See id.*

Commenters offered different views on the examples in the proposed essential community facilities category. Some commenters expressly supported the proposed examples of essential community facilities. Others sought clarity on the types of activities that would qualify under this community development category, or advocated for including additional types of activities in the regulation. For example, a number of commenters highlighted the proposed examples of hospitals and other healthcare-related facilities, noting this may encourage new investment in healthcare access, while others noted the inclusion of childcare facilities, citing a wide variety of community benefits.

Others sought clarity on the types of activities that would qualify under this community development category, or advocated for including additional types of activities in the regulation. Several commenters suggested that the agencies add supermarkets and other food-related facilities to the proposed list of examples, including because low- and moderate-income communities are disproportionately more likely to be food deserts.[468] Other comments included: a suggestion to clarify that the financing of retail service businesses, including grocery stores, pharmacies, and other neighborhood-scale services, are eligible facilities, regardless of the size of the occupant business, as these facilities bring convenience, jobs, physical revitalization, and lower prices for consumers; and suggested eligibility for financing grocery stores larger than the size standards in the proposed Retail Lending Test or proposed economic development category of community development. Another commenter cautioned the agencies against defining all examples of essential community facilities and essential community infrastructure in the regulation, stating that doing so could cause banks to limit activities based on the list and limit creativity in responding to local needs.

A number of commenters also responded to the agencies' request for feedback regarding whether the proposed category should incorporate additional requirements to help ensure that essential community facilities activities include a benefit to low- or moderate-income residents in the communities served by these projects. Several commenters asserted that CRA credit should be given only to essential community facilities activities that serve critical community needs directly in low- and moderate-income areas that are otherwise unable to attract funding. One of these commenters stated that CRA credit should be limited if the market is already fully able to serve such needs. Another commenter recognized the challenges of determining the specific population of people who benefit from a public investment, but argued for identifying a set of characteristics or parameters to distinguish certain projects beneficial to low- and moderate-income residents from those where financing would be readily available at reasonable terms notwithstanding CRA eligibility.

[468] Suggestions also included adding support for grocery stores to the illustrative list of eligible activities in proposed § ____.14(a). For discussion of the proposed and final rules regarding the illustrative list of eligible community development loans, investments, and services, see the section-by-section analysis of final § ____.14(a).

Other commenters emphasized that the goal for qualifying activities under this category should be to provide benefits to low- and moderate-income residents. Commenter recommendations in support of this goal included, among others, that the final rule should: require banks to explain how low- and moderate-income residents benefit from an activity; include a primary purpose standard for qualifying bank support for essential community facilities under which a majority of the dollars invested by the bank would have to be directed toward supporting low- and moderate-income residents; and establish guardrails to ensure financing goes directly to low- and moderate-income communities, including metrics to measure benefits of these projects, such as jobs created for low- and moderate-income individuals and contracts with local companies, and growth in median income for census tract residents. A commenter recommended that any facility be presumed to serve low- and moderate-income residents if it is open to all residents of a targeted census tract, with fees (if any) that are affordable to low- and moderate-income persons.

A few commenters opposed adding other criteria to the essential community facilities category to ensure that low- and moderate-income communities and residents benefit. These commenters asserted that activities should qualify if they benefit the entire community, including but without a specific focus on low- and moderate-income residents. A commenter recommended that essential community facilities should qualify, at least for partial credit, if located outside of targeted census tracts, if and to the extent they benefit low- and moderate residents of the targeted geographic areas.

Final Rule

The agencies are adopting proposed § ____.13(f), reorganized for clarity and consistency with the structures of other place-based categories and modified as described below. Consistent with the proposal, final § ____.13(f) provides the general definition of the types of activities included in this category of community development, and requires that these activities must also meet specific place-based eligibility criteria in final § ____.13(f)(1) through (3).

Section ____.13(f) In General

Under final § ____.13(f), essential community facilities are 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 that benefit or serve targeted census tracts. The final rule reflects technical edits for readability, but is substantively consistent with the proposal. As noted in the discussion of the revitalization or stabilization category in § ____.13(e) above, the agencies believe that the final rule, with the common place-based criteria discussed throughout the section-by-section analysis of § ____.13(e) through (j), will provide stakeholders with a better upfront understanding of the types of essential community facilities that will qualify as community development relative to an ''attract or retain'' standard, resulting in more consistency in application. Further, the agencies believe that, relative to current practice, the final rule will better ensure that loans, investments, and services support activities aligned with the purposes of CRA to meet the credit needs of entire communities, including low- or moderate-income individuals.

The proposed rule defined essential community facilities as those that are ''conducted in'' targeted census tracts; the final rule revises the proposal to define essential community facilities as those that ''benefit or serve'' residents of targeted census tracts, including low- and moderate-income individuals. The agencies proposed the ''conducted in'' standard to facilitate a bank's demonstration that activities are benefiting and serving the residents of a targeted census tract. Based on comments and on further consideration, however, the agencies believe that the ''conducted in'' standard could exclude facilities located in close proximity to a targeted census tract that nonetheless benefit and serve residents of that census tract, including low- and moderate-income individuals. For example, under the proposal, a construction loan to build a fire station located just outside but primarily serving residents of a targeted census tract would have not qualified for consideration. Under the final rule, that construction loan could be considered, provided the rule's other criteria are met. The agencies believe that the requirement as revised—to require that essential community facilities benefit or serve targeted census tracts—will ensure a strong connection between essential community facilities and community needs in targeted census tracts, and that this connection will be further bolstered by the other two place-based criteria (*e.g.,* undertaken with a plan, program, or initiative that includes a focus on benefiting or serving the targeted census tract and not directly resulting in the forced or involuntary displacement of low- or moderate-income individuals in the targeted census tract). The agencies note that banks will be expected to be able to demonstrate that a project benefits the targeted census tracts in accordance with the rule.

The agencies considered but are not adopting the suggestion for a presumption that any facility open to all residents of targeted census tracts with affordable fees serves low- and moderate residents, given the variety of potential facts and circumstances. The agencies believe, however, that a facility will qualify for consideration if a bank demonstrates that the facility is public and provides essential services, serves low- or moderate-income residents in the targeted census tract, and meets the rule's other required criteria. Similarly, the agencies are not adopting the commenter suggestion that activities qualify if they benefit the entire community without specific inclusion of low- and moderate-income individuals. The agencies believe that qualifying essential community facility activities should be demonstrably inclusive of low- and moderate-income individuals, in alignment with the CRA's express focus on encouraging banks to meet low- and moderate-income community needs in the communities they serve.

Final § ____.13(f) adopts the proposed list of examples of essential community facilities: schools, libraries, childcare facilities, parks, hospitals, healthcare facilities, and community centers, which are generally consistent with examples found in current guidance. The agencies believe that these examples provide adequate clarity to illustrate the types of activities that may qualify under this category. The list is intended to help clarify, for instance, that a loan to help build a public school or a community center that serves residents of a targeted census tract would qualify for community development consideration, provided all other criteria of § ____.13(f) are met. While the final rule does not adopt other examples raised by commenters, the agencies note that the list of examples is illustrative and non-exhaustive. The final rule does not preclude agency consideration of investments, loans, or services supporting other types of essential community facilities meeting the criteria set forth in § ____.13(f). The agencies do not believe that identifying every kind of essential community facility in the regulation is practicable or possible. However, the agencies will take commenters' suggestions under advisement as the agencies develop the illustrative list contemplated by § ____.14(a).

Additionally, activities mentioned by commenters that might not qualify as essential community facilities under the final rule might qualify under other categories of community development. For example, a loan to finance a public road or sewer could qualify for consideration as supportive of essential community infrastructure under § ____.13(g), if all of the rule's criteria were met, while a grant to support a food bank that opens a food pantry could qualify under § ____.13(d) as supportive of a community supportive service. Financing of retail service businesses such as grocery stores, retail pharmacies, and other neighborhood-scale services are generally private sector facilities, and thus are not considered essential community facilities, which are defined as public facilities. However, these retail services may qualify as revitalization or stabilization activities under § ____.13(e), should they meet the criteria of that provision.

On consideration of the comments and further deliberation, the agencies are not adopting additional or alternative requirements to help ensure that essential community facilities include a benefit to low- or moderate-income residents in the communities served by these projects. For example, regarding comments that the rule should qualify only activities supporting critical community needs, the agencies believe that this approach could be overly limiting in light of communities' varying needs and different views about which needs are critical. The agencies intend the final rule to maintain sufficient flexibility for banks and communities to address a wide range of needs that communities consider important.

Regarding comments that the rule should require activities to have a primary purpose of serving low- and moderate-income residents in targeted census tracts, the final rule seeks to maintain flexibility for activities to meet a range of community needs, while also requiring the inclusion of low- or moderate-income individuals as beneficiaries. As noted, this flexibility remains particularly important in distressed and underserved nonmetropolitan middle-income census tracts, which can have fewer low- or moderate-income residents. On the other hand, the agencies are also not adopting the suggestion to qualify facilities open to the entire community without specific inclusion of low- and moderate-income individuals. The agencies believe that the final criterion, as adopted, is tailored and consistent with the CRA statute, which focuses on benefits to communities, including to low- or moderate-income populations. The agencies believe that the rule as finalized, combined with the majority standard set forth in § ____.13(a),[469] appropriately ensures inclusion of low- or moderate-income residents.

For similar reasons, the agencies are also not incorporating into final § ____.13(f) metrics for measuring the benefits of essential community facility activities to low- and moderate-income individuals. The agencies are concerned that specific metrics-related requirements or methodologies for demonstrating low- or moderate-income benefits of essential community facilities could be overly burdensome and complex to apply, potentially dissuading banks from supporting essential community facilities and limiting the adaptability of the rule to accommodate a variety of activities over time. However, banks will be expected to demonstrate that essential community facilities benefit or serve residents of targeted census tracts, including low- and moderate-income individuals. Finally, as discussed further in the section-by-section analysis of § ____.13(a), the agencies are not adopting a partial consideration option in § ____.13(f). The agencies believe the primary focus of activities should be to benefit or serve residents of targeted tracts and an alternative option providing partial consideration would allow for qualification of activities that do not share this focus as an intentional goal.

Section ____.13(f)(1) Through (3) Place-Based Criteria

The final rule adopts the three common place-based eligibility criteria for essential community facilities, reorganized to be in a consistent parallel order across all place-based categories, and with the revisions described in the discussion of the place-based criteria above in this section-by-section analysis. Accordingly, under the final rule, essential community facilities are public facilities that: are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefiting or serving targeted census tracts (final § ____.13(f)(1)); benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts (final § ____.13(f)(2)); and do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts (final § ____.13(f)(3)). As noted, the reasons for adopting these final criteria, and for revisions to the proposed criteria, are collectively discussed above in this section-by-section analysis.

Section ____.13(g) Essential Community Infrastructure

The Agencies' Proposal

In proposed § ____.13(g), the agencies proposed a category of community development for essential community infrastructure activities, defined as activities 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. The proposal further defined essential community infrastructure as activities conducted in targeted census tracts (as defined in proposed § ____.12 and discussed above) that also meet the other place-based criteria discussed above: that activities benefit or serve residents, including low- or moderate-income residents (proposed § ____.13(g)(1)); that activities do not displace or exclude low- or moderate-income residents in the targeted census tracts (proposed § ____.13(g)(2)); and that an activity that finances or supports essential community infrastructure must be conducted in conjunction with a Federal, State, local, or tribal government plan that includes an explicit focus on benefiting or serving the targeted census tracts (proposed § ____.13(g)(3)). Thus, under the proposal, support for larger infrastructure projects could be eligible for community development consideration if the project is conducted in relevant targeted census tracts, demonstrably benefits the residents of the targeted census tracts, and it is evident that, in particular, low- or moderate-income residents, of the targeted census tracts would benefit and not be excluded from the larger-scale improvements.

Comments Received

Many comments on proposed § ____.13(g) provided feedback on the types of infrastructure that should be considered essential community infrastructure, with a number requesting clarification about specific types of infrastructure projects. Many commenters expressly supported the proposed consideration for broadband activities, emphasizing, among other things, the importance of broadband access in community resilience, closing the digital divide, and creating access to financial services, jobs, healthcare, and education, and noting the role of CRA in overcoming broadband investment costs. Additional commenter feedback included support for qualification of broadband infrastructure only if reliable, affordable, and locally controlled; and support for qualifying only the infrastructure examples included as part of the proposal. Other commenters generally highlighted the importance of investments made in functioning roadways, internet, health, and safety, with additional suggestions that the regulation specify a range of activities that qualify as essential community infrastructure, including renewable energy projects; transit-oriented infrastructure, including road and technology infrastructure; hospital construction; jail renovations; and refuse services.

The agencies also received a number of comments in response to the agencies' request for feedback regarding whether the proposed category should incorporate additional criteria to help ensure that essential community infrastructure activities include a benefit to low- or moderate-income residents in the communities served by these projects. Some commenters opposed additional criteria for community development consideration of infrastructure projects (or community facilities), indicating that activities benefiting all residents, including persons of any income level, should qualify. As discussed in more detail below, other commenters on this aspect

[469] For further discussion of the standards for receiving full credit for a loan, investment, or service supportive of essential community facilities or essential community infrastructure, and related public comments, see the section-by-section analysis of § ____.13(a). Loans, investments, or services supporting community development under final § ____.13(f) meet the ''majority standard'' for receiving full credit it the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of targeted census tracts. *See* final § ____.13(a)(1)(i)(B)(*4*).

of the proposal supported an emphasis on benefits to low- and moderate-income residents, with some suggesting additional criteria for ensuring that community infrastructure projects qualifying as community development under the CRA benefit low- and moderate-income residents.

Some commenters asserted that essential community infrastructure activities should be focused on benefiting low- and moderate-income residents of targeted census tracts (or other relevant geographic areas). For example, a commenter expressed concerns about certain proposed infrastructure examples such as broadband, water, and sewage, as greatly expanding the number and types of eligible activities without a clear benefit to low- and moderate-income people and places. A few commenters recommended that essential community infrastructure be limited to activities with a clear and demonstrable benefit to, or primary purpose of serving, low- and moderate-income people and geographic areas. Several commenters suggested that CRA credit for infrastructure should be limited based on a strong correlation with benefits to low- and moderate-income individuals and families because reasonable financing is already available for most essential infrastructure projects. Commenters also asserted that CRA credit should be given only to essential community infrastructure activities that serve critical community needs directly in low- and moderate-income areas and are otherwise unable to attract funding. A few commenters recommended that essential community infrastructure be limited to activities with a clear and demonstrable benefit to, or primary purpose of serving, low- and moderate-income people and geographies. Another commenter emphasized that qualifying activities in this category should have a clear objective of meeting needs in targeted communities.

Other comments on ensuring benefits for ensuring benefit for low- and moderate-income individuals and communities included support for limiting CRA consideration to those activities with a strong correlation to benefits for low- and moderate-income individuals and families, such as a project in a majority low- and moderate-income population census tract. Suggestions for measuring the benefits of infrastructure projects to low- and moderate-income communities included considering jobs created for low- and moderate-income individuals; contracts with local companies; economic growth-related metrics such as growth in median income for census tract residents; and environmental improvements, such as greenhouse gas emissions and/or pollution reductions, increases in the amount of greenspace, community health benefits, and climate adaptation strategies.

Citing the impact of historical disinvestment in basic infrastructure on many low- and moderate-income communities, particularly minority communities, a commenter suggested that the CRA framework should prioritize ensuring that all communities have a minimum standard of infrastructure, including protective infrastructure, over enhancing infrastructure in areas that already have a standard level of investment. Another commenter suggestion was that the agencies consider a bank's activities supporting essential community infrastructure in light of the overall balance of activities that comprise a bank's portfolio, to ensure that a significant portion of the bank's community development activities are targeting places and populations of high need with products that are not otherwise likely to be offered by the bank. This commenter further suggested that that agencies cap the volume of essential community infrastructure that could be included in the proposed Community Development Financing Metric,[470] asserting that essential community infrastructure projects are often relatively safe investments to make but might not necessarily be directly targeted to low- and moderate-income persons or communities.

As also discussed above in the section-by-section analysis of § ____.13(a), a few commenters expressed support for giving partial credit for essential community infrastructure activities. Citing the large-scale nature of many infrastructure projects and concerns about the potential difficulty of applying the proposed primary purpose standard,[471] commenters recommended various approaches to a partial credit framework for essential community infrastructure. These included partial credit based on the percentage of low- and moderate-income census tracts served by the activity, or based on whether the infrastructure project meets or exceeds a minimum threshold of serving low- and moderate-income census tracts, residents, or small businesses or farms. A commenter separately suggested granting at least partial credit for infrastructure (and facilities) located outside of targeted census tracts, as long as the infrastructure benefits residents of those census tracts. In contrast, at least one commenter expressly opposed providing partial credit for bank support of essential community infrastructure, noting concerns that these activities tend to be large dollar transactions that are not necessarily targeted at low- and moderate-income residents with intentionality, and thus partial credit could allow for more projects to qualify and potentially comprise a significant portion of a bank's community development finance metric numerator at the expense of smaller, more impactful investments. However, this commenter recommended an exception for partial credit for activities in rural communities and cities with low bond ratings and thus that might not otherwise receive financing support.

Final Rule

The agencies are adopting proposed § ____.13(g), reorganized for clarity and consistency with the structures of other place-based categories and modified as described below. Consistent with the proposal, final § ____.13(g) provides the general definition of the types of activities included in this category of community development, and requires that they meet specific place-based eligibility criteria in final § ____.13(g)(1) through (3).

Section ____.13(g) In General

Under final § ____.13(g), essential community infrastructure comprises activities benefiting or serving targeted census tracts, including but not limited to broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. Thus, final § ____.13(g) makes no substantive changes to the proposal other than technical edits for readability. As with other place-based categories, the agencies believe that final § ____.13(g), with the common place-based criteria discussed in more detail elsewhere in the section-by-section analysis of § ____.13, will provide stakeholders with a better upfront understanding of the types of essential community infrastructure that will qualify as community development relative to the current approach based on an ''attract or retain'' standard. Additionally, consistent with the proposal, the final rule clarifies that essential community infrastructure is a community development category that applies across all targeted census tracts (*i.e.,* low-income, moderate-income, distressed or underserved middle-

[470] *See* proposed § ____.24. *See also* final § ____.24 and the accompanying section-by-section analysis.

[471] *See* proposed § ____.13(a). *See also* final § ____.13(a) and the accompanying section-by-section analysis.

income census tracts), whereas, as noted, current guidance explicitly references infrastructure only in the context of distressed or underserved nonmetropolitan middle-income census tracts. Further, the agencies believe that, relative to current practice, the final rule will better ensure that loans, investments, and services support activities that align with the purposes of CRA to meet the credit needs of entire communities, including low- or moderate-income individuals.

As noted, proposed § ____.13(g) defined essential community infrastructure as those that are ''conducted in'' targeted census tracts; the final rule revises the proposal to define essential community infrastructure activities as those that ''benefit or serve'' residents of targeted census tracts, including low- or moderate-income individuals, similar to revisions made with respect to the essential community facilities category under § ____.13(f). As with proposed § ____.13(f), the agencies proposed the ''conducted in'' standard to facilitate a bank's demonstration that essential community infrastructure activities are benefiting and serving the residents of a targeted census tract. Based on comments and on further consideration, the agencies believe that the ''conducted in'' standard could exclude infrastructure projects located in close proximity to a targeted census tract that nonetheless benefit and serve residents of that tract, including low- and moderate-income individuals. The agencies also intend this revision to strengthen the emphasis on benefits to residents of targeted census tracts, including low- or moderate-income individuals, in the event that infrastructure projects ''conducted in'' a targeted census tract might have only ancillary if any benefits for the targeted census tract. For example, a project to build a sewer line that connects services to a middle- or upper-income housing development but passes through a low- or moderate-income census tract without connecting needed sewer services to that community generally would not qualify as essential community infrastructure under the final rule.[472] In contrast, a project to improve water supply to residents of targeted census tracts could qualify as community development even if the water supply improvements were made outside of those census tracts, provided that the bank could demonstrate the project benefits the targeted census tracts in accordance with the rule. The agencies believe that the requirement as revised—to require that essential community infrastructure benefit or serve targeted census tracts—will ensure a strong connection between essential community infrastructure and community needs in targeted census tracts, and that this connection will be further bolstered by the other two common place-based criteria. The agencies further note that banks will be expected to be able to demonstrate that a project benefits the targeted census tracts in accordance with the rule.

As noted above, the final rule adopts the proposed non-exhaustive list of examples of essential community infrastructure: broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems. On consideration of the comments and further review, the agencies continue to believe that the proposed examples provide adequate clarity for the types of activities that could be considered essential community infrastructure under final § ____.13(g), and also note that they generally align with current guidance, discussed above. Accordingly, examples of the types of loans, investments, and services that support essential community infrastructure under § ____.13(g) could include a municipal bond to help fund a transit improvement within targeted census tracts, or financing of a project to provide residents of targeted census tracts access to broadband, subject to the other criteria being met.

Regarding other examples raised by commenters, the agencies note that the list of examples is illustrative and non-exhaustive. Thus, the final rule does not preclude agency consideration of investments, loans, or services supporting other types of essential community infrastructure that meet the criteria set forth in § ____.13(g). The agencies do not believe that identifying every kind of essential community infrastructure in the regulation is practicable or possible. However, the agencies will take commenters' suggestions under advisement as the agencies develop the illustrative list contemplated by § ____.14(a).

The agencies also considered the suggestion to limit the provision to only those activities listed in § ____.13(g), but believe that this approach would be too restrictive; communities may have differing infrastructure needs, and limitations could deter new or innovative essential community infrastructure projects. Additionally, activities that are not essential community infrastructure may qualify under other categories of community development. For example, a project to redevelop vacant brownfield lots into buildable land would not qualify as essential community infrastructure in section § ____.13(g), but might qualify as a revitalization or stabilization activity pursuant to section § ____.13(e).

On consideration of the comments and further deliberation, the agencies believe that final § ____.13(g), combined with the majority standard set forth in § ____.13(a),[473] appropriately ensures a focus on low- or moderate-income residents of targeted census tracts. Accordingly, the agencies have determined not to adopt additional or alternative requirements to help ensure that essential community infrastructure activities include a benefit to low- or moderate-income residents in the communities served by these projects. Having carefully reviewed commenter suggestions, the agencies are concerned that additional criteria might be overly limiting, such as qualifying only activities supporting critical community needs, or particular activities only under specified conditions, such as limited costs or local control. The agencies recognize that community needs can vary widely across communities, and therefore intend the final rule to be sufficiently adaptable for banks and communities to address those needs. While the agencies note that infrastructure projects in higher income areas tend to be sufficiently resourced, the agencies believe that the final rule will provide recognition of bank support for a variety of needed activities in targeted census tracts, including those projects that would be less likely to be funded otherwise.

In addition, the agencies are not adopting comments suggesting that the rule should require activities to primarily serve low- and moderate-income residents in targeted census tracts; to strongly correlate to the benefit to low- and moderate-income individuals; or to limit eligible activities to census tracts with majority low- or moderate-income populations. The final rule seeks to maintain flexibility for activities to meet a range of community needs, while also requiring the inclusion of low- or moderate-income individuals as beneficiaries. As noted in the discussion of essential community facilities (final § ____.13(f)), the agencies believe that this flexibility remains particularly important in distressed or

[472] *See also* Q&A § ____.12(g)(4)(iii)—4.

[473] *See* final § ____.13(a)(1)(i)(B)(*4*) (providing that loans, investments, or services supporting community development under final § ____.13(f) and (g) meet the ''majority standard'' for receiving full credit it the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of targeted census tracts), discussed in the section-by-section analysis of final § ____.13(a)(1).

underserved nonmetropolitan middle-income census tracts, which can have fewer low- or moderate-income residents. Thus, the final rule is intended to balance a number of considerations by specifically requiring that essential community infrastructure under § ____.13(g) benefit or serve residents of these census tracts, or low- or moderate-income census tracts, but also requiring that low- or moderate-income individuals within those census tracts benefit from the project. At the same time, the agencies are declining to expand the rule to qualify activities benefiting all residents without regard to income level, as the agencies believe it is important that there be some demonstrated benefit to low- and moderate-income individuals.

For similar reasons, the agencies are also not adopting in the regulation recommended methods for measuring the benefits of these projects to low- and moderate-income individuals. The agencies are concerned that specific requirements in this regard could be overly burdensome and add a level of complexity to the rule that could run counter to facilitating partnerships between banks and communities to meet essential community infrastructure needs. The agencies further believe that there is a need to maintain flexibility in the rule, as noted above, for qualifying a range of infrastructure projects that meet varying community needs. However, banks will be expected to demonstrate that all of the criteria in § ____.13(g) have been met, notably the criterion in § ____.13(g)(2) that essential community infrastructure benefits or serves residents of targeted census tracts, including low- and moderate-income individuals.

The agencies have also considered comments suggesting an option to provide partial credit for activities under § ____.13(g), but continue to believe that not including a partial credit option for essential community infrastructure will better facilitate clarity and consistency in the consideration of essential community infrastructure. In addition, the agencies are concerned that providing partial credit could allow for qualification of projects without a specific focus on benefiting and serving residents of targeted census tracts, and might allow for activities with only tangential benefits to the targeted census tracts. The agencies recognize commenter concerns that the criteria for essential community infrastructure could result in support for larger infrastructure projects not qualifying for CRA credit, but believe that these larger projects are likely to have financing options even if they have only ancillary benefits to residents of targeted census tracts. The place-based criteria adopted under the final rule thus are designed to help ensure that community development under the CRA includes larger infrastructure projects that provide clear and meaningful benefits to residents of targeted census tracts, and that smaller projects benefiting residents of targeted census tracts have needed financial support. Larger scale infrastructure projects will qualify if they meet all required criteria, including that there is a demonstrated majority benefit for residents of targeted census tracts.[474] Thus, a bank could purchase a bond to fund improvements for a citywide water treatment project that is consistent with a city's capital improvement plan; this bond purchase would qualify if the majority of the project benefits or serves residents in the eligible census tracts, includes low- or moderate-income residents, and meets the other criteria of § ____.13(g).

Section ____.13(g)(1) Through (3) Place-Based Criteria

The final rule adopts the three common place-based eligibility criteria for essential community infrastructure, reorganized to be in a consistent parallel order across all place-based categories, and with the revisions described in the discussion of the place-based criteria above in this section-by-section analysis. Accordingly, under the final rule, essential community infrastructure are activities that: are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefiting or serving targeted census tracts (final § ____.13(g)(1)); benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts (final § ____.13(g)(2)); and do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts (final § ____.13(g)(3)). As noted, the reasons for adopting these final criteria, and for revisions to the proposed criteria, are collectively discussed above in this section-by-section analysis.

Section ____.13(h) Recovery Activities in Designated Disaster Areas

Current Approach and the Agencies' Proposal

Similar to the current CRA regulations and guidance regarding support for designated disaster areas,[475] proposed § ____.13(h) would establish recovery activities in designated disaster areas as a category of community development. Specifically, proposed § ____.13(h)(1) stated that these recovery activities comprised 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, the proposed provision expressly excluded 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), but modified the exclusion by providing that the agencies may determine to grant a temporary exception for these areas.[476] Also aligned with current guidance, the proposal provided that activities promoting the revitalization or stabilization of designated disaster areas would be eligible for CRA consideration for 36 months after a Major Disaster Declaration unless that period is extended by the agencies.[477]

The proposal further defined recovery activities in designated disaster areas as activities that also meet the other place-based criteria discussed above: that activities benefit or serve residents, including low- or moderate-income residents (proposed § ____.13(h)(2)); not displace or exclude low- or moderate-income residents, of these geographic areas (proposed § ____.13(h)(2)); be conducted in conjunction with a Federal, State, local, or tribal government disaster plan that includes an explicit focus on benefiting the designated disaster area (proposed § ____.13(h)(3)). Under the proposal, activities in designated disaster areas that meet these eligibility standards could be considered regardless of the income level of the designated census tracts.

Comments Received

Comments on the proposal regarding recovery activities in designated disaster areas generally focused on the agencies' specific request for feedback on whether they should consider any additional criteria to ensure that activities in this category benefit low- or moderate-income individuals and communities. Some commenters, for example, indicated support for additional criteria for this category to focus the benefits of

[474] *See* final § ____.13(a)(1)(i)(B)(*4*) and the accompanying section-by-section analysis.

[475] *See* 12 CFR ____.12(g)(4)(ii). *See also* Q&A § ____.12(g)(4)(ii)–1 and –2.

[476] *See* proposed § ____.13(h)(1); *compare with* Q&A § ____.12(g)(4)(ii)–1.

[477] *See id.*

recovery activities in disaster areas on low- and moderate-income individuals and communities and to avoid recovery efforts being concentrated in higher-income areas. Commenters noted that disasters disproportionately impact low-income communities, and pointed to the inequitable distribution of recovery resources following a disaster. Several of these commenters recommended metrics to help ensure low- and moderate-income community benefit of disaster recovery activities, such as: (1) requiring that a specific percentage of benefits inure to low- and moderate-income residents; (2) use of a Social Vulnerability Index to help determine and assess low- and moderate-income benefit; or (3) consideration of criteria used in the Census Bureau's Community Resilience Estimates, which focus on various factors that could impact a community's ability to survive and rebound from declared disasters.[478] A few commenters further suggested that the agencies give credit for activities that serve displaced residents who were forced to migrate, as well as the census tracts that receive those displaced residents; or require that recovery activities in designated disaster areas benefit low- and moderate-income communities, minority communities, or both, in order to be eligible for CRA consideration. Another commenter similarly suggested that the focus of disaster recovery should be expanded to include minority communities, to ensure the agencies are fulfilling their obligation under the Fair Housing Act's affirmatively furthering fair housing provision.[479] This commenter suggested that minority individuals and communities are especially vulnerable to disasters and are also the least likely to have access to the resources needed to recover from disasters. Commenter feedback also included a recommendation to qualify activities that primarily benefit low- and moderate-income communities affected by a natural disaster without requiring a FEMA declaration or disaster plan for that community.

In lieu of additional criteria, a few commenters advocated for using the proposed impact review to give positive treatment for bank financing activities for disaster recovery based on the extent to which low- and moderate-income individuals or neighborhoods benefit.[480] For instance, a commenter suggested that CRA performance evaluations should specifically factor in the degree to which these activities benefit low- and moderate-income populations, with higher scores assigned to projects benefiting low- and moderate-income residents than other projects.

Some commenters supported qualifying recovery activities in designated disaster areas, regardless of income level, or otherwise opposed additional criteria to ensure benefits for low- and moderate-income individuals and communities in designated disaster areas. For example, a commenter supported considering disaster recovery activities as responsive to community needs and suggested that such activities in middle- and upper-income areas can benefit low- and moderate-income persons. A few commenters suggested that the agencies rely on the expertise of the bank's CRA professional to create a case for the activity and demonstrate that the activity is in direct response to a natural disaster. Another commenter referenced current guidance on disaster recovery activities under the CRA that are not income-limited,[481] and asserted that, to ensure that disaster recovery efforts are effective, all members of any community who have experienced economic dislocation due to a disaster must continue to be able to benefit from the community development activities undertaken by the financial institution, regardless of income.

Final Rule

Final § ____.13(h) adopts proposed § ____.13(h), reorganized for clarity and consistency with the structures of other place-based categories, and modified as described below. Consistent with the proposal, final § ____.13(h)(1) provides the general definition of the types of activities included in this category of community development and specifies that they must also meet the common place-based eligibility criteria (final § ____.13(h)(1)(i) through (iii)). Final § ____.13(h)(2) contains the proposed exclusion from consideration for loans, investments, and services supporting disaster recovery in counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures), and the timeframe for eligibility for consideration.

Section ____.13(h)(1) Recovery of Designated Disaster Areas

Under final § ____.13(h)(1), activities that promote recovery of a designated disaster area are those that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by FEMA. The final rule relocates the proposed additional parameters for qualification from proposed § ____.13(h)(1) to final § ____.13(h)(2), described below. The final rule is intended to describe eligible disaster recovery activities more clearly, as a stand-alone community development category of community development in the regulation, rather than including disaster recovery activities as a subcategory of revitalization and stabilization. Examples of bank activities for CRA credit as supportive of disaster recovery activities under final § ____.13(h) include, but are not limited to, assistance with rebuilding infrastructure; financing to retain businesses that employ local residents; and recovery-related housing or financial assistance to individuals in the designated disaster areas. As with the other place-based categories, the agencies believe that the final rule on disaster recovery activities, with the common place-based criteria discussed in more detail above, will provide stakeholders with a better upfront understanding of the types of disaster recovery activities that will qualify as community development relative to the current ''attract or retain'' standard.

The agencies have considered commenter suggestions for additional or alternative criteria to help ensure that designated disaster recovery activities include a benefit to low- or moderate-income residents in the communities served by these projects. In particular, the agencies are sensitive to commenter concerns that disasters can often more severely impact low- and moderate-income individuals. At the same time, given the disparate and widespread impacts that major disasters can involve, the agencies are concerned about unduly limiting qualification of activities under this category and possibly qualifying fewer disaster recovery activities than under the current rule. Thus, the agencies are not adopting commenter suggestions that the rule should require that a majority of, or all, of disaster recovery activity benefits go to low- or moderate-income residents and communities, or other similar limitations noted in the summary of comments above. The agencies continue to believe that activities that promote the recovery of designated disaster areas should benefit

[478] *See, e.g.,* U.S. Census Bureau, ''Community Resilience Estimates'' (May 30, 2023), *https://www.census.gov/programs-surveys/community-resilience-estimates.html.*

[479] *See* 42 U.S.C. 3608. *See also, e.g.,* 24 CFR 5.150 through 5.180, as proposed to be amended in 88 FR 8516 (Feb. 9, 2023).

[480] *See* proposed § ____.15(b). *See also* final § ____.15(b) and the accompanying section-by-section analysis.

[481] *See* Q&A § ____.12(g)(4)(ii)–1 and –2.

the entire community, including, but not limited to, low- or moderate-income individuals and communities, consistent with the purposes of CRA. Further, the agencies believe that the common place-based criteria adopted under the final rule will ensure a strong connection to community needs in designated disaster areas. Specifically, while activities in all census tract income levels may be considered, these activities must benefit or serve residents of the census tracts included in the designated disaster area, including low- or moderate-income individuals, and must not directly result in forced or involuntary relocation of individuals in designated disaster areas.

The agencies are also not adopting the suggestion to include under disaster recovery those activities that are not tied to specific FEMA Major Disaster Declarations or disaster recovery plans. The agencies believe that revising the current (and proposed) rule to take a more expansive approach to designating eligibility under the disaster recovery category would be overbroad and could require supplemental eligibility criteria that would add complexity to the final rule, potentially detracting from the increased clarity and transparency for stakeholders and examiners that the final rule is designed to achieve. Incorporating State disaster declarations, for example, would pose compliance and implementation challenges due to varying standards and the large volume of such declarations.

The agencies believe that generally retaining current and proposed parameters related to disaster recovery activities, including the focus on federally designated disaster areas and a nexus to a plan, program, or initiative,[482] benefits stakeholders by providing consistency and predictability. The agencies also believe that the final rule's tie to geographic areas subject to a FEMA Major Disaster Area Declaration will provide recognition for a wide range of projects benefiting communities in crisis across the United States within appropriately far-reaching, yet clearly defined, geographic areas. The agencies also note that there have been a significant number of FEMA Major Disaster Declarations in recent years, further indicating that the final rule approach has an appropriate scope for considering a wide range of activities assisting many specifically impacted communities.

Finally, the agencies are declining to adopt specific methods to measure benefits as suggested by some commenters. As with similar suggestions for other place-based categories, the agencies are concerned that specific requirements could be difficult to implement and dissuade banks from engaging in these activities. The agencies further aim to support adaptability of the rule and recognize that different facts and circumstances could give rise to a wide range of appropriate ways to demonstrate that an activity meets the disaster recovery standards in final § ____.13(h). As noted elsewhere, however, banks will be expected to demonstrate that they have met all of the criteria in § ____.13(h) for activities in designated disaster areas, notably that the activities benefit residents, including low- or moderate-income individuals, of designated disaster areas.

Section ____.13(h)(1)(i) Through (iii) Place-Based Criteria

The final rule adopts the three common place-based eligibility criteria for disaster recovery activities, reorganized to be in a consistent parallel order across all place-based categories, and with the revisions described in the discussion of the place-based criteria above in this section-by-section analysis. Under the final rule, activities that promote recovery from a designated disaster are activities that: are undertaken in conjunction with a disaster plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefiting or serving the designated disaster area (final § ____.13(h)(1)(i)); benefit or serve residents, including low- or moderate-income individuals, of the designated disaster area (final § ____.13(h)(1)(ii)); and do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in the designated disaster area (final § ____.13(h)(1)(iii)). As noted, the reasons for adopting these final criteria, and for revisions to the proposed criteria, are collectively discussed above in this section-by-section analysis.

Section ____.13(h)(2) Eligibility Limitations for Loans, Investments, or Services Supporting Recovery of a Designated Disaster Area

Final § ____.13(h)(2) relocates and adopts, with non-substantive clarifications, the additional eligibility parameters in proposed § ____.13(h)(1). Specifically, under § ____.13(h)(2)(i), loans, investments, or services that support activities promoting recovery from a designated disaster in counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures) are not eligible for consideration under § ____.13(h), unless the agencies announce a temporary exception. Section ____.13(h)(2)(ii) states that loans, investments, and services that support activities under § ____.13(h) are eligible for consideration up to 36 months after a Major Disaster Declaration, unless that time period is extended by the agencies.

The agencies continue to 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,[483] and that longer-term activities are more likely to provide sustained benefits to impacted communities and thus are a more appropriate focus under the CRA. The agencies are therefore generally adopting the definition of designated disaster areas included in the Interagency Questions and Answers,[484] and permitting the agencies to consider exceptions on a case-by-case basis, such as disaster declarations for the COVID–19 pandemic. Similarly, consistent with the proposal and current guidance, the agencies are adopting a time frame in § ____.13(h)(2)(ii) making loans, investments, and services that support activities under § ____.13(h) eligible for consideration up to 36 months after a Major Disaster Declaration. Thus, for example, providing a loan for rebuilding a commercial property 24 months after a declaration could qualify, even if the project continues to be financed past 36 months. Overall, the agencies believe that adopting these criteria will recognize comments that supported a continuance of current practice for this category and provide clarity for banks on the qualification of activities.

Section ____.13(i) Disaster Preparedness and Weather Resiliency Activities

Current Approach

The agencies' CRA regulations have allowed CRA consideration for certain activities that help communities recover from natural disasters, including activities that help to revitalize and stabilize designated disaster areas, as discussed above. On a limited basis, activities that help designated disaster areas mitigate the impact of future disasters may be considered under CRA

[482] *See* proposed § ____.13(h); *see also* Q&A § ____.12(g)(4)(ii)–1 and –2.

[483] *See, e.g.,* FEMA, ''Public Assistance Fact Sheet'' (Oct. 2019), *https://www.fema.gov/sites/default/files/2020-07/fema_public-assistance-fact-sheet_10-2019.pdf.*

[484] *See* Q&A § ____.12(g)(4)(ii)–1.

if Hazard Mitigation Assistance is included in the FEMA disaster declaration.[485] Outside of activities related to disaster recovery, the Interagency Questions and Answers provide examples of ''community development loans'' that include loans financing ''renewable energy, energy-efficient, or water conservation equipment or projects that support the development, rehabilitation, improvement, or maintenance of affordable housing or community facilities.'' [486] However, the current regulations and guidance do not expressly identify as eligible for CRA credit 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 weather-related events.

The Agencies' Proposal

In proposed § ____.13(i), the agencies proposed to establish a separate category of community development for activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. As with other proposed place-based categories of community development, eligibility under this category would be conditioned on meeting the proposed common place-based criteria. Specifically, the proposal stated that disaster preparedness and climate resiliency activities are those conducted in targeted census tracts and that: benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts (proposed § ____.13(i)(1)); do not displace or exclude low- or moderate-income residents in the targeted census tracts (proposed § ____.13(i)(2)); and are 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 benefiting a geographic area that includes the targeted census tracts (proposed § ____.13(i)(3)).

Comments Received

General comments. Most commenters addressing proposed § ____.13(i) generally supported adding this category of activities under the community development definition, as an appropriate step to encourage financial institutions to support disaster preparedness and climate resilience activities. A number of commenters asserted that these activities can mitigate risks that disproportionately impact low- and moderate-income communities, as well as indigenous communities and communities of color. For example, a commenter stated that low- and moderate-income communities are particularly vulnerable to extreme weather and other natural disasters because they are more likely to be sited in locations that have not benefited from investment in hazard mitigation. A few commenters highlighted the importance of proactive investment in communities as consistent with mission of the CRA, in addition to post-disaster funding. A few commenters asserted that climate resilience is a critical foundation for community health and economic stability and growth, while another noted that the proposed category could help communities understand what kinds of climate-related investments they can seek financing for, and help financial institutions understand which activities can receive CRA credit. In contrast, a commenter opposed the proposal to include this category of activities in the community development definition, arguing that such activities are inconsistent with the CRA.

As discussed in more detail below, while most commenters expressed general support for proposed § ____.13(i), many of these commenters urged the agencies to clarify or broaden the scope and types of activities that would qualify under the proposed category as a way to strengthen the rule. Commenters also offered suggestions for revising the proposed category's required elements for place-based activities under proposed § ____.13(i)(1) through (3), described in more detail below. Commenters also addressed miscellaneous topics outside the scope of the proposed provisions, discussed at the end of this section-by-section analysis.

Qualifying activities: scope and examples. The agencies requested comment on whether the proposed disaster preparedness and climate resiliency category appropriately defined qualifying activities in proposed § ____.13(i) as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters, weather-related disasters, or climate-related risks. The proposal also provided various examples of eligible activities contemplated by this proposed provision. While commenters generally supported proposed § ____.13(i), many of those commenters requested the agencies provide additional clarity; provide additional, non-exhaustive examples of eligible qualifying activities; and/or broaden the types of eligible activities.

For example, some commenters supported the term ''climate-related risks,'' but asserted that the agencies should interpret the term to include not only natural hazards or weather-related risks, but also environmental health and other risks exacerbated by climate change, such as those related to air quality, pest increases, and warming waters. A few commenters suggested State law climate mitigation frameworks as reference points. Other commenters suggested that the final rule specify, or provide as examples, a variety of activities they recommended should qualify, such as development of community solar and microgrids, battery storage, residential electrification, energy and water efficiency measures, green technology, broad environmental initiatives such as the creation and expansion of green jobs, greenhouse emission mitigation and decarbonization, and toxic waste and industrial site clean-up, among others. One commenter cautioned the agencies against being overly prescriptive, recommending that the final rule maintain definitions broadly associated with essential infrastructure, rather than list specific activities that could become obsolete.

Categorizing activities that promote energy efficiency. The agencies sought comment on whether activities that promote energy efficiency should be included as a component of the disaster preparedness and climate resiliency category, or whether those activities should be considered under other categories, such as affordable housing (§ ____.13(b)) and essential community facilities (§ ____.13(f)). The agencies also sought feedback on whether certain activities that support energy efficiency should be included as an explicit component of the definition. Most commenters addressing the question supported the agencies' inclusion of energy efficiency-promoting activities as a component of the disaster preparedness and climate resiliency category. For example, a commenter stated that energy efficiency activities can insulate low-income individuals from price inflation and fluctuations resulting from disasters and climate change impacts. Another commenter noted that in addition to decreased utility costs, many energy-efficient techniques support climate resiliency because they help maintain habitable conditions when power is disrupted. A commenter recommended that energy

[485] *See* Q&A § ____.12(g)(4)(ii)–1 and FEMA, ''How a Disaster Gets Declared'' (Apr. 25, 2023), *https://www.fema.gov/disaster/how-declared.*

[486] Q&A § ____.13(h)–1.

efficiency promoting activities be included as a component of the rule, but consideration for the activities should be conditioned on whether the activities benefited low- or moderate-income individuals or communities. In contrast, one commenter expressed that the agencies should not include activities that promote energy efficiency as a component of disaster preparedness and climate resiliency, asserting that these activities are outside the scope of the CRA and are more appropriate for environmental, social, and corporate governance guidance.

Several commenters also suggested that the agencies should take a broad view of what constitutes an eligible energy efficiency-promoting activity, with some suggesting mitigation efforts be considered. Examples include, among others: energy-efficient upgrades (or new installation) for residential and commercial buildings, such as appliance and fixture replacements, weatherization, improved insulation, window replacements, heat pump and HVAC system purchase and installation; and electrification or decarbonization measures that would help stabilize home energy costs; and water efficiency measures.

A number of commenters suggested that energy efficiency-promoting activities should be considered a component of other proposed community development categories, such as affordable housing, community facilities, and/or community infrastructure. For example, several commenters observed that there will be circumstances where energy efficiency improvements can benefit affordable housing and community facilities and this approach would ensure such activities are targeted to the most underserved populations.

In contrast, a few commenters supported including energy efficiency-promoting activities only under the proposed disaster preparedness and resiliency category, to facilitate initiatives that co-optimize the use of energy efficiency and weatherization with other related activities, to reduce confusion, or to prevent double-counting.

Other energy-related activities. The agencies sought comment on whether, distinct from energy efficiency improvements, other energy-related activities should be included in the disaster preparedness and climate resiliency category. Of those that responded, many commenters supported including other energy-related activities as activities that assist individuals and communities in preparing for, adapting to, and withstanding weather, natural disasters, and climate-related risks. Commenters offered various examples of such activities including, among others: renewable energy (including financing of solar panels in low- and moderate-income census tracts or on homes for low- and moderate-income homeowners, community solar installation, or a neighborhood-wide microgrid or district energy system); flood control and water run-off measures; decarbonization activities; energy storage systems; distribution grid modernization; and electric vehicle charging infrastructure. A commenter suggested that the CRA should prioritize clean energy related lending and investment and do so in a manner akin to how LIHTCs are prioritized under the current rule.

Utility-scale projects. While the agencies noted in the proposal that proposed § ____.13(i) was not intended to include utility-scale projects, the agencies also sought comment on whether to include utility-scale projects, such as certain solar projects, that would benefit residents in targeted census tracts.

Some commenters asserted that utility-scale projects could benefit low- and moderate-income areas through expanded capital investment and likely displacement of fossil fuel burning plants, which are more likely to be located in such areas; or to give clean energy options to residents who cannot install renewable energy on their homes (*e.g.,* due to cost or because they are renters). A few commenters asserted that utility-scale projects such, as renewable energy plants developed outside of a targeted geography, should still be eligible for credit, if benefits accrue to residents of targeted census tracts. A commenter suggested that by definition, utility-scale clean energy should be considered to benefit residents in targeted census tracts, noting that clean energy, regardless of location, benefits the climate everywhere and that even utility-scale clean energy projects located physically outside the geographical borders of a low- and moderate-income community still benefits the environment, health, and welfare of low- and moderate-income persons and communities.

Other commenters supported including utility-scale projects, conditioned on criteria such as a certain percentage of benefits accruing to low- and moderate-income census tracts; physical location in low- and moderate-income communities; or if documentation showed specific benefits to targeted geographies or to low- or moderate-income individuals. A few commenters raised offering partial credit for dollars going to low- or moderate-income neighborhoods or benefiting low- or moderate-income individuals, or for projects providing demonstrable financial benefits to those communities.

In contrast, some commenters responded that utility-scale projects should not be included as eligible activities. These commenters offered various reasons for this view, including that the benefits of utility-scale projects are not sufficiently directed to low- and moderate-income communities and conventional financing is more likely to be available for these projects (*i.e.,* these projects would occur without a CRA incentive). Another commenter expressed the view that including utility-scale projects would dilute the intended core focus of the CRA, due to the broad application of such projects, and the large dollar amounts involved.

Final Rule

Section ____.13(i) In General

The final rule adopts proposed § ____.13(i), renamed and reorganized from the proposal for clarity, including for consistency with the structure of other place-based categories, and with other modifications discussed below. Final § ____.13(i) uses the term ''weather resiliency'' instead of ''climate resiliency'' to clarify the types of activities that qualify under this category of community development. Under final § ____.13(i), disaster preparedness and weather resiliency activities are defined as those that assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters. As discussed below, final § ____.13(i) is revised to state that disaster preparedness and weather resiliency activities benefit or serve targeted census tracts and meet the common place-based criteria in § ____.13(i)(1) through (3).

As noted by commenters and highlighted in a growing body of

[487] *See, e.g.,* Federal Reserve Bank of New York, ''Reducing Climate Risk for Low-Income Communities'' (Nov. 19, 2020), *https://www.newyorkfed.org/newsevents/events/regional_outreach/2020/1119-2020* (referencing, for example, low-income communities' vulnerability to weather-related events such as wildfires and hurricanes); 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/wp-content/uploads/sites/3/climate-adaptation-investment-and-the-community-reinvestment-act.pdf* (stating that ''shocks from extreme weather . . . exacerbate existing vulnerabilities associated with,'' for example, affordable housing, household wealth and savings, and economic mobility).

literature, lower-income households and communities are especially vulnerable to the impact of natural disasters and weather-related risks and disasters.[487] Low- and moderate-income communities are more likely to be located in areas or buildings that are particularly vulnerable to disasters or weather-related risks, such as storm shocks or drought.[488] Because 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.[489] 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.[490] Finally, low- and moderate-income communities are often disproportionately affected by the health impacts associated with natural disasters and weather-related events.[491] For these reasons, the agencies believe adding a disaster preparedness and weather resiliency category furthers the purpose of the CRA.

While the proposed rule defined disaster preparedness and climate resiliency activities as those that are ''conducted in'' targeted census tracts, final § ____.13(i) is revised to define ''disaster preparedness and weather resiliency'' activities as those that ''benefit or serve'' targeted census tracts. The agencies recognize that while a ''conducted in'' standard could facilitate a bank's demonstration that activities are benefiting and serving the residents of targeted census tracts, it could exclude disaster preparedness and weather resiliency activities located in close proximity to a targeted census tract that nonetheless are demonstrably designed to benefit and serve residents of that census tract, including low- or moderate-income individuals. Thus, under the final rule, a project to finance a levee specifically intended to prevent flooding in a targeted census tract could qualify for consideration, even if the levee were not located directly within the census tract, presuming all criteria of the rule were met.

Qualifying activities under the final rule; examples; additional criteria. The agencies have considered commenter feedback on the scope and types of activities that might qualify under this category, and commenter responses to whether activities that promote energy-efficiency and other energy-related activities should be explicitly included in the definition. For the reasons discussed below, the agencies are finalizing the proposal's high-level, comprehensive approach regarding the scope and types of activities that qualify under this category, such as activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters. The agencies believe the final rule will encompass a wide variety of activities that help low- or moderate-income individuals and communities proactively prepare for, adapt to, or withstand the effect of natural disasters or weather-related risks or disasters, such as earthquakes, severe storms, droughts, flooding, and forest fires. For example, potentially eligible activities under the final rule, include, but are not limited to, the construction of flood control systems in a flood prone low- or moderate-income or underserved or distressed nonmetropolitan middle-income census tract; and retrofitting multifamily affordable housing to withstand future disasters or weather-related events. Additional examples of potentially eligible qualifying activities include, but are not limited to: promoting green space in targeted census tracts in order to mitigate the effects of extreme heat, particularly in urban areas; weatherization upgrades to affordable housing such as more efficient heating and air-cooling systems or more energy-efficient appliances; community solar projects, microgrid and battery projects that could help ensure access to power to an affordable housing project in the event of severe storms; financing community centers that serve as cooling or warming centers in low- or moderate-income census tracts that are more vulnerable to extreme temperatures; and assistance to small farms to adapt to drought challenges.

The agencies believe that the final definition provides banks the flexibility needed to encourage investments in a range of activities that promote disaster preparedness and weather resiliency, particularly given that communities face different types of risks across the country. To the extent that activities meet the definition and the common place-based criteria in final § ____.13(i), as well as meet the majority standard in final § ____.13(a), such activities would qualify for community development consideration. For this reason, while the agencies intend that the final rule will encompass some energy-efficiency and other energy-related activities (*e.g.,* those mentioned above), the agencies believe it is unnecessary to more specifically reference those activities in the final rule. With respect to these and other activities raised by commenters, the agencies are concerned that a more prescriptive rule that either designates or provides examples of precise qualifying activities could be overly limiting for this category, become obsolete, or discourage innovative activities in an evolving area of community development. However, the agencies will take commenters' suggestions under advisement as the agencies develop the illustrative list contemplated by § ____.14.

While the agencies believe the final rule provides broad flexibility, the agencies are also declining to further expand community development under this category, for example, to incorporate all environmental health threats and other risks that could be exacerbated by climate conditions, all

[488] *See, e.g.,* Eleanor Kruse and Richard V. Reeves, ''Hurricanes hit the poor the hardest,'' Brookings Institute (Sept. 18, 2017), *https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/*; Bev Wilson, ''Urban Heat Management and the Legacy of Redlining,'' 86 J. Am. Planning Ass'n 443–57(2020), *https://www.tandfonline.com/doi/full/10.1080/01944363.2020.1759127*.

[489] *See, e.g.,* Maya K. Buchanan *et al.,* ''Sea level rise and coastal flooding threaten affordable housing,'' Environ. Res. Lett. 15 124020 (2020), *https://iopscience.iop.org/article/10.1088/1748-9326/abb266/pdf* (providing estimates of the expected number of affordable housing units that may be at risk of flooding due to exposure to extreme coastal water levels); Patrick Sisson, ''In Many Cities, Climate Change Will Flood Affordable Housing'' Bloomberg (Dec. 1, 2020), *https://www.bloomberg.com/news/articles/2020-12-01/how-climate-change-is-targeting-affordable-housing* (referencing significant projected losses of affordable housing in the United States due to repeated flooding and noting, for example, that ''[o]lder homes tend to be poorer quality, suffer from deferred maintenance, and are more physically vulnerable to flooding damage (not to mention rising heat), all while housing a disproportionate amount of disabled, elderly and otherwise at-risk residents'').

[490] *See, e.g.,* U.S. Global Change Research Program, ''Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States'' (2018), *https://nca2018.globalchange.gov/*(''People who are already vulnerable, including lower-income and other marginalized communities, have lower capacity to prepare for and cope with extreme weather and climate-related events and are expected to experience greater impacts.''); and 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*.

[491] 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 Change Research Program, ''Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States'' (2018), *https://nca2018.globalchange.gov/*(referencing increasing impacts from extreme weather on ''the health and well-being of the American people, particularly populations that are already vulnerable'').

activities to mitigate climate risks, such as those that promote decarbonization, or activities that facilitate the transition to clean energy generally. The agencies believe it is important that the final rule clearly link qualifying disaster preparedness and weather resiliency activities to those activities that benefit or serve residents of a targeted census tract, to ensure that these activities provide the community benefit in alignment with the CRA. The agencies are concerned that broadening the rule as suggested by some commenters would make it difficult for banks to demonstrate that nexus, as well as to meet the majority standard in § ____.13(a).

Energy efficiency activities and other community development categories. The agencies have also considered comments on whether to include activities that promote energy efficiency in the disaster preparedness and weather resiliency category, or under other community development categories, such as affordable housing or essential community facilities. On further consideration, the agencies believe that energy efficiency-promoting activities are generally consistent with the final definition of disaster preparedness and weather resiliency, and therefore should be included within this category. However, the agencies do recognize that some energy efficiency-promoting activities could potentially be considered under other community development categories. For example, and as discussed in more detail in the proposal, certain weatherization improvements might also benefit affordable housing or essential community facilities. Banks subject to the rule are permitted to qualify activities under any applicable community development category, but those activities may count only once for the purposes of calculating the Community Development Financing Metric.

Utility-scale projects. Relatedly, the agencies appreciate the varying views on whether to include utility-scale projects that benefit residents of targeted census tracts within the scope of the rule. After considering the comments, the agencies reaffirm that final § ____.13(i) is not intended to include utility-scale projects. Utility-scale projects tend to be large, even regional projects. In addition, given their nature and function, the agencies believe it would be difficult for utility-scale projects to meet the definition and place-based criteria described below; in particular, the agencies believe it would be difficult for banks to clearly demonstrate such projects benefit or serve specific groups of residents in targeted census tracts. The agencies further believe it would be difficult for utility-scale projects to meet the majority standard described in § ____.13(a).

The agencies also considered comments suggesting partial consideration be available for those utility-scale activities benefiting low- or moderate-income individuals or communities, but are not revising the rule in that regard. The agencies believe that partial consideration could allow for qualification of activities that are not primarily focused on benefiting or serving residents of targeted census tracts, and could allow for activities with only accessory benefits to targeted census tracts.

Section ____.13(i)(1) Through (3) Placed-Based Criteria

The Agencies' Proposal

The proposal defined disaster preparedness and climate resiliency activities as those conducted in targeted census tracts and that: benefit or serve residents, including low- or moderate-income residents, in one or more of the targeted census tracts (proposed § ____.13(i)(1)); do not displace or exclude low- or moderate-income residents in the targeted census tracts (proposed § ____.13(i)(2)); and are 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 benefiting a geographic area that includes the targeted census tracts (proposed § ____.13(i)(3)).

Comments Received

Comments regarding the common place-based criteria are generally discussed in the introduction to this section-by-section analysis. The agencies additionally sought comment on questions specific to this category, as noted below.

Criteria to ensure targeted benefits. The agencies sought feedback on other options for determining whether disaster preparedness and climate resiliency activities are appropriately targeted; how qualifying activities should be tailored to directly benefit low- or moderate-income communities and distressed or underserved nonmetropolitan middle-income areas; and whether other criteria are needed to ensure those activities benefit low- or moderate-income individuals and communities. Additionally, the agencies sought feedback on whether energy efficiency standards should be used to determine if an activity provides sufficient benefit to targeted census tracts, including low- and moderate-income residents. Several commenters concurred that the proposal would appropriately require activities to be targeted to ensure benefits to low- and moderate-income individuals and communities. Some commenters further recommended that qualifying activities be evaluated to ensure that they provide clear, direct, targeted, meaningful, and/or proven benefit to low- and moderate-income and historically disinvested individuals or communities. Other commenters expressed concern that the proposal was not sufficiently targeted, and urged the rule be revised to state that activities must directly benefit low- and moderate-income communities, Native communities, and minority communities to be eligible for CRA consideration, to prevent funding from going to higher-income areas.

Some commenters offered specific views on whether additional tailoring is needed for eligible activities that benefit or serve low- and moderate-income individuals. A commenter encouraged the agencies to consider socially and environmentally beneficial activities even if the transaction does not directly involve a low- and moderate-income party, such as investments in broad environmental initiatives, green technology, and State programs to combat climate change. The commenter asserted that this would allow for financial institutions to more holistically serve low- and moderate-income communities. Another commenter noted that, as disasters do not target low- and moderate-income communities and impact all income levels, further tailoring is unnecessary. In contrast, a commenter stated that activities that are generically responsive to climate change such as wind farms or carbon capture efforts should not be eligible for CRA consideration as they lack the targeted benefit.

Commenters also suggested various criteria for the agencies to consider including in the final rule to ensure disaster preparedness and climate resiliency activities benefit low- or moderate-income individuals and communities. Examples of criteria suggested included, among others, considering the mission or focus of the organization owning or controlling the project and whether they have a focus on serving residents of low- and moderate-income communities; whether a project leads to expected energy reduction for low- and moderate-income individuals and communities; or whether a project expands low- and moderate-income household access to renewable energy. Other commenters suggested eligibility criteria, such as requiring renewable energy projects to have a certain percentage of low- and moderate-income subscribers, or prorating CRA credit for activities based on the portion of funds dedicated to low- and moderate-income individuals and communities.

Additional prong for activities benefiting low- and moderate-income individuals regardless of geographic location. The agencies also sought comment on whether to include a separate prong of the disaster preparedness and climate resiliency category for activities that benefit low- and moderate-income individuals, regardless of whether they reside in one of the targeted census tracts; and if so, what types of activities should be included in this component. In response, commenters generally supported including a prong to qualify activities that benefit low- and moderate-income individuals, regardless of where they live, if there is a clear benefit to low- and moderate-income individuals or communities or minority communities. Various commenters noted that not all low- and moderate-income individuals live in low- and moderate-income areas and so may be subject to increased displacement risk or physical and financial impacts. Another commenter observed that poverty is not concentrated in rural regions in the same way as in metropolitan areas. In contrast, a commenter suggested that fewer and more inclusive prongs would avoid confusion.

Examples of activities that might fit under such a prong submitted by commenters included, among others: activities that promote energy efficiency activities for low- or moderate-income individuals, regardless of where they live, and activities that facilitate improvements and recovery assistance for homes owned or rented by low- and moderate-income households.

Consideration of activities in designated disaster areas. The agencies also requested feedback on whether to qualify activities related to disaster preparedness and climate resiliency in designated disaster areas, and if so, whether additional criteria are needed to ensure benefits accrue to communities with fewest resources to address the impacts of future disasters and climate-related risks. Most commenters addressing this question opposed including designated disaster areas as targeted geographic areas for these activities. These commenters noted that Federal disaster areas often include higher-income census tracts that have access to greater resources to finance activities that promote disaster preparedness and climate resiliency, and that CRA should encourage resources to go to communities with limited resources and greater needs. A few commenters offered support, but only if low- and moderate-income individuals or targeted census tracts would be the beneficiaries, with defined constraints, such as demonstrable requirements to have low- and moderate-income census tracts comprise a high percentage of the total geography for the project financed. A few commenters offered support for specified activities in designated disaster areas (such as emergency protective measures), and one commenter suggested that credit could be pro-rated based on the portion of low- and moderate-income census tracts that benefit.

Final Rule

The final rule adopts the common place-based eligibility criteria, reorganized to be in a consistent parallel order across all place-based categories, and with the revisions described in the discussion of the place-based criteria above in this section-by-section analysis. Under the final rule, disaster preparedness and weather resiliency activities benefit or serve targeted census tracts and: are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefiting or serving targeted census tracts (final § ____.13(i)(1)); benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts (final § ____.13(i)(2)); and do not directly result in the forced or involuntary relocation of low- or moderate-income individuals residing in targeted census tracts (final § ____.13(i)(3)).

As discussed in more detail above, the final rule expands the government plan criterion adopted in § ____.13(i)(1) to include mission-driven nonprofit organizations and deletes ''explicit'' from the requirement for the plan, program, or initiative to have a focus on benefiting or serving targeted census tracts. In particular, the agencies recognize that, consistent with feedback from some commenters, the Federal, State or local governments may not have disaster preparedness or weather resiliency plans or programs currently in place for some targeted census tracts. Additionally, some government plans may not be specifically focused on, or described as, disaster preparation or weather resiliency. The agencies also note that the Federal Government as well as more State and local governments are developing disaster preparedness or weather resiliency-related plans, and the agencies anticipate these plans will become more widespread over time.

The criterion adopted in § ____.13(i)(2) is substantially similar to the proposed criterion, with a revision from ''low- or moderate-income residents'' to ''low- or moderate-income individuals.'' The criterion adopted in § ____.13(i)(3) is revised to prohibit activities that directly result in forced or involuntary relocation of low- and moderate-income individuals residing in the targeted census tracts. The agencies believe that the common place-based criteria, combined with the majority standard set forth in § ____.13(a), will adequately ensure that disaster preparedness and weather resiliency activities benefit and serve the residents of targeted census tracts, including low- and moderate-income individuals. Reasons for adopting these final criteria, and for the revisions made, are generally discussed above in this section-by-section analysis. Responses to comments on specific questions asked regarding this community development category follow below.

Criteria to ensure targeted benefits. The agencies appreciate commenters' thoughtful responses on potential additional eligibility criteria to ensure targeted benefits to low- or moderate-income individuals and communities of activities under this category of community development. The agencies have considered the suggestions and believe the adopted standard is adequately calibrated to provide needed flexibility for qualifying activities to support varying community development needs across different types of communities. In addition, the agencies are concerned that it may be burdensome to have to demonstrate that a project meets suggested criteria and could deter investments under this category. Therefore, the agencies are not adopting additional eligibility criteria. The agencies believe that the final rule is appropriately tailored to ensure a focus on low- and moderate-income residents in targeted census tracts and will facilitate banks' ability to find opportunities to serve targeted communities.

The agencies are also not adopting the suggestion to condition consideration of energy efficiency activities under the rule on specific benefits to low- or moderate-income individuals or communities, or specific energy efficiency standards. The agencies have considered that such standards are continuously evolving and believe it would be impracticable to incorporate and enforce such standards in the final rule over time. In addition, the agencies have considered that, given the many different types of activities that could qualify, setting energy efficiency standards could result in standards that are not calibrated to the full breadth of qualifying activities. However, banks may find information showing that activities meet energy efficiency standards to be helpful in demonstrating that a particular activity meets the relevant criteria in § ____.13(i).

Additional prong for targeted activities, regardless of geographic location. Similarly, the agencies are declining to expand the proposed rule to adopt an additional prong for activities directed to low- or moderate-income individuals, regardless of geographic location. Although the agencies recognize that not all low- and moderate-income individuals live in targeted census tracts, as discussed above, the agencies believe that this category should remain place-based and thus focused on activities that benefit or serve targeted census tracts. Adopting an additional basis for qualifying activities in this category would also reduce consistency across the place-based categories and in that regard could increase the final rule's complexity.

Consideration of activities in designated disaster areas. The agencies are also declining to expand the criterion in final § ____.13(i)(2) to include activities in designated disaster areas. In response to commenter concerns and upon further consideration, the agencies believe that the rule as finalized, combined with the majority standard in § ____.13(a), will appropriately help ensure a focus on low- or moderate-income residents and targeted census tracts. The agencies also note that, to the extent a designated disaster area already encompasses one or more targeted census tracts, that area would already be eligible under final § ____.13(i)(2). The agencies are concerned that expanding this category beyond targeted census tracts to include designated disaster areas would detract from ensuring that these activities continue to have a benefit for all residents, including low- and moderate-income residents, since designated disaster areas often include higher-income census tracts. The agencies also believe that many activities with long-term benefits for designated disaster areas could qualify under the separate category of community development focused on recovery for designated disaster areas.[492] The agencies believe the rule as finalized, combined with the majority standard set forth in § ____.13(a), sufficiently and appropriately ensures a focus on low- or moderate-income residents.

Additional comments. Beyond the specific elements of proposed § ____.13(i), commenters also offered a variety of other suggestions related to the proposed disaster preparedness and climate resiliency category of community development. For example, a few commenters suggested the final rule should indicate the kinds of public data and tools available for banks to identify and/or quantify climate vulnerable communities and risks, to assess whether proposed investments align with known demographic and environmental conditions, and to prioritize investments to maximize benefits to targeted communities. For example, some commenters suggested leveraging the U.S. EPA's Environmental Justice Screening and Mapping Tool (EJScreen) and White House Council on Environmental Quality's Climate and Economic Justice Screening Tool (CEJST). While the agencies appreciate these suggestions, the agencies are aware that public data and tools are continuously evolving, and therefore are declining to adopt or reference specific tools in the final rule. As the agencies note in the section-by-section analysis of § ____.21, the agencies intend to make tools and information available to banks and the public on performance context related information and will take these comments into consideration as the agencies implement the final rule.

Commenters also addressed topics such as how the climate impacts of a bank's activities should be factored into a bank's CRA performance evaluation. For example, some commenters stated that banks should be scrutinized and/or downgraded for financing activities that increase greenhouse gas emissions, asserting that such activities disproportionately impact low- and moderate-income communities or minority communities, while at least one commenter expressed concern about such an approach. A few commenters suggested that the agencies should avoid awarding CRA credit to programs or products that may take advantage of or otherwise be unaffordable to low- and moderate-income or other underserved homeowners or consumers. In this regard, the agencies note that under the final rule, as currently, evidence of illegal credit practices can be the basis of a rating downgrade.[493] For more information on the final rule's approach to rating downgrades, see the section-by-section analysis of § ____.28.

Several commenters suggested that the final rule encourage banks to provide financial services for climate resiliency activities in low-income, indigenous, and minority communities. Specifically, one commenter suggested that the agencies develop a race and ethnicity disclosure framework for community development activities, similar to the proposed disclosure of race and ethnicity data for mortgage lending under the Retail Lending Test. Another commenter asserted that race should be explicitly used as a metric to ensure that climate vulnerable communities receive improved access to credit and services. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

A few commenters suggested that an impact factor for climate resiliency-related activities could be developed, to recognize, among others, activities such as energy efficiency improvements that also benefit affordable housing and essential community facilities (if not explicitly eligible under those categories); decarbonization features of otherwise qualified activities; or activities undertaken in line with community-based plans or in collaboration with public agencies. For example, a commenter suggested that the final rule offer additional CRA credit specifically for making investments in CDFIs or other institutions that directly invest in rural-based resilience and adaptation programs or projects. The commenter observed that rural communities, particularly rural coastal regions, face a greater threat from climate change than more-urbanized areas because they often lack the resources, infrastructure and adaptive capacity of city centers.

While the final rule does not adopt a specific impact factor for these types of activities, as suggested above, the agencies note that certain activities associated with commenter-recommended impact factors could potentially already be counted under one of the twelve impact and responsiveness factors adopted in final § ____.15(b). These could include, for example, factors for community

[492] *See* final § ____.13(h), discussed further in the accompanying section-by-section analysis.

[493] *See* current § ____.28(c), proposed § ____.28(d), and final § ____.28(d).

development loans, investments, and services in specific geographic areas with significant community development needs (§ ____.15(b)(1) through (3)), that support an MDI, WDI, LICU, or CDFI (§ ____.15(b)(4)), or that serve low-income individuals or families (§ ____.15(b)(5)). Impact and responsiveness factors are discussed in more detail in the section-by-section analysis of § ____.15.

Section ____.13(j) Revitalization or Stabilization, Essential Community Facilities, Essential Community Infrastructure, and Disaster Preparedness and Weather Resiliency in Native Land Areas

Current Approach

The current CRA regulations do not include a specific category of community development for activities in Native or tribal lands, although current guidance encompasses ''revitalization and stabilization'' activities consistent with a tribal government plan if the activities are located in low- or moderate-income census tracts.[494] The OCC 2020 CRA Final Rule adopted definitions of both ''Indian country'' and ''other tribal and Native lands,'' and designated certain activities as qualifying for consideration in these geographic areas.[495]

Discussed in greater detail below, to help address challenges specific to Native lands, the agencies proposed in § ____.13(l), a new category of qualifying 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 (as defined in § ____.12, discussed in the corresponding section-by-section analysis above). The final rule renumbers proposed § ____.13(l) as § ____.13(j), revises and reorganizes the section for clarity, and makes other modifications described below.

The Agencies' Proposal

Under proposed § ____.13(l), activities in Native Land Areas related to the following would comprise a distinct category of community development: revitalization, essential community facilities;[496] essential community infrastructure; and disaster preparedness and climate resiliency.[497] Consistent with other proposed place-based categories of community development, the agencies proposed that essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency activities in Native Land Areas must: benefit or serve residents of Native Land Areas, including low- or moderate-income residents of Native Land Areas;[498] not displace or exclude low- or moderate-income residents of Native Land Areas;[499] and 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.[500]

Separately, the agencies proposed that revitalization activities in Native Land Areas have a more specific focus on low- and moderate-income individuals. Specifically, the agencies proposed that revitalization activities must benefit or serve residents of Native Land Areas, with substantial benefits for low- or moderate-income residents;[501] and must not displace or exclude low- or moderate-income residents.[502] Revitalization activities in Native Land Areas also would need to be undertaken in conjunction with a Federal, State, local, or tribal government plan, program, or initiative with ''an explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households.''[503]

Comments Received

Commenters offered views on establishing a category of community development for activities in Native Land Areas, as well as feedback on the types of activities that would qualify for CRA consideration under the Native Land Areas category of community development and additional ways to facilitate activities in Native Land Areas. Comments on the proposed definition of Native Land Areas are discussed in the section-by-section analysis of that definition in § ____.12.

General comments. Overall, commenters generally expressed wide support for including a new community development category for activities in Native Land Areas, with some indicating that the proposal would facilitate addressing unmet credit needs in geographical areas that have traditionally lacked access to CRA loans and investments, as well as bank branches in those areas. Comments included that the CRA should ensure capital is deployed to Native Land Areas, given persistent lending gaps in these areas; that the proposal could be an important step toward addressing housing needs and persistent poverty in these communities; and that a strengthened and targeted provision would incentivize banks to do more to promote prosperity in rural and Native communities throughout the country.

Additional eligibility requirements. Commenters expressed a range of views in response to the agencies' request for feedback on whether the agencies should consider additional eligibility requirements for activities in Native Land Areas to ensure that community development activities benefit or serves low- or moderate-income residents of Native Land Areas. A few commenters expressed general support for additional criteria to ensure that community development benefits accrue to low- and moderate-income residents of Native Land Areas. One such commenter, however, also wanted to ensure that CRA requirements do not place more burden on Native persons than others. Another commenter expressed support for focusing activities on low- and moderate-income residents, but asserted that low- and moderate-income resident benefit should not be a requirement for qualification.

A number of commenters more specifically objected to including income limits on beneficiaries for activities to receive CRA consideration in Native Land Areas. Reasons offered included, among others, that: (1) AMI in these areas is often very low and credit challenges are not limited to those with below 80 percent AMI; (2) middle-income Native communities often experience gaps in services and funding opportunities; (3) income limits could deter investments; and (4) revitalization across the income spectrum can have

[494] *See* 12 CFR ____.12(g)(4) and Q&A § ____.12(g)(4)(i)–1 (regarding activities in low- or moderate-income census tracts designated ''as consistent with a Federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income [census tract]''). *See also* Q&A § ____.12(g)(4)(ii)–2 (regarding activities in designated disaster areas ''consistent with a bona fide government revitalization or stabilization plan'') and Q&A § ____.12(g)(4)(iii)–3 (regarding activities in distressed nonmetropolitan middle-income census tracts ''consistent with a bona fide government revitalization or stabilization plan'').

[495] *See, e.g.,* 85 FR 34734, 34771, 34794–34796 (June 5, 2020).

[496] The proposal's regulatory text used the term ''eligible'' community infrastructure, which was a typographical error. The final rule corrects the language to ''essential community infrastructure.''

[497] Under the proposal, other community development activities (*i.e.,* affordable housing or economic development) could still qualify for consideration if those activities took place in Native Land Areas, provided that they otherwise meet the eligibility standards for that particular activity under another paragraph of § ____.13.

[498] *See* proposed § ____.13(l)(2)(i) and (l)(3)(i).

[499] *See* proposed § ____.13(l)(2)(i) and (l)(3)(i).

[500] *See* proposed § ____.13(l)(2)(ii) and (l)(3)(ii).

[501] *See* proposed § ____.13(l)(1)(i)(A).

[502] *See* proposed § ____.13(l)(1)(i)(B).

[503] Proposed § ____.13(1)(1)(i).

far-reaching positive community impacts across Native communities. Additional commenter feedback included: urging the agencies to make eligibility requirements as inclusive as possible, with various commenters noting the Federal Government's trust and treaty obligations or the historic underinvestment in tribal communities; stating that consideration of activities should focus on how an investment benefits the tribal community, and expressing concern that additional requirements would add to the complexity of determining whether a project would qualify prior to a CRA examination; and emphasizing that investments in businesses owned by higher-income Native individuals with a broader impact on tribal community and economic development can help avoid an unintended consequence of maintaining islands of poverty without amenities.

Finally, on the topic of requirements for qualifying activities on Native Land Areas more generally, a commenter asserted that tribal organizations are best positioned to determine community development needs of their communities and advocated that the agencies incorporate into the CRA framework the ability for tribal nations to determine what constitutes a qualifying community development activity in tribal communities. This commenter also recommended that the rule focus on loans to individuals as well as investments in tribal nations, as individual tribal citizens residing on tribal lands have difficulty obtaining lines of credit, loans, and other financial services.

Tribal association or tribal designee plans, programs, or initiatives. As discussed in the proposal, 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. Accordingly, the agencies sought feedback on whether to expand the government plan eligibility criteria to activities in Native Land Areas undertaken in conjunction with tribal association or tribal designee plans, programs, or initiatives. Most commenters on this topic expressed support for broadening qualification to include an option for activities in conjunction with tribal associations or designees. For example, a commenter stated that tribal associations and tribal designees offer and manage many services and programs on tribal lands and for tribal members. Another commenter noted the lack of capacity of tribal governments and indicated that full consent to these proposed activities may therefore be unreasonable; this commenter suggested that broader investment opportunities would be possible if they did not have to be undertaken in conjunction with an explicitly established tribal government initiative.

Commenters also offered views on how the rule could define what tribal associations or designees would be included in an expanded government plan eligibility criterion. Some suggested requiring that a tribal designee be led by or work closely with tribal members, or requiring that tribal association and designee plans be majority Native-led and endorsed by the tribal government or at least not actively opposed by a tribal government. A few commenters asserted that consortia should be included, while other commenters suggested that tribal charters, other Native-led organizations, Native CDFIs and TDHEs could fall within this category, with a commenter noting that tribes rely on federally funded TDHEs to drive housing development. One commenter suggested that regulators should be prepared to allow banks to invest in the activities of Native organizations even though the organizations may have an unfamiliar legal structure.

Other recommendations for Native Land Area activities. Commenters also requested various clarifications or additions to the proposed rule. Suggestions included ensuring consideration for (1) activities that impactfully improve access to Native business loans, mortgage loans, and disaster loans; (2) investments in Native CDFIs to help make more micro loans and provide financing for larger, more complex development projects; and (3) high impact activities in Native Land Areas, such as bond and debt issuances for tribal government entities. Other recommendations included emphasizing climate resiliency or renewable energy with regard to activities in Native communities, as well as broadband and digital equity access for Native Americans.

A few commenters suggested that the agencies provide express presumptions of eligibility for activities such as those carried out by or in conjunction with a tribal government or its agencies, tribal associations or designee plans, or where the primary beneficiaries are members of a federally or State-recognized Indian tribe. Several commenters, including tribal commenters, further asserted that the agencies should consult with tribes to exchange information, build relationships, and receive guidance and recommendations on reforming and implementing the CRA framework. Other commenters addressed tribal consultations with respect to activities that potentially would qualify under proposed § ____.13(l). Comments included, for example, a suggestion that the agencies explicitly state that meaningful consultation should always be undertaken with the goal of obtaining tribal informed consent when a project would have an impact on tribal lands or resources, either on or off the reservation.

Final Rule

General Rule (§ ____.13(j)(1))

The agencies are adopting proposed § ____.13(l), renumbered as § ____.13(j), with revisions as follows. The final rule is reorganized for clarity and consistency with the structures of other place-based categories. Final § ____.13(j)(1) sets forth the types of activities included in this category of community development: generally consistent with the proposal, this provision states that revitalization or stabilization (termed ''revitalization'' in the proposal), essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land areas are activities specifically targeted to and conducted in Native Land Areas. The final rule also adopts a conforming change from ''climate resiliency'' to ''weather resiliency'' for consistency with final § ____.13(i).These activities must also meet specific place-based eligibility criteria in § ____.13(j)(2) or (3), as applicable: final § ____.13(j)(2) describes place-based eligibility criteria for revitalization or stabilization activities in Native Land Areas, while final § ____.13(j)(3) collectively describes place-based eligibility criteria for essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas. These place-based eligibility criteria are discussed in more detail below.

The final rule also makes other technical edits. Section ____.13(j)(1) and (2) now reference ''revitalization or stabilization,'' instead of ''revitalization'' as proposed, for consistency with revisions to § ____.13(e). Further, for clarity and to simplify the regulatory text, § ____.13(j)(3) now cross-references the definitions of essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency found in final § ____.13(f), (g), and (i), respectively.

The agencies believe that adopting a community development category for specified activities in Native Land Areas will further the purpose of the CRA to encourage banks to meet the credit needs of their entire communities, including those of low- and moderate-income communities. 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 35 percent, and exceeds 50 percent in some communities.[504] Banking and credit access remains a chronic barrier for tribal economic inclusion. Seven percent of American Indian or Alaska Native households were unbanked in 2021, much higher than the 2.1 percent among White, non-Hispanic households.[505] Majority-Native American counties have an average of two bank branches compared to the nine-branch average in nonmetropolitan counties and well below the 27-branch overall average for all counties.[506] In addition, basic infrastructure in tribal areas significantly lags behind that of the rest of the country, with over one-third of Native households in tribal areas affected by major 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.[507] In addition, rates of broadband and cellular access are low in many tribal lands, with 21 percent of all tribal lands and 35 percent of rural tribal lands lacking broadband and cellular access.[508] Given these challenges, and as noted in more detail in the place-based criteria discussion, the agencies believe it is particularly important that community development consideration under this category be directly linked to Native Land Areas. For this reason, the agencies are finalizing in § ____.13(j)(1) the proposed requirement that all qualifying activities under § ____.13(j) be ''targeted to and conducted in'' Native Land Areas, even where the cross-referenced community development category (*e.g.,* essential community facilities in § ____.13(f)) does not itself have a ''targeted to and conducted in'' requirement.

Based on comments received and upon further consideration, the agencies are not adopting additional eligibility requirements for activities in Native Land Areas to ensure that community development activities benefit or serve low- or moderate-income individuals residing in those areas, beyond those proposed and finalized. As discussed above, tribal communities in Native Land Areas face particular challenges related to access to credit. The agencies are concerned that additional income limitations or requirements could deter investments under this category. The agencies further believe that the rule as finalized is sufficiently tailored to ensure a focus on low- and moderate-income residents in Native Land Areas, and will accordingly encourage banks to find opportunities to serve low- and moderate-income communities in areas that can be more difficult to serve.

The agencies are also not expanding the regulation to address commenter suggestions that tribal organizations determine what constitutes qualifying community development activities in Native Land Areas. The final rule is intended in part to ensure that stakeholders have a clear upfront understanding of what constitutes a qualifying activity, in order to encourage investment and greater certainty for banks and those they serve in undertaking community development. However, the final rule incorporates as an eligibility criterion that activities must be undertaken in conjunction with plans, programs, or initiatives of governments (including tribal governments) or mission-driven nonprofit organizations, as discussed further below, and in the section-by-section analysis of the common criteria for placed-based activities, above. In this way, the final rule better incorporates recognition of the importance of tribal government and tribal nonprofit organizations in identifying, understanding, and addressing the needs of their communities, relative to the proposal.

The agencies have also considered comments recommending additions or clarifications to the rule, such as to provide additional emphasis on various specific impactful activities or to provide presumptions of eligibility as described above. The agencies have decided not to adopt these recommendations specifically, but note that activities meeting the eligibility criteria in the full range of community development categories adopted in final § ____.13, and that meet the majority standard in § ____.13(a), would qualify for community development consideration. For the reasons explained in this section-by-section analysis, the agencies believe that the common place-based criteria are all important to ensuring that the place-based categories provide the intended community benefit, and thus are not adopting presumptions of eligibility in final § ____.13(j) for select activities on Native Land Areas that might not satisfy those criteria. The agencies also emphasize that the final rule adopts twelve impact and responsiveness factors under § ____.15 that highlight key areas of concern raised by stakeholders, including an impact and responsiveness factor expressly focused on activities that benefit or serve residents of Native Land Areas (final § ____.15(b)(8), discussed in the accompanying section-by-section analysis below).

Regarding comments seeking consultation with tribal stakeholders, the agencies engaged in significant outreach prior to issuing the NPR and received feedback from many stakeholders that informed the proposal and final rule, including from those that would be affected by the inclusion of activities in Native Land Areas. Moreover, ongoing engagement with the wide range of stakeholders, including tribes, related to community reinvestment and community development is a central element of agency practice and will continue to be over the course of CRA implementation. Further, the agencies continue to believe that limiting qualification under § ____.13(j) to only those activities where tribal governments had been consulted could be overly restrictive and impractical to implement, and

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[504] The Federal Reserve Bank of Minneapolis' Center for Indian Country Development (CICD) 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 2017–2021 data. Twenty-five 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 land units.

[505] FDIC, ''National Survey of Unbanked and Underbanked Households,'' Table 3.1 (2021), *https://www.fdic.gov/analysis/household-survey/2021report.pdf*.

[506] Information calculated using FDIC's Summary of Deposits (2020).

[507] 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*. This study is based on a survey of 38 ''tribal areas'' that are considered Native Land Areas under the final rule.

[508] Federal Communications Commission, ''Fourteenth Broadband Deployment Report'' 28 (2021), *https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf*. As calculated by the Federal Reserve Bank of Minneapolis' CICD using U.S. Census Bureau American Community Survey 5-Year 2017–2021 data, nearly 1 in 5 households (17%) in Native geographic areas do not have access to the internet, compared to 1 in 10 households (10%) nationally. *See also, e.g.,* Matthew T. Gregg, Anahid Bauer, and Donn. L. Feir, ''The Tribal Digital Divide: Extent and Explanations'' (revised June 2022), *https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2021/cicd-wp-2021-03.pdf* (providing more detail on internet access challenges in Native geographic areas).

could diminish the scope of the activities that would qualify as community development, due to the time and resource constraints of tribal governments. However, as discussed in more detail below, the final rule recognizes the importance of tribal governments and other tribal organizations; in particular, and as discussed below, the agencies are adopting the proposal to require that activities in Native Land Areas must be conducted in conjunction with a government plans, programs, and initiatives, including a tribal government plan, program, or initiative, as well as by expanding the ways that this requirement can be met by allowing for activities undertaken in conjunction with a mission-based nonprofit organization.[509]

Definitions and place-based criteria (§ ____.13(j)(2) (revitalization or stabilization activities) and (3) (essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency)). The final rule adopts place-based eligibility criteria for the community development category focused on activities in Native Land Areas in § ____.13(j)(2) (revitalization or stabilization activities) and (3) (essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency). These sections are reorganized from the proposal to be in a consistent parallel order with other place-based categories, with certain features specific to the Native Land Areas category that are substantially similar to those in the proposal.

Government plan, program, or initiative (§ ____.13(j)(2)(i) and (j)(3)(i)). Consistent with other place-based community development categories, the final rule adopts a criterion in each of § ____.13(j)(2)(i) and (j)(3)(i) requiring an activity to be undertaken ''in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization.'' For clarity, and as described in the section-by-section analysis for § ____.12, the final rule adopts a definition of ''tribal government.'' The agencies believe that including a government plan criterion in each of § ____.13(j)(2)(i) and (j)(3)(i) will help ensure that community development activities under § ____.13(j) remain responsive to identified community needs, and that the addition of allowing activities with mission-driven nonprofit organizations will appropriately allow for and recognize the value and importance of targeted non-government-related activities that can serve communities in Native Land Areas.

Final § ____.13(j)(2)(i) adopts the proposed requirement that the relevant plan, program, or initiative include an ''explicit focus'' on revitalizing or stabilizing Native Land Areas, while final § ____.13(j)(3)(i) is revised to include the requirement that the relevant plan, program, or initiative include an ''explicit focus'' on benefiting or serving Native Land Areas. While other final place-based categories are adopted without an ''explicit focus'' requirement (as described elsewhere in the section-by-section analysis of § ____.13), the agencies believe this standard is important for this category of community development, to establish that plans, programs, or initiatives have an intentional link to Native Land Areas, which as discussed above are particularly underserved geographic areas. Thus, for example, this category would qualify a flood mitigation project that is specifically designed to benefit residents of a Native Land Area (presuming all other criteria are met).

Regarding revitalization or stabilization activities, final § ____.13(j)(2)(i) further requires that the plan, program, or initiative include ''a particular focus on low- or moderate-income households.'' As discussed in the proposal, the agencies are adopting a more targeted criterion for revitalization or stabilization activities, because Native Land Areas include some middle- and upper-income census tracts that are not designated as distressed or underserved nonmetropolitan middle-income census tracts. This criterion allows consideration for activities conducted in geographic areas that include middle- and upper-income census tracts, but retains the focus on low- and moderate-income households. Based on supervisory experience, the agencies believe that the types of projects that could qualify as revitalization and stabilization activities are more feasibly and likely to be developed to target specific income levels than other categories of place-based activities covered in final § ____.13(j) (*i.e.,* community facilities, infrastructure, and disaster preparedness and weather resiliency activities), which are more likely to be utilized by the community as a whole. Therefore, the agencies believe that it is appropriate to establish an express nexus between these activities and benefits to low- and moderate-income households in Native Land Areas, to better ensure direct benefits to low- and moderate-income components of the community.

As discussed above, the final rule expands the government plan criterion in each of § ____.13(j)(2)(i) and (j)(3)(i) from the proposal to include plans, programs, or initiatives of mission-driven nonprofit organizations. Regarding the Native Land Area category of community development in particular, the agencies believe that this expanded government plan criterion will generally capture plans, programs, and initiatives of qualifying Native CFDIs, Native Hawaiian organizations, TDHEs, Indian Health Centers, consortia, and other key Native designees focused on low- and moderate-income individuals and communities. For this reason, the agencies do not believe that expanding this criterion to include tribal associations or designees specifically is necessary. Further, based on the agencies' research and commenter views on the proposal, the agencies are concerned that defining qualifying tribal associations or designees appropriately for the rule would be difficult. Rather, the agencies believe that defining and adding to this criterion mission-driven nonprofit organizations will remove potential ambiguity regarding which organizations would be eligible tribal associations or designees under this criterion, increasing clarity and transparency for stakeholders.

Benefit or serve residents, including low- or moderate-income individuals (§ ____.13(j)(2)(ii) and (j)(3)(ii)). Final § ____.13(j)(2)(ii) and (j)(3)(ii) each contain the place-based criterion generally requiring benefits to residents in Native Land Areas. For the same reasons discussed above with respect to the government plan criterion, the agencies are adopting a more targeted criterion for revitalization or stabilization activities. Specifically, under § ____.13(j)(2)(ii), revitalization or stabilization 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 a distribution center in a Native Land Area, where a substantial number of employment opportunities are expected to be filled by low- or moderate-income residents of the Native Land Area, may qualify for consideration if the activity met other required criteria.

Under final § ____.13(j)(3)(ii), essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas must benefit or serve residents, including

[509] *See* final § ____.13(j)(2)(i) and (j)(3)(i).

low- or moderate-income individuals, in Native Land Areas. The reasons for adopting this criterion and general revisions from the proposal are discussed above in this section-by-section analysis regarding the common place-based criteria.

Forced or involuntary relocation (§ ____.13(j)(2)(iii) and (j)(3)(iii)). Final § ____.13(j)(2)(iii) and (j)(3)(iii) require that revitalization or stabilization activities and essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas, respectively, do not directly result in the forced or involuntary relocation of low- or moderate-income individuals residing in Native Land Areas. The reasons for adopting this criterion and general revisions from the proposal are discussed above in this section-by-section analysis regarding the common place-based criteria.

Section ____.13(k) Activities With MDIs, WDIs, LICUs, or CDFIs

Current Approach

Under the CRA statute and current regulations, nonminority- and nonwomen-owned banks can receive CRA credit for ''capital investment, loan participation, and other ventures'' undertaken in cooperation with MDIs, WDIs, and LICUs, provided that these activities help meet the credit needs of local communities in which the MDIs, WDIs, and LICUs are chartered.[510] These activities need not also benefit the bank's assessment areas or the broader statewide or regional area that includes the bank's assessment areas.[511] While CDFIs are not separately highlighted in the statute or regulations, activities with CDFIs can qualify as community development under various provisions of the current regulations pursuant to current guidance.[512]

The Agencies' Proposal

The agencies proposed to establish a category of community development for activities with MDIs, WDIs, LICUs, and U.S. Treasury Department-certified CDFIs. Specifically, a community development category in proposed § ____.13(j) included:

- Investments, loan participations, and other ventures undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs;[513] and
- Lending, investment, and service activities undertaken in connection with a U.S. Treasury Department-certified CDFI,[514] which the proposed rule expressly indicated would be presumed to qualify for favorable community development consideration.[515]

As discussed above in the section-by-section analysis of § ____.12, the proposal defined the term MDI to ensure consistency with the CRA statute and incorporate existing flexibility for each agency to define MDI as it determines appropriate. In this way, the agencies intended the proposal to ensure that activities conducted in cooperation with banks owned by minority individuals would receive consideration, and also provided consideration for activities conducted in cooperation with banks that the agencies have long considered to be MDIs.[516] The agencies sought comment on whether the MDI definition should include insured credit unions considered to be MDIs by the NCUA. As also discussed in the section-by-section analysis of § ____.12, the proposal defined WDI by cross-reference to the definition of the term in the CRA.[517]

In the proposal, the agencies noted stakeholder feedback indicating support for 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 nonprofit affiliates. Some stakeholders previously suggested the need to increase certainty surrounding the treatment of activities in partnership with MDIs, WDIs, LICUs, and CDFIs. For example, stakeholders noted that examiners might require extensive documentation that a CDFI assists low-income populations, even though CDFI certification by the U.S. Treasury Department's Community Development Financial Institutions Fund is an indication of having a mission of community development.[518] In the proposal, the agencies also noted stakeholder support for conferring automatic CRA community development consideration for community development activities with U.S. Treasury Department-certified CDFIs, to provide a stronger incentive and reduce burden.

The proposal clarified that investments, loan participations, and other ventures undertaken not only by nonminority institutions, but also by MDIs and WDIs, in cooperation with other MDIs, WDIs, and LICUs, would qualify for consideration under this category. This would expand on the current rule, which focuses on providing consideration for these activities when conducted by nonminority institutions.[519]

The agencies also sought feedback on whether activities undertaken by an MDI or WDI to promote its own sustainability and profitability should qualify for consideration. The agencies considered that 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. The agencies further sought comment on whether additional eligibility criteria should be considered to ensure investments by MDIs or WDIs in themselves would ultimately benefit low- and moderate-income and other underserved communities.

The proposal to provide a presumption of favorable CRA consideration for lending, investment, and service activities with U.S. Treasury Department-certified CDFIs was based on the agencies' recognition that these CDFIs already undergo specific certification processes and evaluations of CDFIs' ongoing outputs and outcome goals in award-making processes to demonstrate that they have a mission of promoting community development and providing financial products and services to low- or moderate-income individuals and communities.[520]

[510] *See* 12 U.S.C. 2903(b), implemented at 12 CFR ____.21(f).

[511] *See* 12 CFR ____.21(f); *see also* Q&A § ____.21(f)–1.

[512] *See, e.g.,* Q&A § ____.12(t)(4) and § ____.21(h)–1.

[513] Proposed § ____.13(j)(1).

[514] Proposed § ____.13(j)(2).

[515] *Id.*

[516] *See* OCC, ''Policy Statement on Minority Depository Institutions'' (July 26, 2022), *https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-92a.pdf*; 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*; FDIC, ''Statement of Policy Regarding Minority Depository Institutions,'' 86 FR 32728 (June 23, 2021).

[517] 12 U.S.C. 2907(b)(2), defining the term ''women's depository institution'' to mean 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. *See also* the section-by-section analysis of final § ____.12 (''women's depository institution'').

[518] *See* U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''CDFI Certification,'' *https://www.cdfifund.gov/programs-training/certification/cdfi.*

[519] *See* 12 CFR ____.21(f) (implementing 12 U.S.C. 2903(b)).

[520] *See* U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''CDFI Certification,'' *https://www.cdfifund.gov/programs-training/certification/cdfi.*

Comments Received

General. The agencies received comments on proposed § ____.13(j) from a wide range of commenters. Overall, most commenters addressing proposed § ____.13(j) supported including this category of community development under proposed § ____.13, and most commenters supported both prongs of the proposal. Commenters noted, for example, that these organizations' missions to serve (and record of serving) underserved or historically disadvantaged communities, is consistent with the goals of CRA; that the proposed category would provide clarity regarding the treatment of bank activities with MDIs, WDIs, LICUs, and CDFIs under the CRA; and that the proposal would encourage activities that would reinforce and build the capacity of these entities. As discussed in more detail below, some commenters recommended that the agencies apply additional eligibility criteria to proposed § ____.13(j), while others suggested that additional entities be included within the scope of proposed § ____.13(j). As discussed in more detail below, some commenters sought additional clarity on the types of activities included in the rule.

Comments regarding MDIs, WDIs, and LICUs (proposed § ____.13(j)(1)). Most commenters addressing proposed § ____.13(j)(1) supported recognizing ''investments, loan participations, and other ventures'' undertaken by any bank, including by MDIs and WDIs, in cooperation with other MDIs, other WDIs, or LICUs, as community development. Similarly, several commenters noted that these entities are mission-driven and share a focus consistent with the purpose of CRA. For example, a commenter stated that MDIs have proven to advance economic mobility in Black communities, citing an FDIC study that included findings that an estimated 6 out of 10 people living in the service area of Black-owned banks are Black, and that MDIs originate a greater share of mortgage loans than non-MDIs to borrowers in low- and moderate-income census tracts and in census tracts with larger shares of minority populations.[521] Another commenter stated that in many minority communities, MDIs offer safe and affordable banking services where other institutions may not, and that most MDIs provide vital deposit and credit access services in communities that large financial institutions avoid.

Commenters asserted that MDIs need increased capital investments to serve their communities and that the agencies should incentivize bank activities with MDIs that have a proven record of lending to minority consumers and in low- and moderate-income and minority communities. In this regard, a few commenters asserted that the agencies should specifically encourage activities with MDIs and minority-led or minority-owned CDFIs and credit unions in order to increase racial equity in historically underserved communities.

Several commenters suggested additional eligibility criteria for activities with MDIs and WDIs, based on concerns that MDIs and WDIs might not always serve low- or moderate-income individuals or communities. A few commenters suggested that CRA credit for activities with MDIs be connected to the MDI's record of serving borrowers in minority communities. For example, to ensure that minority communities are served, a commenter suggested that activities with MDIs or WDIs with assets over $1 billion be subject to additional data requirements for transparency, as well as other guardrails. Another commenter suggested incorporating into the CRA regulations a Federal statutory definition of ''minority lending institution,'' requiring that a majority of both the number and dollar volume of arm's-length, on-balance sheet financial products be directed at minorities or majority minority census tracts or equivalents.[522] Another commenter asserted that activities with CDFIs are more responsive and impactful than deposits or investments into MDIs and WDIs, and that automatic consideration should not be conferred for activities with MDIs or WDIs; instead, examiners should consider what the MDI or WDI does with a deposit or investment prior to granting CRA credit.

Commenters separately addressed the proposed definition of MDI, including in response to the agencies' question on whether to include in the definition minority insured credit unions recognized by the NCUA. These comments and the agencies' response are addressed in the section-by-section analysis for the MDI definition in § ____.12.

Comments regarding CDFIs (proposed § ____.13(j)(2)). Most commenters addressing proposed § ____.13(j)(2) supported qualifying ''lending, investment, and service activities'' undertaken in connection with a U.S. Treasury Department-certified CDFI as community development under the rule, including the proposed presumption that such activities qualify for favorable community development consideration. Commenters supporting the provision noted that CDFIs are responsible, mission-based lenders and investors. For example, a commenter stated that CDFIs are very active in the NMTC program and work closely with banks to produce the thoughtful and impactful revitalization efforts. Some commenters emphasized that CDFIs can help support small businesses, especially minority- and women-owned small businesses, and continue to partner with banks to make credit accessible in low- and moderate-income communities across the country.

Some commenters sought clarifications in the final rule related to CDFIs. Several commenters recommended that the final rule clarify that a bank's activities with CDFIs would receive equal consideration to activities with MDIs, WDIs and LICUs, with some noting that this should apply regardless of a CDFI's location relative to a bank's assessment area. As noted above, one commenter suggested CDFIs are more impactful than MDIs, WDIs, or LICUs, and, accordingly, that only activities with CDFIs should receive automatic consideration. Some commenters also suggested that the final rule ensure uniform treatment of all kinds of CDFIs (*e.g.,* loan funds, banks, and credit unions). A number of commenters suggested that the final rule explicitly include ''CDFI banks,'' based on concerns that the proposal was not clear that CDFI banks were ''banks'' and that activities between CDFI banks and MDIs, WDIs, and LICUs would be covered for CRA consideration under this category. Other commenters raised concerns about the potential impact of giving similar community development consideration to all CDFIs. For example, a few commenters expressed concern that allowing CRA consideration for bank activities in conjunction with a CDFI regardless of where the CDFI exists could have the effect of encouraging bank activities with only the largest CDFIs, thus redirecting capital resources away from smaller CDFIs with a primary mission of serving local communities. Thus, a commenter recommended that regulators should incentivize substantial participation with local CDFIs, as a condition precedent to an ''Outstanding'' rating.

Activities undertaken by an MDI or WDI to promote its own sustainability and profitability; eligibility criteria.

[521] FDIC, ''Minority Depository Institution: Structure, Performance, and Social Impact'' (May 2019), *https://www.fdic.gov/regulations/resources/minority/2019-mdi-study/full.pdf.*

[522] Consolidated Appropriations Act, 2021, tit. V, subtitle B, section 523(c)(4)(A), Public Law 116–260, 134 Stat. 2088–89 (Dec. 27, 2020).

Most commenters responding to the question of whether the agencies should consider activities undertaken by an MDI or WDI to promote its own sustainability and profitability stated that these activities should be considered. Commenters cited the importance of keeping these institutions in business so that they may better serve their communities. Commenters further suggested clear language expressly allowing CDFI banks to receive CRA consideration for activities that promote their own sustainability and profitability.

A few commenters responded to a related question posed by the agencies on whether additional eligibility criteria should be considered to ensure that investments by an MDI or WDI in itself provide benefit to low- and moderate-income and other underserved communities. A commenter stated that the investments should show an ancillary benefit to low- and moderate-income populations or low- and moderate-income areas served by the institution. Some commenters stated that no additional eligibility criteria should apply to WDI and MDI investments in themselves, but suggested that enhanced consideration should be given to investments that directly benefit low- and moderate-income and underserved communities.

A few commenters opposed giving CRA consideration to activities undertaken by an MDI or WDI to promote its own sustainability and profitability, or suggested limits on consideration of these types of investments. For example, a commenter stated that MDIs or WDIs that are small or intermediate banks should receive CRA consideration for well-defined investments in building their capacity, but that this should not extend to large banks that are MDIs or WDIs.

Other requests for clarification. Commenters also sought clarification on various other aspects of the rule. A commenter suggested that the proposal generally did not clearly articulate what activities would be eligible for consideration under proposed § ____.13(j), and thus would not provide sufficient incentive for banks to engage in these partnerships. Some commenters sought clarity on whether specific types of activities would qualify, such as, among others, CDFI products designed to address racial inequity, or loan participations that banks sold to or purchased from MDIs and CDFIs. Some commenters suggested that all bank investments or loans, including equity investments in or to certified CDFIs be eligible to receive CRA credit, and that the final rule provide full CRA credit for loans originated to unbanked and underbanked borrowers that are originated by nonbank CDFIs (even if sold immediately to third-party investors). Commenters also recommended clarifying that investments, loans, or grants, and other support to subsidiaries or entities controlled or wholly-owned by U.S. Treasury Department-certified CDFIs be given the same CRA consideration as those supporting the CDFI.

Additional entities. Some commenters recommended that community development consideration under proposed § ____.13(j) be extended to activities with other entities, such as those undertaken with chartered NeighborWorks organizations, HUD-designated Community Housing Development Organizations, HUD-approved Housing Counseling Organizations, and Certified Development Companies (CDCs). In particular, commenters highlighted the rigor required for entities to maintain these certifications. Commenters also suggested adding a wide range of other entities that offer important community supports, such as Community Action Agencies (CAAs), Housing Partnership Network partners, Mutual Self-Help Housing grantees under the USDA Rural Development section 523 program, and other community-based organizations. Some commenters expressed concern that the proposal to grant automatic consideration to CDFIs could discourage similar support to CDCs and other non-CDFI-certified community-based organizations. A commenter suggested that providing CRA consideration for activities with community development venture capital funds and formative funds or entities seeking certified CDFI status would encourage bank support of valuable CDEs prior to certification, while another expressed support for the agencies' clarification in the proposal that non-CDFI certified activities could be considered under another community development category (assuming criteria are met).

Final Rule

The final rule renumbers proposed § ____.13(j) as § ____.13(k) and revises it as discussed below. Under the final rule, activities with MDIs, WDIs, LICUs, or CDFIs are ''loans, investments, or services undertaken by any bank, including by an MDI, WDI, or CDFI bank evaluated under [the agencies' CRA regulations], in cooperation with an MDI, WDI, LICU, or CDFI.'' Final § ____.13(k) covers activities with the same types of entities as those proposed, but the language referencing eligible types of activities with those entities is revised and simplified, with no substantive change intended, to refer to ''loans, investments, and services.'' This change is a clarification for consistency with the activities considered under the Community Development Financing Test in final § ____.24, the Community Development Services Test in final § ____.25, and the Community Development Financing Test for Limited Purpose Banks in final § ____.26. Additionally, the final rule states that these activities do not include investments by an MDI, WDI, or CDFI bank in itself.

The final rule is intended to build on and clarify important community development financing and services through MDIs, WDIs, LICUs, and CDFIs that qualify under the current CRA framework. The agencies believe that, by establishing a clear and straightforward standard that allows a bank's loans, investments, and services with MDIs, WDIs, LICUs, and CDFIs to receive community development consideration, the final rule will increase certainty and transparency concerning treatment of activities in partnership with these entities relative to current practice. The final rule is also expected to reduce documentation burden associated with demonstrating, for example, that CDFIs serve low- and moderate-income populations or otherwise have a community development mission, as commenters noted this can create challenges in engaging in these activities. Instead, the final rule is intended to streamline banks' engagement with MDIs, WDIs, LICUs, and CDFIs by providing automatic community development consideration for loans, investment, and services with these entities.[523]

The agencies believe that the mission of MDIs, WDIs, LICUs, and CDFIs in meeting the credit needs of low- and moderate-income and other underserved individuals, communities, and small businesses is highly aligned with CRA's core purpose of encouraging banks to meet the credit needs of their entire community, including low- and moderate-income populations. Emphasizing partnerships with MDIs, WDI, and LICUs in the final rule is consistent with the CRA's express provision highlighting ''capital investment, loan participation, and other ventures'' by banks in cooperation with MDIs, WDIs and LICUs.[524] As reflected in the current CRA framework,

[523] *See also* final § ____.13(a)(1)(iii) regarding credit for community development activities under final § ____.13(k) and the accompanying section-by-section analysis.

[524] 12 U.S.C. 2903(b).

CDFIs have long been recognized by the agencies as financial institutions that, like MDIs, WDIs, and LICUs, are critical to the lending and capital access ecosystem of low- or moderate-income communities.[525] Based on the agencies' supervisory experience, stakeholder feedback over the years of rulemaking leading to this final rule, and other relevant sources, the agencies believe that MDIs, WDIs, LICUs, and CDFIs often have intimate knowledge of local community development needs and opportunities, allowing them to conduct highly responsive activities.[526] These entities also generally undergo rigorous and verifiable certification processes.[527]

Loans, investments, or services include, for instance, equity investments in and loan participations with MDIs, WDIs, and LICUs, and CDFIs. Consistent with current guidance, this would include, for example, loan participations that a bank purchased from a CDFI, loaning an officer or providing other technical expertise to assist an MDI in improving its lending policies and practices, or providing financial support for a WDI to partner with a local educational institution to provide financial literacy programming.[528] The rule takes this broad approach in order to provide flexibility for banks to engage in a range of activities that will meet differing local needs across communities.

Inclusion of CDFIs. The agencies have also considered comments regarding how CDFIs should be considered relative to MDIs, WDIs, and LICUs. The agencies believe that creating a single standard for CDFIs, MDIs, WDIs, and LICUs is not only simpler, but also serves to acknowledge the importance of CDFIs as critical providers of capital to low- or moderate-income communities. The agencies also believe that the construction of the final rule as it relates to activities with CDFIs is preferable since it more directly states that these activities are eligible under final § ____.13(k), as compared to the proposed rule's approach of providing a presumption of credit for CDFIs in proposed § ____.13(j)(2). The agencies determined that the presumption language raised unintended uncertainty about whether activities with CDFIs would actually count for community development consideration.

The final rule also references CDFIs instead of U.S. Treasury Department-certified CDFIs, as the definition of CDFI in the final rule is clarified to mean U.S. Treasury Department-certified CDFIs. *See* the section-by section analysis of § ____.12 for discussion of the definition of ''Community Development Financial Institution (CDFI)''. This definitional change affirms the agencies' intent to ensure that, beyond MDIs, WDIs, and LICUs, the entities with which a bank may engage for automatic consideration of loans, investments, and services have undergone the U.S. Treasury Department's CDFI certification process and meet requirements for maintaining that certification. The agencies consider this a critical guardrail to ensuring that community development on an inclusive community basis is the focus of bank loans, investments, and services in cooperation with these CDFIs.

Activities conducted by MDIs, WDIs, and CDFI banks with other MDIs, WDIs, LICUs, and CDFIs. Under final § ____.13(k), any loans, investments, or services undertaken by any bank, including by an MDI, WDI, or CDFI bank, in cooperation with an MDI, WDI, LICU, or CDFI will qualify as community development. As noted in the proposal, in this regard the final rule expands on the current rule, which focuses on crediting these activities when conducted by nonminority institutions.[529] As MDI, WDI, and CDFI banks are themselves subject to CRA evaluations, the agencies believe that this expansion is appropriate to ensure that the loans, investments, and services of these institutions receive the same treatment as nonminority institutions. *CDFI banks.* The final rule also clarifies that loans, investments, and services by ''any bank'' include not only majority institutions, but also those by an MDI, WDI, or ''CDFI bank'' that is evaluated under the CRA. The definition of ''CDFI'' in final (and proposed) § ____.12 is general and thus includes both depository and non-depository CDFIs; however, the agencies intend with the reference to a ''CDFI bank'' in final § ____.13(k) to address commenter concerns that the proposal was not clear that CDFI bank loans, investments, and services in cooperation with MDIs, WDIs, LICUs, and other CDFIs could qualify for consideration under this provision.

Additional eligibility criteria. The agencies have considered commenter suggestions to add additional eligibility criteria for MDIs and WDIs under the final rule, such as criteria concerning how investments in MDIs and WDIs are used, or an MDI's record of service to minority communities. On further deliberation, the agencies believe that an additional layer of criteria would be overly complex to define and apply, potentially dampening the range and quantity of activities beneficial to communities that could otherwise qualify under this provision. For similar reasons, the agencies also are using their statutory authority not to include in final § ____.13(k) the reference in the statute and current regulation to activities that help meet the credit needs of ''local communities in which [MDIs, WDIs, and LICUs] are chartered.'' [530] As discussed above, based on the agencies' supervisory experience, stakeholder feedback over the years of rulemaking leading to this final rule, and other relevant sources, MDIs, WDIs, LICUs, and CDFIs have robust knowledge about the needs of their local communities and records of serving these needs. The agencies believe that the structure and orientation of these entities provide needed guardrails to ensure that activities in cooperation with them will be consistent with the CRA's community focus in the final regulation.

Relatedly, under the final rule, activities with CDFIs are treated similarly to those with MDIs, WDIs, and LICUs, regardless of a CDFI's location or size. The agencies are mindful of concerns expressed by some commenters that this approach could direct bank investment away from smaller, local CDFIs in favor of larger

[525] *See, e.g.,* Q&A § ____.12(t)(4) and § ____.21(h)–1. *See also, e.g.,* 81 FR 48506, 48508–48510 (July 25, 2016).

[526] *See also, e.g.,* U.S. Government Accountability Office (GAO), ''Paycheck Protection Program: Program Changes Increased Lending to Small Businesses and Underserved Businesses,'' 13 (Mar. 16, 2022), *https://www.gao.gov/assets/gao-22-105788.pdf* (estimating, for example, that 69 percent of Paycheck Protection Loans by MDIs and CDFIs went to businesses in high-minority counties).

[527] *See, e.g.,* OCC, ''Policy Statement on Minority Depository Institutions'' (July 26, 2022), *https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-92a.pdf*; 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*; FDIC, ''Statement of Policy Regarding Minority Depository Institutions,'' 86 FR 32728 (June 23, 2021); U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''CDFI Certification,'' *https://www.cdfifund.gov/programs-training/certification/cdfi. See also* 12 CFR 701.34 (NCUA standards for designating a Federal credit union as a ''low-income credit union'').

[528] *See* Q&A § ____.21(f)–1. The final rule expands on current guidance to include CDFIs. Donating a branch, selling a branch on favorable terms, or making branches available on a rent-free basis to MDIs, WDIs, and LICUs pursuant to section 801 of the CRA would also qualify for consideration under this prong, based on the final rule's definition of ''community development investment,'' discussed further in the section-by-section analysis of that definition in final § ____.12.

[529] *See* current 12 CFR ____.21(f) (implementing 12 U.S.C. 2903(b)).

[530] *See* 12 U.S.C. 2903(b), implemented by current 12 CFR ____.21(f). *See also* 12 U.S.C. 2901(b), 2903(a) and (b), and 2905.

CDFIs. On further consideration, the agencies believe that adding size or location criteria regarding CDFIs with which banks may engage for CRA credit under this provision would diminish the flexibility needed for a range of activities meeting differing local needs across communities. The agencies also note the final rule's adoption of an impact and responsiveness review under § ____.15, including an impact and responsiveness factor under § ____.15(b)(4) for loans, investments, and services that support an MDI, WDI, LICU, or CDFI (excluding certificates of deposit with a term of less than one year) will allow the agencies to consider the extent to which such activities are highly impactful or responsive to the needs of underserved areas and populations.[531]

Activities undertaken by an MDI or WDI to promote its own sustainability and profitability. The agencies have considered comments responding to the question on whether an MDI or WDI should receive consideration for activities that promote an MDI's or WDI's own sustainability and profitability, and are adopting a final rule that excludes investments by MDIs, WDIs, or CDFI banks in themselves.[532] The agencies appreciate commenter views on the importance of investment support for these entities to bolster their financial position so that they can better serve their communities, as well as the need to consider ways to ensure that these investments benefit low- and moderate-income and underserved communities. On further consideration, the agencies are concerned that the linkage between such investments and benefits to low- or moderate-income communities may be attenuated and thus difficult to determine, in turn making establishment and application of clear and consistent guardrails to ensure benefits to low- and moderate-income communities unduly challenging. At the same time, the agencies believe that the final rule provides robust avenues of support for the sustainability and profitability of MDIs and WDIs through other CRA-evaluated banks, including other MDIs and WDIs.

Definition of MDIs; minority credit unions. The agencies considered comments in response to the agencies' request for feedback regarding whether minority credit unions should be included in the definition of MDI for the final rule and conducted further research on this matter. The agencies note that there is a large overlap between minority credit unions and LICUs.[533] Thus, a bank's loans, investments, and services with a large percentage of minority credit unions will be eligible for community development consideration under final § ____.13(k), based on the minority credit union's LICU status. For this and other reasons, the agencies have decided not to add minority credit unions to the proposed definition of MDI. The question of whether to include minority credit unions in the final rule's definition of MDI, as well as other aspects of the final rule's definition of MDI, is discussed in more detail in the section-by-section analysis of § ____.12 (''minority-depository institution (MDI)'').

Additional entities. The agencies have also considered comments recommending that the final rule include additional types of entities with which banks could collaborate in order to receive community development consideration, and have decided not to include additional entities in § ____.13(k). The agencies have considered that entities such as NeighborWorks America's network organizations, HUD's Community Housing Development Organizations, and other community-based organizations perform important functions in communities, as do community development venture funds and formative funds, or other entities seeking certified CDFI status. However, because qualifying activities under § ____.13(k) are eligible for community development consideration without additional eligibility criteria, the agencies believe that narrowly tailoring the entities considered under the final rule is especially important and, accordingly, that focusing final § ____.13(k) on MDIs, WDIs, LICUs, and CDFIs is appropriate. As outlined above, MDIs, WDIs, LICUs, and CDFIs generally have missions and track records that directly align with the CRA's mandate of providing credit to entire communities, including to low- or moderate-income communities; undergo rigorous and verifiable certification processes; and are financial institutions that provide critical capital access and credit to underserved communities. The agencies further believe that emphasizing partnerships with the entities covered by final § ____.13(k) is consistent with the CRA's express emphasis on cooperation with MDIs, WDIs and LICUs, as well as with the key role CDFIs play in the capital and financial ecosystem in low- or moderate-income communities. The agencies also note and expect that loans, investments, and services supporting activities performed by other entities suggested by commenters may be eligible for community development consideration under other provisions in § ____.13.

The agencies have also considered comments that activities with subsidiaries or entities controlled or wholly-owned by CDFIs be eligible for community development consideration under § ____.13(k). The agencies note that subsidiaries or entities controlled or wholly-owned by MDIs, WDIs, or LICUs are not referenced in current § ____.21(f) or proposed § ____.13(j)[534] Similarly, final § ____.13(k) does not include activities with these subsidiaries or affiliates, as the agencies believe an automatic grant of community development consideration should remain narrowly tailored. However, activities with subsidiaries or affiliates could be considered under other categories of community development, to the extent they would meet the criteria of those categories.

Section ____.13(l) Financial Literacy

Current Approach

Currently, activities related to financial literacy may qualify for CRA credit as ''community development services.''[535] These activities must be targeted to low- or moderate-income individuals.[536] Examples of community development services provided in current guidance include, among others: (1) ''[p]roviding credit counseling, home-buyer and home maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist low- or moderate-income borrowers in avoiding foreclosure on their homes,'' as well as (2) ''[e]stablishing school savings programs or developing or teaching financial education or literacy curricula for low- or moderate-income individuals.''[537]

[531] *See* final § ____.15 and the accompanying section-by-section analysis.

[532] While the agencies requested comment only on investments by MDIs and WDIs, the final rule also excludes similar investments by CDFIs for parity.

[533] NCUA, ''Minority Depository Institutions Annual Report to Congress,'' 2 (2021), *https://ncua.gov/files/publications/2021-mdi-congressional-report.pdf* (indicating that 81 percent of minority credit unions are designated as LICUs).

[534] The relevant CRA statutory provision also does not reference subsidiaries or controlled entities of MDIs, WDIs, or LICUs. *See* 12 U.S.C. 2903(b).

[535] *See* 12 CFR ____.12(i) (defining ''community development service'').

[536] *See* Q&A § ____.12(i)–3, Q&A § ____.12(h)–8.

[537] *See* Q&A § ____.12(i)–3.

The Agencies' Proposal

Proposed § ____.13(k) established a separate category of community development for ''[a]ctivities that promote financial literacy,'' defined as 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.'' Under the proposed rule, a bank would receive consideration for these activities without requiring them to focus specifically on low- and moderate-income beneficiaries. The proposed approach was intended to encourage investments that have broad benefits across income levels and that support the economic well-being of entire communities, as well as to simplify qualification by limiting the need for banks to obtain documentation to demonstrate that the activity is targeted to low- or moderate-income individuals or families, which can be particularly difficult to obtain for non-customers. However, proposed § ____.13(k) specified that the individuals and families assisted by financial literacy activities must ''includ[e] low- or moderate-income individuals and families.'' The agencies requested comment on whether CRA consideration of financial literacy activities should be expanded from current practice to include activities that benefit individuals and families of all income levels, or be limited to activities that have a primary purpose of benefiting low- or moderate-income individuals or families.

Comments Received

The agencies received many comments on the proposed financial literacy category of community development from a variety of commenters, as discussed in more detail below.

Financial literacy activities that benefit individuals and families of all income levels, including low- and moderate-income. Commenters generally supported creating a community development category for financial literacy activities. In response to the agencies' request for comment on whether the financial literacy category should apply to all income levels or only to low- and moderate-income individuals and families, some commenters supported applying the community development category to all income levels as proposed. Commenters asserted, for example, that financial literacy is useful and important to peoples of all income levels; that the proposed approach would ensure that other underserved populations, including seniors, veterans, and rural communities, would benefit from financial literacy activities; and that the proposed approach would allow banks to expand financial literacy activities more broadly and efficiently to schools and students, without restricting activities to only those students that are low- or moderate-income. In this regard, one commenter asserted that targeting financial literacy activities to only low- or moderate-income students can be difficult in rural areas because there are very few schools with a majority of students that meet this criterion. A few commenters also noted that expanding the provision to all income levels would allow banks to better reach low- or moderate-income populations, including by providing an incentive for bank employees to offer financial literacy sessions to mixed-income groups, and by reducing burden for banks by streamlining the process for determining whether financial literacy activities qualify.

In contrast, other commenters raised a range of concerns regarding the proposed approach to consider financial literacy activities that benefit individuals and families of all income levels. Of those commenters, many asserted that there is a scarcity of resources and support for financial literacy activities, and expressed concern that expanding eligible financial literacy activities to include those for all income levels would divert resources from low- and moderate-income individuals and families that are in greater need. Commenter feedback included, for example: that the proposed approach would not be aligned with the intention and goals of the CRA to ensure that low- and moderate-income consumers are adequately served by the banking system; disagreement with assertions that income level documentation is a significant burden to financial institutions, noting that nonprofit organizations track the income level of their clientele; and that banks should be required to demonstrate that the primary purpose of the financial literacy activities it supports is benefiting low- and moderate-income individuals or families.

Some commenters suggested that financial literacy activities for other populations or in other specific areas should qualify. Suggestions included financial literacy activities serving underserved populations, first-time homebuyers, small businesses, minorities or minority-owned businesses of all income levels, Native communities, or activities in and around Native Land Areas. A commenter suggested that the agencies consider any financial literacy activity provided by a HUD-approved housing counseling agency or intermediary, as a way to address concerns about income verification burden on banks.

Financial literacy activities. While many commenters supported the proposal without suggested changes or revisions to the activities indicated as qualifying under this category, other commenters suggested the agencies clarify or add a range of other activities considered eligible under this category, such as financial coaching, various digital education products, and other specific financial literacy education programs, products, and services. For example, a commenter suggested that the agencies clarify that credit counseling is an eligible activity under the financial literacy category, asserting that nonprofit credit counseling and debt management counseling are critical to support low- and moderate-income consumers. A few commenters suggested that the agencies specify that grants and loans made to nonprofit organizations that support eligible activities under the proposed financial literacy category qualify for consideration.

Housing-related comments. A number of commenters had suggestions regarding consideration for housing and homeownership-related counseling activities. In particular, several commenters suggested that additional emphasis be given to activities that focus on housing counseling. Commenters generally noted the unique, vital, and effective role housing counseling can play in helping consumers meet their financial goals. A few commenters noted that HUD-certified housing counselors provide several critical services to renters and first-time homebuyers that help mitigate barriers related to income, race, and ethnicity, and asserted that the agencies should recognize and provide additional credit for activities that support those counselors. A group of commenters separately suggested that housing counseling should be recognized as a community development activity distinct from the financial literacy category. These commenters expressed concern that including activities related to housing counseling along with other activities in a single financial literacy category could result in banks focusing on non-housing activities in that category.

Some commenters recommended that the final rule specifically recognize lender fee-for-service payments for housing counseling services by HUD-approved housing counseling agencies as an eligible activity, with some commenters recommending recognition of fee-for-service payments for housing counseling services specifically assisting low- and moderate-income borrowers. For example, one commenter asserted that consideration for lender fee-for-service payments to housing counseling providers serving low- or moderate-income clientele would help ensure that those organizations would be able to continue providing housing counseling services. This commenter indicated that such organizations traditionally rely on grants to fund those activities, which can present a challenge for their long-term stability. Another commenter suggested that fee-for-service payments for housing counseling services should be recognized as an eligible activity if the bank can demonstrate that this service is being offered to low- or moderate-income borrowers.

Additional approaches to qualifying eligible financial literacy activities. Several commenters emphasized that the rule should encourage banks to partner with nonprofit organizations to ensure that financial literacy activities are relevant to the community and marketed successfully, and suggested that qualifying programs or activities should have a stated purpose of engaging low- and moderate-income residents. A few commenters suggested that banks should receive enhanced credit for supporting financial literacy activities targeted to low- and moderate-income individuals and families, including through a multiplier scoring system correlated to the percentage of low- and moderate-income beneficiaries supported by an eligible activity.

Final Rule

The final rule adopts the proposal on financial literacy substantially as proposed, renumbered as § ____.13(l). Under the final rule, activities that promote financial literacy are those that ''assist individuals, families, and households, including low- or moderate-income individuals, families, and households, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.'' The final rule makes technical edits from the proposal by adding ''and households'' as a conforming edit consistent with edits made in other community provisions in final § ____.13. The agencies that believe incorporating financial literacy activities into the regulation as a separate regulatory category of community development will provide banks with certainty and clarity regarding how these activities will qualify for CRA consideration, and that this, in turn, will benefit a wide range of individuals and families in need of financial literacy services.

The agencies have carefully considered commenter views on whether the financial literacy category should be limited to activities targeted to low- and moderate-income individuals and families. On balance, for the reasons discussed below, the agencies believe that the rule as finalized, without such limitation, will ensure low- and moderate-income individuals, families, and households benefit from financial literacy activities, while further encouraging banks' involvement in such activities. The final rule will reduce barriers to offering financial literacy activities by permitting a broader range of mixed-income activities to qualify relative to current practice, and will reduce burden by limiting the need for banks to track income levels of participants (which, as noted above, can be particularly difficult with respect to non-customers). As discussed in the proposal, prior stakeholder feedback also has suggested that financial literacy activities are, in practice, primarily delivered to low- or moderate-income individuals, which may be another factor that reduces the need to obtain income documentation. The language of the final rule providing that individuals, families, and households assisted by financial literacy activities must include low- or moderate-income individuals, families, and households will also ensure that financial literacy activities will not be eligible for CRA credit if they solely benefit middle- and upper-income individuals, families, or households.

The agencies further believe that financial literacy can build economic resilience at all income levels, particularly where there may be evidence that financial literacy is lacking, or financial instability exists. The agencies are sensitive to concerns about the scarcity of available resources for financial literacy activities, and believe that the final rule's approach will more broadly share the benefits of these activities across communities and open up greater opportunities for underserved populations, including seniors, students, veterans, and rural communities to benefit from financial literacy activities. In the agencies' experience, financial literacy activities can provide important tools for all individuals and families to maintain or improve upon their financial status, which benefit communities as a whole. As such, the agencies believe that the final rule is consistent with the intent of CRA to serve the credit needs of a bank's entire community, including low- and moderate-income communities.[538]

Regarding commenters' suggestions that the agencies revise the regulation to explicitly qualify specific activities, the agencies believe that the broader approach in the final rule will allow banks more flexibility, as any activities meeting the criteria in § ____.13(l) will qualify. Activities that the agencies view as consistent with the language in § ____.13(l) will generally include activities such as financial education, financial coaching and counseling, small business education, and housing counseling. For example, a financial planning seminar with senior citizens, including low- and moderate-income seniors, or a financial education program for children in a middle-income school district would both be activities that would qualify for consideration. Similarly, credit counseling for residents of a rural area or grants and loans to nonprofits related to financial literacy would generally qualify for consideration. The agencies will take commenters' recommended examples under advisement as the agencies develop the illustrative list anticipated by § ____.14(a), discussed below.

The agencies do not believe that direct marketing of specific bank products alone would constitute a financial literacy activity that ''assist[s] individuals, families, and households, including low- or moderate-income individuals, families, and households, to make informed financial decisions,'' and therefore would not meet the criteria for qualification in § ____.13(l). However, a lender fee-for-service financial education program focused on savings and the benefits of savings, through which a bank provides information on its low-cost savings accounts (such as through a BankOn program[539]) or allows participants to prepare for and access a sustainable home mortgage, as is done in many homebuyer programs with HUD-certified housing counselors, would likely qualify for consideration under § ____.13(l). The agencies note that when engaging in activities under § ____.13(l), banks are expected to comply with all applicable laws,

[538] *See, e.g.,* 12 U.S.C. 2903(a)(1).

[539] *See* BankOn, ''Account Standards,'' *https://bankon.wpenginepowered.com/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf.*

including, among others, section 8 of the Real Estate Settlement Procedures Act of 1974.[540]

The agencies have also considered commenter suggestions that various specific activities related to housing counseling should be recognized within a separate category of qualifying activities or that they should otherwise be given extra emphasis on examinations, including suggestions to give enhanced credit for activities targeted to low- and moderate-income individuals. The agencies understand the importance of housing-related financial literacy activities and, on further deliberation, believe that the final rule appropriately recognizes housing counseling activities by expressly identifying activities that assist individuals, families, and households to making informed financial decisions regarding ''homeownership'' as one key type of qualifying activity within a new, separate community development category for financial literacy overall. The agencies note that activities that assist individuals, families, and households to make informed financial decisions about homeownership are part of a wide range of available qualifying financial literacy activities that offer critical support for the economic well-being of communities. With respect to comments suggesting extra emphasis, the agencies also note that the final rule creates a non-exhaustive list of specific impact and responsiveness factors that will recognize certain activities, including factors for activities serving persistent poverty counties and higher poverty census tracts (§ ____.15(b)(1) and (2)), low-income individuals, families, and households (§ ____.15(b)(5)), and affordable housing in High Opportunity Areas (§ ____.15(b)(7)). *See* the section-by-section analysis of § ____.15, below.

Section ____.14 Community Development Illustrative List; Confirmation of Eligibility

Current Approach

Under the current regulations, the agencies do not jointly maintain a standalone list of examples of loans, investments, and services that qualify for CRA community development consideration. However, the OCC maintains an illustrative list of activities as a reference for determining whether activities conducted while the OCC 2020 CRA Final Rule was in effect were eligible for consideration under that rule.[541] The Interagency Questions and Answers also include certain examples of eligible community development loans, investments, and services.[542]

Relatedly, the OCC previously established a confirmation process, not currently codified in its CRA regulation, through which national banks, Federal savings associations, and other interested parties may request confirmation that a loan, investment, or service qualifies for CRA consideration.[543] The Board and the FDIC do not currently have similar mechanisms for State banks or State savings associations. 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, banks assessing a new, less common, more complex, or innovative activity may not know whether that activity is eligible for CRA consideration until a determination is made by an examiner as part of the bank's CRA examination—after the bank has made a decision about whether to provide a loan, investment, or service. The determination requires examiner judgment and the use of performance context, which may further complicate a bank's ability to predict what activities could qualify.

Section ____.14(a) Illustrative List

Section ____.14(a)(1) Issuing and Maintaining The Illustrative List

The Agencies' Proposal

To provide increased certainty regarding what community development activities qualify for CRA consideration, the agencies proposed in § ____.14(a) to maintain a publicly available, non-exhaustive illustrative list of examples of community development activities that qualify for CRA consideration. As noted in the proposal, prior stakeholders had indicated broad support for an illustrative list similar to the list associated with the OCC 2020 CRA Final Rule. In the proposal, the agencies indicated that stakeholders supported this approach as a way to highlight loans, investments, and services that meet the CRA community development criteria, while also noting that those criteria remain the determinative factors in qualifying community development activities (as opposed to whether a particular activity appears on the illustrative list). The agencies sought feedback on whether the benefit of greater certainty would outweigh the potential that the list might limit innovation by unintentionally leading banks to focus primarily on activities on the list. The agencies sought comment on whether, in addition to maintaining an illustrative list of qualifying activities under § ____.14(a), the agencies should also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity.

Comments Received

General. Most commenters on this aspect of the proposal expressed support for the agencies maintaining a non-exhaustive illustrative list of qualifying activities, as set forth in proposed § ____.14(a). In general, commenters stated that an illustrative list would simplify compliance, and provide more regulatory certainty regarding community development activities that meet the requirements for CRA credit. Commenters also generally stated that an illustrative list would promote consistency among agencies and examiners, with at least one commenter stating that the list should be universally accepted across all agencies and deployed consistently across examiners. Other commenters highlighted the benefits of an illustrative list in connection with a timely pre-approval process. For example, a commenter indicated that a clearly-articulated illustrative list could allow transactions to be structured between banks and partner organizations with more information earlier in the process. Commenters also suggested that the agencies clarify further that the list is not exhaustive.

Some commenters expressed concerns about the potential breadth and impact of the proposed illustrative list. For instance, some commenters stated their concern that a lengthy list of qualifying activities could encourage banks to

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[540] 12 U.S.C. 2607.

[541] The OCC maintains an illustrative list on its website as a reference for national banks, Federal 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. Activities on this 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 Illustrative List of Qualifying Activities,'' *https://www.occ.treas.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf.*

[542] *See, e.g.,* Q&A § ____.12(g)–1 through ____.12(g)(4)(iii)–4, Q&A § ____.12(h)–1 through ____.12(h)–8, and Q&A § ____.12(i)–1 through ____.12(i)–3.

[543] *See* OCC, ''CRA Qualifying Activity Confirmation Request,'' *https://www.occ.treas.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html.*

participate in the easiest and least impactful community development activities. Accordingly, commenters emphasized that the list should be focused on those activities that are most impactful to low- and moderate-income communities or closely tied to local needs, or that a listed activity would not automatically qualify if it resulted in displacement of low- and moderate-income individuals or minorities. Several commenters raised concerns that providing an illustrative list could stifle innovation to the extent that banks default to engaging only in listed activities. Another commenter stated that examiner judgment and the use of performance context would still be warranted as new, innovative activities arise. Several other commenters proposed that the agencies instead adopt a principles-based list, with a few raising concerns that an extensive list could evolve into an overwhelming ad hoc list.

Many commenters offered a variety of suggestions regarding how the agencies should develop, issue, and maintain an illustrative list. For example, a few commenters recommended that the list be published in the **Federal Register**. In addition, several commenters recommended that the agencies maintain an interactive database with various features, including, among others, topical organization and searchability; case studies; or guidance and examples of documentation. Several commenters suggested that any list be developed and updated in coordination with relevant stakeholders.

Finally, commenters also offered a variety of suggestions on specific activities that should be included or expanded upon in an illustrative list. Several commenters recommended that the agencies adopt the list of qualifying activities found in the OCC 2020 CRA Final Rule. Other commenters offered specific suggested activities, including, among many others, various activities pertaining to environmental and climate resilience; impacting disabled persons, as relevant to the community supportive services category; and promoting digital inclusion. At least one commenter suggested that an illustrative list be expanded to include innovative and responsive retail product and service offerings in addition to community development activities.

List of activities that do not qualify for CRA consideration. As noted above, the agencies sought comment on whether, in addition to maintaining an illustrative list of qualifying activities under § ____.14(a), the agencies should also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity. Many commenters supported maintaining a non-exhaustive illustrative list of activities that do not qualify for CRA consideration, with several arguing, for example, that a list of non-qualifying activities would provide increased transparency and prevent banks from allocating time to non-qualifying activities. Commenters also shared suggestions on how the agencies might develop a non-qualifying illustrative list. However, other commenters opposed or expressed concerns about maintaining a non-exhaustive list of non-qualifying activities. For example, one commenter cautioned that a list of ineligible activities could be misinterpreted, causing banks to avoid partnerships with entire entities instead of certain activities. Another commenter noted that eligibility for CRA consideration can depend on specific circumstances and unique facts, detracting from the usefulness of maintaining a list of non-qualifying activities.

Final Rule

The final rule renumbers proposed § ____.14(a) as § ____.14(a)(1), and reflects the technical edits and revisions from the proposal discussed below. The final rule clarifies that the agencies not only will maintain, but will jointly issue a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration as provided in § ____.13. For the reasons stated in the proposal and on consideration of comments, the agencies believe that establishing an illustrative list will promote transparency and consistency, provide banks and other stakeholders with greater certainty, and help clarify the application of criteria for community development categories. These examples are intended to help banks make more informed decisions regarding what loans, investments, and services would qualify for community development consideration.

The revision in the final rule confirming that the list will be jointly issued by the OCC, Board, and FDIC is partly intended to support commenters' interest in consistency across agencies and examinations. Whether to include (or add under final § ____.14(a)(2), discussed below) an activity to the illustrative list is subject to the agencies' discretion. The final rule also makes conforming edits to replace ''community development activities that qualify for CRA consideration'' with ''loans, investments, and services that qualify for community development consideration,'' consistent with other revisions in the final rule, and edits to clarify that § ____.14(a) is specifically applicable to the types of activities that are described in § ____.13.

In adopting the final rule, the agencies considered feedback on whether the benefit of greater certainty would outweigh the potential that the list might limit innovation by unintentionally leading banks to focus primarily on examples on the list. The agencies believe that, on balance, the benefit of greater certainty, transparency, and clarity outweigh this potential concern. The agencies also believe that updating the illustrative list periodically pursuant to final § ____.14(a)(2)(i), described below, will further mitigate concerns by allowing for new, innovative examples to be added over time.

The agencies similarly considered commenter concerns and recommendations related to the potential breadth of the illustrative list. The agencies are concerned that adopting a principles-based list as suggested would not provide sufficient clarity or specificity, which would limit the informational benefits of an illustrative list for banks regarding what kinds of loans, investments, and services would qualify as community development. In developing the illustrative list, the agencies expect to consider what steps the agencies can take to promote ease of use by banks and the public, and to provide context to complex issues as feasible. Regarding the suggestion that the agencies clarify further that the list is not exclusive, the agencies reaffirm that the illustrative list is intended to be non-exhaustive; accordingly, the final rule retains proposed language expressly stating that the illustrative examples are non-exhaustive.

The agencies also appreciate commenters' thoughtful views on how the agencies should develop and issue an illustrative list, as well as the types of activities that should populate the list. Subsequent to this rulemaking, the agencies expect to jointly develop the process for issuing, maintaining, and updating the illustrative list. The agencies will continue to take all of these comments under advisement as this process moves forward.

The agencies are not adopting suggested revisions to final § ____.14(a)(1), as follows. Regarding commenter concerns that activities on the list be focused on particular community needs and not result in displacement, the agencies note that, as a threshold matter, any activity on the illustrative list would still need to qualify under the relevant criteria of a particular community development category in § ____.13, including any applicable criteria for any place-based community development activity. As discussed in the section-by-section analyses of § ____.13(e) through (j), above, one placed-based criteria is that the activity ''not directly result in the forced or involuntary relocation of low- or moderate-income individuals'' in the relevant geographic area.[544] Further, as needed, examiners will still exercise judgment and review performance context in evaluating an activity under the applicable facts and circumstances.

The agencies also considered the suggestion to expand the illustrative list to include innovative and responsive retail services and products offerings, in addition to community development activities. The agencies are not expanding the illustrative list in this manner, as the agencies have not observed as many questions necessitating upfront clarification regarding eligible retail services and products. In deliberating further on this matter in light of the comments, the agencies determined that, at this time, the illustrative list will best serve the purpose of clarity and transparency by being focused on community development activities as the area in which the agencies observe and hear from stakeholders there is the most need for clarity.

Finally, the agencies considered commenter feedback on whether to maintain a separate list of activities that do not qualify for community development consideration. Upon further consideration of comments received, the agencies are concerned that such a list might inadvertently deter banks from pursuing eligible loans, investments, and services, and accordingly, the agencies are not adopting a provision to maintain a list of non-qualifying activities. The agencies also believe that resources will be more effectively and efficiently deployed if focused on providing a resource for banks seeking new opportunities to serve community needs. Nonetheless, the agencies note that the confirmation process adopted in final § ____.14(b), discussed below, will provide a related venue for confirming eligibility, which should help banks reduce unintended allocation of time and resources to non-qualifying loans, investments, and services.

Section ____.14(a)(2) Modifying the Illustrative List

The Agencies' Proposal

To ensure flexibility and incorporation of new activities, the agencies proposed in § ____.14(b)(1) to update the illustrative list periodically. The agencies also proposed in § ____.14(b)(2) that, if the agencies determine that an activity on the illustrative list is no longer eligible for CRA community development consideration, the owner of the loan or investment at the time of the determination would continue to receive CRA consideration for the remaining term or period of the loan or investment. However, the loan or investment would not be eligible for consideration for any purchasers of that loan or investment post-determination.

Comments Received and Final Rule

Commenters provided views on various aspects of proposed § ____.14(b), addressing how the agencies might update and remove items from the illustrative list, and the timeline for doing so. Commenters generally suggested regular monitoring and updating, with several offering suggested timelines (for example: as new innovations arise and circumstances warrant; biannually; or triennially). Commenter feedback included that: the agencies should regularly seek public comment as the most transparent and fair way to update the illustrative list; all stakeholders should be permitted to submit suggestions for issuing and modifying the illustrative list; banks should work with their primary regulator to provide submissions to the illustrative list, and agency staff should also be allowed to submit activities to the list arising through outreach or the examination process; and banks should still receive consideration for any previous investment that remains on the bank's books even if the activity is deemed ineligible later.

The final rule adopts § ____.14(b) substantially as proposed, renumbered as § ____.14(a)(2), with technical edits to replace ''activities'' with ''loans, investments, or services'' and other conforming edits. Final § ____.14(a)(2)(i) provides that the agencies will periodically update the illustrative list in § ____.14(a)(1). Consistent with the proposal, final § ____.14(a)(2)(ii) states that, in the event the agencies determine that a loan or investment on the illustrative list is no longer eligible for community development consideration, the owner of the loan or investment at the time of the determination will continue to receive community development consideration for the remaining term or period of the loan or investment. However, these loans or investments will not be considered eligible for community development consideration for any purchasers of that loan or investment after the determination.

The agencies believe that providing for periodic updates to the illustrative list under § ____.14(a)(2)(i) offers the agencies flexibility and will promote innovation by allowing the agencies to add new and innovative examples over time. This provision also will allow the agencies' understanding of community development activities to evolve as banks' activities and community development needs shift. The agencies' ability to update the list periodically is also intended to help address some commenter concerns regarding § ____.14(a)(1), that an illustrative list could limit innovation by leading banks to focus primarily on examples found on the list.

As noted above, subsequent to this rulemaking, the agencies expect to jointly develop the process for issuing, maintaining, and updating the illustrative list, and will consider commenter suggestions for that process, including those regarding modifying and removing items from the illustrative list, and the timeline for doing so. Regarding commenter concerns about treatment of loans and investments later removed from the list, the agencies note that final § ____.14(a)(2)(ii) is intended to provide certainty that a bank (albeit not subsequent purchasers) will continue to receive consideration for their loans and investments even if those examples are later removed from the list. Accordingly, in circumstances where examples are later removed from the list, a bank's credit for those loans and investments would not be retroactively impacted.

Section ____.14(b) Confirmation of Eligibility

The Agencies' Proposal

The agencies proposed in § ____.14(c) and (d) a formal mechanism for banks subject to the CRA regulations to request confirmation that an activity is eligible for CRA consideration. Under proposed § ____.14(c), a bank could submit a request to its appropriate Federal financial supervisory agency for confirmation that an activity is eligible for CRA consideration. When the agencies confirmed that an activity is or is not eligible for CRA consideration, the supervisory agency would notify the requestor, and the agencies might add

[544] *See* final § ____.13(e)(1)(iii), (f)(3), (g)(3), (h)(1)(iii), (i)(3), (j)(2)(iii), and (j)(3)(iii).

the activity to the publicly available illustrative list of activities, incorporating any conditions imposed, if applicable.

Proposed § ____.14(d)(1) provided that a bank could request that the appropriate Federal financial supervisory agency confirm that an activity is eligible for CRA consideration by submitting a request to its Federal financial supervisory, in a format prescribed by the agency. Proposed § ____.14(d)(2) provided that, in responding to a confirmation request, the agencies would consider: (1) the information provided to describe and support the request; (2) whether the activity is consistent with the safe and sound operation of the bank; and (3) any other information that the agencies deem relevant. The agencies further proposed in § ____.14(d)(3) that the agencies may impose any conditions on that confirmation, in order to ensure consistency with the requirements of the CRA and the CRA regulations. The agencies solicited comment on the process for accepting submissions for confirming qualifying community development activities, and on establishing a timeline for review. The agencies also solicited comment on processes involving joint actions by the agencies, as well as alternative processes and actions, such as consultation among the agencies, that would be consistent with the purposes of the CRA.

Comments Received

Commenters generally supported the agencies' proposal in § ____.14(c) and (d) to create an established process for banks to request confirmation that an activity is eligible for CRA consideration. Commenters noted that such a process could help banks focus their community development activities, increase clarity, reduce uncertainty, improve transparency, and offer a centralized resource for vetting projects. For example, a commenter noted that an illustrative list, coupled with a confirmation process, would give banks the tools to plan community development activities and still be innovative when warranted. Some commenters stated that the agencies should expand the scope of proposed § ____.14(c) and (d)(1) to permit submissions by stakeholders other than banks, so as not to deter the development of qualified, responsive, and innovative activities. Another commenter suggested that financial institutions should be allowed to request confirmation of activities that may have been presented to them by other stakeholders.

Commenters shared a variety of suggestions in response to the agencies' request for feedback on the process for accepting submissions for confirming qualifying community development activities. For example, a commenter emphasized the importance of a confirmation process that is published and public, while another recommended that the agencies adopt a clear process for frequency of updates, factors considered in adding new activities, and the process for alerting banks to any modifications. Another commenter recommended that there be a process for confirming eligibility of qualifying activities both in advance and after an activity is completed.

Commenters further offered feedback on processes involving joint actions by the agencies. Several commenters offered ideas for the review process, including establishing a joint interagency review and determination process; involving stakeholders (*e.g.,* through a stakeholder advisory board or through a joint agency and stakeholder committee); and/or an automated review and approval process. A few commenters suggested coordination with State agencies or consideration of State CRA frameworks in the confirmation process. Several other commenters underscored the need for consistency among regulators' approval or denial for similar opportunities. A commenter that encouraged interagency coordination also recommended that only a requestor's primary Federal regulator should make the determination, rather than the feedback being a joint undertaking of the three agencies.

Commenters also addressed timelines for the review and confirmation process. Some commenters stated that the process would need to be timely to be helpful, including because competition and customer expectations require institutions to move quickly, and because slow feedback can hinder projects and investments. A few commenters cautioned that a preapproval process should not require major investments of time or effort.

Commenters suggested different review timeline ranges. Many commenters recommended a maximum 30-day timeframe for answering preapproval requests, with some noting this timeframe would allow for dialogue between the agency and financial institution, as well as time for regulators to coordinate with one another for purposes of consistency. Another group of commenters suggested that a 60-day timeframe would be appropriate. Other suggested timelines generally ranged from 24 hours to six months, with a commenter suggesting that a lack of response from the agency within a standard time should be taken as an approval of the activity.

Commenters also addressed technical aspects of the submission process, such as submission through an email system, portal, and/or template, with details regarding acknowledgment and response times. Some commenters offered ideas to increase transparency, including, for example, making requests and decisions public, and implementing technology such as an online request tracking system. Among other process-related topics, commenters encouraged training and expectation-setting for agency staff to promote expertise and consistency, and suggested documentation of the structure and flow of the confirmation process.

Final Rule

Consistent with the proposal, the final rule establishes a formal mechanism for banks to submit a request for confirmation that an activity is eligible for community development consideration. Proposed § ____.14(c) and (d) are renumbered as § ____.14(b)(1) through (3), reflecting reorganization of the proposed regulatory text to follow a more chronological order of the confirmation process. As described more specifically below, final § ____.14(b)(1) describes how banks subject to the CRA regulations may request a confirmation of eligibility from the appropriate Federal financial supervisory agency. Final § ____.14(b)(2) describes the process for determining eligibility of an activity, which includes the types of information the appropriate Federal financial supervisory agency will consider and a statement that the appropriate Federal financial supervisory agency will work in close coordination with the other agencies to make eligibility determinations. Final § ____.14(b)(2) also includes the proposal clarifying that the supervisory agency may impose limitations or requirements on a determination for consistency with the requirements of the CRA final rule. Final § ____.14(b)(3) reflects proposed § ____.14(c), stating that the appropriate Federal financial supervisory agency will notify the requestor and other agencies of its determination.

The agencies believe that establishing a confirmation process as set forth in final § ____.14(b) will accomplish the desired goal of increased certainty and clarity for banks by allowing them to seek an upfront determination that a loan, investment, or service will be eligible for community development consideration (subject to limitations or conditions set by agencies in the confirmation process, such as the legality of the activity). Together with the illustrative list process in § ____.14(a), the agencies believe that the confirmation process in § ____.14(b) will assist banks with planning and will facilitate banks' support of newer, less common, more complex, or innovative activities. The agencies further believe that the confirmation process will improve a bank's transparency into its supervisory agency's views on a particular request, and will help banks focus their community development resources and engagements. The agencies have considered comments on the confirmation submission and review process, including views on joint confirmation determinations, and have adopted a revised rule taking that feedback into account, as described in more detail below.

The agencies note that the confirmation process anticipated by § ____.14(b) is an optional tool designed to provide more upfront certainty to banks. However, the final rule does not prevent banks from seeking informal, nonbinding feedback from the appropriate Federal financial supervisory agency on particular activities, or prevent an examiner from affirming in the normal course of an examination that an activity does or does not qualify for community development consideration based upon review of all facts and circumstances.

Section ____.14(b)(1) Request for confirmation of eligibility. As noted, final § ____.14(b)(1) provides that a bank subject to the CRA regulations may request that the appropriate Federal financial supervisory agency confirm that a loan, investment, or service is eligible for community development consideration by submitting a request to, and in a format prescribed by, that agency. To streamline the regulation and reduce redundancy, the final rule combines proposed § ____.14(c) and (d) in final § ____.14(b)(1) through (3). Final § ____.14(b) does not include the reference in proposed § ____.14(c) to updating the illustrative list, as duplicative of final § ____.14(a)(2). The agencies expect to consider whether to add confirmed eligible loans, investments, and services to the illustrative list as part of the periodic list update process.

The agencies are declining to expand the confirmation process to permit stakeholders beyond banks subject to the CRA regulations to submit confirmation requests to the agencies, as suggested by some commenters. The agencies appreciate the strong interest that other stakeholders such as community groups may have in confirming whether particular activities qualify for CRA consideration; at the same time, they are not subject to CRA examinations. The agencies believe that limiting the confirmation submission process to banks will ensure that agency resources are most efficiently deployed to considering eligibility for activities with confirmed interest from the banks that would be seeking CRA consideration. Additionally, the agencies emphasize that public input, including community contacts, and other tools for stakeholder involvement remain a key part of the CRA examination process.[545]

Section ____.14(b)(2) Determination of eligibility. Final § ____.14(b)(2) describes the eligibility determination process, which has been revised from proposed § ____.14(d)(2). Final § ____.14(b)(2)(i) provides the criteria the agencies will use in determining the eligibility of a loan, investment, or service for a request submitted under § ____.14(b)(1). Specifically, the appropriate Federal financial supervisory agency will consider information that describes and supports the bank's request (final § ____.14(b)(2)(i)(A)) and any other information that the agency deems relevant (final § ____.14(b)(2)(i)(B)).

Final § ____.14(b)(2)(i) clarifies proposed § ____.14(d)(2) by stating that the appropriate Federal financial supervisory agency will consider these factors ''[t]o determine the eligibility of a loan, investment, or service for which a request has been submitted under paragraph (b)(1)'' (as opposed to considering these factors ''[i]n response to a request for confirmation'' [546]). In final § ____.14(b)(2)(i)(A) and (B), the agencies are adopting provisions proposed regarding information that the appropriate Federal financial supervisory agency will consider in determining whether an activity is eligible for CRA consideration under the individualized confirmation process.[547] Final § ____.14(b)(2)(i) does not incorporate the proposed provision stating that the agencies will consider ''[w]hether the activity is consistent with the safe and sound operation of the bank.'' [548] On further consideration, the agencies believe that information in relation to the safe and sound operation of the bank is covered under the language ''any other information that the [Agency] deems relevant'' in final § ____.14(b)(2)(i)(B), so is unnecessary. However, the agencies do not intend to substantively change the final rule in this regard, and note that the CRA emphasizes meeting community credit needs ''consistent with the safe and sound operation of such institutions.'' [549]

Final § ____.14(b)(2)(ii) states that the agencies expect and are presumed to jointly determine eligibility of a loan, investment, or service to promote consistency across the agencies. This provision further states that, before making a determination of eligibility, the appropriate Federal financial supervisory agency will consult with the other agencies regarding the eligibility of a loan, investment, or service. On further deliberation, the agencies determined that it was important to clarify the provisions regarding confirmation of eligibility to reflect each agency's authority to make decisions about its own supervised entities. At the same time, the final rule incorporates the agencies' obligation to consult with one another and work together in making eligibility determinations.

Proposed § ____.14(d)(3) is finalized as § ____.14(b)(2)(iii), with technical edits and revisions to clarify that the appropriate Federal financial supervisory agency (rather than all three agencies) may impose limitations or requirements on a determination of the eligibility of a loan, investment, or service of its regulated bank, to ensure consistency with the CRA regulations.

In considering the appropriate provisions for final § ____.14(b)(2), the agencies particularly noted commenters' views on the importance of an efficient, timely confirmation process, as well as commenters' interest in promoting consistency across the agencies concerning similar opportunities. The agencies also considered that confirmation requests may be highly varied by type, complexity, and scope. The final rule thus emphasizes the agencies' commitment to jointly consider and make decisions on confirmation requests in consultation with one another, while allowing the Federal financial supervisory agency to consider relevant factors and make a final determination based on its particular supervisory knowledge of the requesting bank and the agency's supervisory experience with the CRA. Based on that knowledge and experience, the agencies believe it appropriate to clarify that the appropriate Federal financial supervisory agency (as opposed to all

[545] *See, e.g.,* final § ____.46, regarding public engagement, and the accompanying section-by-section analysis.

[546] *See* proposed § ____.14(d)(2).

[547] *See* proposed § ____.14(d)(2)(i) and (iii).

[548] Proposed § ____.14(d)(2)(ii).

[549] 12 U.S.C. 2901(b).

three agencies together, as proposed) may impose limitations or requirements on any determination. The agencies believe that the final rule thus appropriately balances commenters' interests in efficiency and consistency.

The agencies note that any determination of eligibility under final § ____.14(b) is not a determination of legal permissibility or compliance with applicable laws and regulations. A bank requesting a determination remains responsible for ensuring that the loan, investment, or service is legally permissible and complies with applicable laws and regulations.

Section ____.14(b)(3) Notification of eligibility. Final § ____.14(b)(3) states that the Federal financial supervisory agency will provide a written notification to the requestor and to the other agencies of any eligibility determination, as well as the rationale for such determination. The final rule expands on the proposal (proposed § ____.14(c)) to clarify that a requestor can expect to receive the rationale for an agency's determination, and to ensure that the agencies remain collectively informed of the final dispensation of requests, which will help promote interagency consistency and support future confirmation request determinations. As each confirmation request is dependent on individual facts and circumstances, and could contain confidential information from the requesting bank, the agencies do not intend to make their confirmation decisions public. However, as noted above, the agencies will consider confirmation decisions when periodically updating the illustrative list contemplated by § ____.14(a).

Additional process issues. The final rule does not adopt specific timelines or other more detailed points of process at this time. The agencies appreciate commenters' additional feedback in response to questions on the confirmation submission process and timelines, including regarding process development, stakeholder engagement, and technical suggestions. As with the illustrative list in § ____.14(a), subsequent to this rulemaking, the agencies expect to jointly develop the confirmation process in connection with final § ____.14(b). The agencies in particular recognize commenter feedback on timelines, and intend to implement a timely and efficient process. The agencies will take these comments under advisement as that process development moves forward.

Section ____.15 Impact and Responsiveness Review of Community Development Loans, Community Development Investments, and Community Development Services

Current Approach

Currently, the agencies' qualitative assessment of a bank's community development performance takes into account the responsiveness of the bank's activities to credit and community development needs and, if applicable, the innovativeness and complexity of the activities.[550] As part of these considerations, examiners also consider the degree to which the activities serve as a catalyst for other community development activities.[551]

The terms ''responsiveness'' and ''innovativeness'' are generally described in the Interagency Questions and Answers. Regarding ''responsiveness,'' for example, the Interagency Questions and Answers explains that an examiner will consider both quantitative and qualitative aspects of a bank's community development activities.[552] Thus, in addition to considering the volume and type of activities, examiners may consider some activities to be more responsive than others if an activity effectively meets identified credit and community development needs.[553] ''Innovativeness'' takes into account, for example, whether a bank implements meaningful improvements to products, services, or delivery systems to respond to community needs.[554] These qualitative aspects of the bank's community development activities can be assessed based on information provided by the bank and other sources about the performance context and information about credit and community development needs and opportunities.[555]

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 identified or measured. As a result, the qualitative evaluation currently relies heavily on examiner judgment.

As the agencies discussed in the proposal, some stakeholders have suggested that the current approach for the qualitative evaluation of community development activities could be more transparent and consistent, and 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.

Section ____.15(a) Impact and Responsiveness Review, in General

The Agencies' Proposal

Proposed § ____.15(a) would incorporate into the regulation an impact review of community development activities under the Community Development Financing Test,[556] the Community Development Services Test,[557] and the Community Development Financing Test for Wholesale or Limited Purpose Banks.[558] The impact review would qualitatively evaluate the impact and responsiveness of qualifying activities with respect to community credit needs and opportunities through the application of a series of review factors. Specifically, as proposed in § ____.15(b) and discussed below, the evaluation of a community development activity's impact and responsiveness would include, but would not be limited to, a set of ten specific qualitative factors. In addition, proposed § ____.15(a) stated that the agencies would consider, as applicable, performance context information set forth in proposed § ____.21(e), which would include information demonstrating an activity's 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.[559] The impact and responsiveness review would provide appropriate community development recognition for loans, investments, and services that are considered to be especially impactful and responsive to community needs, including loans and investments that

[550] *See* Q&A § ____.21(a)–2.

[551] *See id.*

[552] *See* Q&A § ____.21(a)—3.

[553] *See id.*

[554] *See* Q&A § ____.21(a)—4. The Interagency Questions and Answers also indicate that ''innovativeness'' may include banks introducing existing products, services, or delivery systems to ''low- or moderate-income customers or segments of consumers or markets not previously served.'' *Id.* This guidance further states, ''Practices that cease to be innovative may still receive qualitative consideration for being flexible, complex, or responsive.'' *Id.*

[555] *See id.*

[556] Proposed § ____.24.

[557] Proposed § ____.25.

[558] Proposed § ____.26.

[559] Proposed § ____.21(e) is renumbered final § ____.21(d), discussed in detail in the accompanying section-by-section analysis below.

may be relatively small in dollar amount.

Comments Received

Commenters on the proposed community development impact review generally supported adding an impact review as proposed in § ____.15(a). As discussed in more detail below, commenters also generally favored adopting the proposed impact review factors in proposed § ____.15(b), while expressing a range of views regarding how particular proposed impact factors should be implemented. Numerous commenters also recommended that the agencies adopt a variety of additional impact factors.

Scope of impact factor review. Several commenters urged the agencies to expand the scope of the impact factor review to include activities under the proposed Retail Lending Test and Retail Services and Product Test. These comments are discussed in the section-by-section analysis of final §§ ____.22 and ____.23.

Clarifications and impact factor review process.[560] Some commenters recommended that the agencies provide further clarity and processes concerning how the agencies would review, weigh, and apply impact factors in examinations and ratings determinations. A number of commenters highlighted the need for a clear and transparent impact factor review process, with commenters offering a range of suggestions, including recommending additional public engagement, such as a public comment process. Some commenters expressed concern about what they viewed as a lack of specificity, regulatory uncertainty, and the risk of examination inconsistency in the proposed impact factor review process, while others emphasized the need for examiner training to promote rigorous analysis, development of requisite expertise, and consistency. A number of commenters also offered views on whether the agencies also should permit activities with harmful features to be evaluated negatively. Other commenters suggested that the impact review also consider the impact of a bank's historical discriminatory practices. A few commenters recommended that the agencies clarify that institutions would not be penalized if they do not conduct a sufficient number of activities associated with an enumerated impact factor.

Some commenters suggested that the agencies consider a quantitative, metrics-based approach to an impact review in addition to a qualitative review. Various commenters suggested that impact factor reviews include points, weighting, and ratings, such as score weighting for the most impactful investments, and a few commenters provided examples of potential metrics for consideration. A few commenters, in suggesting an analytical framework for evaluating the impact factors in proposed § ____.15(b)(1) and (2) relating to persistent poverty areas and areas with low levels of community development financing (discussed below), noted that it would take several years before the agencies would have sufficient data to incorporate impact factors as a quantitative element of the examination process. Separately, another commenter cautioned that a quantitative approach could lead to unrealistic activity targets in some instances.

Final Rule

The final rule adopts proposed § ____.15(a) with clarifying and technical revisions. The final rule states that, under the Community Development Financing Test in § ____.24, the Community Development Services Test in § ____.25, and the Community Development Financing Test for Limited Purpose Banks in § ____.26, the relevant agency evaluates the extent to which a bank's community development loans, investments, and services are impactful and responsive in meeting community development needs in each facility-based assessment area and, as applicable, each State, multistate MSA, and the nationwide area. The final rule renames the review as the ''impact and responsiveness review'' to clarify the agencies' intent that impact should be considered in conjunction with how responsive an activity is to community needs. As discussed below, the final rule is further revised from the proposal to clarify the agencies' intent for the impact and responsiveness review and associated factors. Additionally, the final rule makes technical edits to: (1) remove the reference to ''Wholesale Banks'' to conform with revisions made elsewhere in the regulation; (2) replace ''activities'' with ''loans, investments, and services,'' consistent with revisions made elsewhere in the regulation (with parallel edits made in § ____.15(b)); and (3) update the performance context cross-reference to § ____.21(d).

As discussed in more detail in the section-by-section analysis of § ____.24, the approach of identifying specific impact and responsiveness review factors as part of the qualitative evaluation is intended to promote clear and consistent criteria. As a result, the agencies believe that providing the impact and responsiveness review factors in final § ____.15(b) will result in a more standardized qualitative evaluation relative to current practices, in combination with the standardized Community Development Financing Metrics and benchmarks adopted in the final rule. In addition, this approach is intended to foster transparency by providing the categories the agencies will consistently review in considering the impact and responsiveness of a bank's community development loans, investments, and services. The agencies believe that this approach will advance the purpose of the CRA by ensuring a strong emphasis on the impact and responsiveness of community development loans, investments, and services in meeting community needs, including loans and investments that may be relatively small in dollar amount.

Consistent with the proposal, the final rule also states that the relevant agency evaluates the impact and responsiveness of a bank's community development loans, investments, or services based on § ____.15(b), discussed in detail below, and may also take into account performance context information pursuant to § ____.21(d).[561] The agencies recognize that assessing the impact and responsiveness of a bank's community development loans, investments, and services may necessitate considering activities and factors outside of § ____.15(b), and the agencies have provided for this through the reference to § ____.21(d). Accordingly, the final rule's approach of considering the standardized categories in § ____.15(b) in conjunction with the ability to consider broader performance context information pursuant to § ____.21(d) is intended to help ensure recognition of activities with a high degree of impact on and responsiveness to the needs of low- or moderate-income communities. Consistent with the proposal, the final list of impact and responsiveness factors in § ____.15(b) is non-exhaustive, which will also allow examiners to consider other highly impactful or responsive loans, investments, or services that support

[560] *See* the section-by-section analysis of § ____.24 for further discussion of the commenters' requested clarifications to the impact and responsiveness review component in the final rule, other than those noted herein.

[561] For further discussion of final § ____.21, see the corresponding section-by-section analysis below.

community development under § ____.13.

The agencies have considered comments requesting additional detail on the impact review process, various specific suggestions for the process, and how the impact review might enhance or lower the bank's performance conclusion. The final rule clarifies the agencies' intent that, for purposes of the community development tests in §§ ____.24 through ____.26, the relevant agency will evaluate the extent to which a bank's community development loans, investments, and services are impactful and responsive in meeting community development needs. As part of this evaluation, the agencies may consider the volume and type of activities undertaken by a bank, applying the factors in § ____.15(b) and performance context considerations. However, the agencies also recognize that some community development activities that are considered especially impactful and responsive to community needs may be comparatively smaller in dollar amount. As such, the agencies may consider more than the dollar volume or percentage of activities meeting an impact and responsiveness factor category in § ____.15(b) when assessing the extent to which a bank's community development activities are impactful and responsive. The agencies will provide a summary of a bank's impact and responsiveness review data, such as the volume of activities by impact and responsiveness review category, and incorporate the impact and responsiveness review into the performance conclusions and the written performance evaluation.

The agencies view the impact and responsiveness review as one component of a comprehensive evaluation in the community development tests under §§ ____.24 through ____.26. Under the final rule, metrics, benchmarks, and impact and responsiveness reviews are considered, as applicable, holistically in arriving at a performance conclusion for each of these community development-focused tests. As a result, the impact and responsiveness evaluation is not designed to raise or lower a conclusion that is based solely on other components of the performance tests under §§ ____.24 through ____.26, such as the bank's Community Development Financing Metric under § ____.24. Rather, pursuant to the final rule, the impact and responsiveness evaluation is one of several components of the applicable tests, and all of these components are considered together to result in any of the five conclusion categories.

The agencies have considered, but decline to adopt, an approach that would assign a separate impact score. The agencies believe that developing a consistent and consistently applied method of scoring the impact and responsiveness of a bank's community development activities factors could be particularly challenging without additional data, as also noted below, and given that the list of factors in § ____.15(b) is non-exhaustive. When considering a bank's performance under the Community Development Financing Test in § ____.24, the final rule specifies that the agency must consider the applicable Community Development Financing Metric, benchmark(s), and impact and responsiveness review. As a result, the impact and responsiveness review is directly incorporated into a Community Development Financing Test conclusion, which reflects the agencies' view that it is important to consider both quantitative data points and more qualitative considerations in assessing a bank's community development performance. *See* the section-by-section analysis of § ____.24 for additional discussion regarding the overall qualitative nature of the Community Development Financing Test evaluation.

The agencies also considered commenter suggestions to implement a quantitative, metrics-based approach to conducting an impact review. The agencies are not in this final rule adding any specific impact and responsiveness metrics, thresholds, or multipliers for community development financing or services activity due to a lack of relevant community development data. The agencies will continue to consider what additional guidance may be provided in the future regarding the impact and responsiveness review, and will take these comments under advisement.

The agencies have considered, but are not adopting, a commenter recommendation to include in the impact and responsiveness review an assessment of a bank's historical discriminatory practices on the communities that it serves. In making this determination, the agencies considered that, under the final rule, as currently, evidence of discrimination and other illegal credit practices can be the basis of a rating downgrade.[562]

Regarding comments recommending that the impact and responsiveness review be expanded to the proposed Retail Lending Test and Retail Services and Products Test, the agencies are not revising the final rule in that regard. As is discussed in the section-by-section analyses of §§ ____.22 and ____.23, the Retail Lending Test and the Retail Services and Products Test, taken together, have other mechanisms in place to evaluate qualitative aspects of responsive products and programs and incorporate factors appropriate for those evaluations.

Section ____.15(b) Impact and Responsiveness Review Factors

Section ____.15(b)(1) Benefits or Serves One or More Persistent Poverty Counties

Section ____.15(b)(2) Benefits or Serves One or More Census Tracts With a Poverty Rate of 40 Percent or Higher

Section ____.15(b)(3) Benefits or Serves One or More Geographic Areas With Low Levels of Community Development Financing

The Agencies' Proposal

In § ____.15(b)(1) and (2), the agencies proposed impact factors for activities serving specific geographic areas with significant community development needs: ''persistent poverty counties,'' (proposed § ____.15(b)(1)); and ''areas with low levels of community development financing'' (proposed § ____.15(b)(2)). The agencies considered that serving these geographic areas would reflect a high level of responsiveness because the activities could increase economic opportunity in areas with high needs and such activities may involve a high degree of complexity and more intensive engagement on the part of the bank.

Under proposed § ____.15(b)(1), whether an activity serves ''persistent poverty counties'' would be an impact factor. The agencies proposed to define persistent poverty counties as counties or county-equivalents with a poverty rate of at least 20 percent for the past 30 years as measured by the most recent decennial censuses.[563] Under proposed § ____.15(b)(2), whether an activity serves ''areas with low levels of community development financing'' would be an impact factor. By incorporating local CRA community development financing data into the designation, this approach would highlight areas where CRA capital is most limited. Because comprehensive

[562] *See* current § ____.28(c), proposed § ____.28(d), and final § ____.28(d), discussed in the section-by-section analysis of final § ____.28(d) below.

[563] The Congressional Research Service identifies 407 counties that meet the criteria for persistent poverty county using poverty rate estimates from the 1990 Census, the 2000 Census, and the 2019 Small Area Income and Poverty Estimates. *See* Congressional Research Service, ''The 10–20–30 Provision: Defining Persistent Poverty Counties'' (Apr. 2022), *https://sgp.fas.org/crs/misc/R45100.pdf.*

CRA community development financing data is not currently available at local levels, the proposal noted that 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 also sought feedback on whether to include activities in census tracts with a current poverty rate of at least 40 percent (as referenced in the proposal, a ''high poverty census tract'') as an impact factor. As noted in the proposal, the agencies considered that this approach would draw attention to economically distressed geographic areas that are smaller than an entire county and not located in a persistent poverty county, such as high poverty neighborhoods in densely populated urban areas. The agencies noted that 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.

The agencies sought feedback on whether the proposed impact review factors for activities serving geographic areas with high community development needs should include persistent poverty counties, high poverty census tracts, areas with low levels of community development financing, or some combination thereof. The agencies also sought feedback on what considerations should be taken in defining these categories and in updating a list of geographic areas for these categories. The agencies indicated in the proposal 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.

Comments Received

Commenters on this aspect of the proposal generally supported proposed § ____.15(b)(1) and (2), and offered views on whether to include high poverty census tracts as an impact factor. Several commenters argued that all three areas have significant needs and would benefit from community development activities. Other commenters emphasized the importance of including both persistent poverty counties and high poverty census tracts, asserting that persistent poverty counties are largely rural, and that focusing only on such counties would neglect many urban and suburban neighborhoods. Another commenter stated that the inclusion of an impact factor for both persistent poverty counties and high poverty census tracts might help address racial and ethnic inequities. One commenter raised concerns that a high poverty census tract approach focused on a 40 percent poverty rate might not encourage activities in less dense rural areas where poverty is diluted in census tracts.

Some commenters recommended alternative geographic impact factors to those proposed. For example, commenters suggested that income-based measures for delineating geographic areas for impact factors might be a more equitable and consistent approach than poverty-based measures. These commenters explained that focusing on ''low-income'' geographic areas would result in investment opportunities that are more equally spread out across the nation because income levels are set relative to the area median income of each geographic area, whereas poverty levels are based on a nationwide standard. Thus, these commenters asserted that areas with lower area median incomes would have greater shares of high-poverty census tracts than areas with higher area median incomes, and investments in high-cost areas (that nonetheless might have high community development needs) would not be incentivized. In this regard, commenters recommended that the agencies recognize activities serving low-income census tracts, which the commenters stated are more challenging to serve than moderate-income census tracts.

Other commenters proposed that the agencies expand on or add to the geographic areas included under proposed § ____.15(b)(1) and (2), or select alternative definitions. Commenters recommended, for example, that the agencies include or give more emphasis to activities in particular communities, regardless of assessment area, such as activities in majority-minority geographic areas, or activities in the following areas with persistent poverty: Native communities, the Mississippi Delta, Central Appalachia, and the Texas/Mexico Border. Several other commenters recommended that ''rural'' communities be a separate impact category, and emphasized that ''rural'' is not synonymous with ''nonmetropolitan areas.'' These commenters noted that some experts are turning to alternative density-based measures like population per square mile to better identify communities.

Commenters also provided other suggestions related to proposed § ____.15(b)(1) and (2). Comments included, for instance, that: counties in all U.S. territories, such as Puerto Rico and the U.S. Virgin Islands, be included on a list of persistent poverty counties; high poverty census tracts, areas of low community development financing, and persistent poverty counties should all be evaluated separately so that projects that meet multiple criteria receive more credit; and the agencies should consider giving additional consideration for grants and donations to CDCs in persistent poverty counties.

Lastly, commenter feedback regarding the inclusion of areas with low levels of community development financing in proposed § ____.15(b)(2) included, for example: opposing or expressing concern, in part because these low levels may be related to extenuating factors; suggesting that a demonstration of responsiveness to unmet needs should also be required; and encouraging the agencies to provide additional credit for community development activities in especially vulnerable census tracts, such as those that are low income, highly segregated, have distressed housing stock, or have significantly lower levels of community development financing than other areas within designated areas of need.

Final Rule

For the reasons discussed below, the agencies are adopting in the final rule:

- Proposed § ____.15(b)(1), with revisions discussed below, providing as an impact and responsiveness factor whether a bank's qualifying community development loan, investment, or service benefits or serves one or more persistent poverty counties. The definition of persistent poverty counties has been revised and relocated to the definitions section § ____.12, as discussed below;[564]
- A new impact and responsiveness factor in § ____.15(b)(2) for whether a loan, investment, or service benefits or serves one or more census tracts with a poverty rate of 40 percent or higher; and
- Proposed § ____.15(b)(2) substantially as proposed, renumbered as final § ____.15(b)(3), providing as an impact and responsiveness factor whether a loan, investment, or service benefits or serves one or more geographic areas with low levels of community development financing.

The final rule makes technical revisions from ''serves'' to ''benefits or serves'' in each of final § ____.15(b)(1)

[564] *See* § ____.12 (''persistent poverty county'') and the corresponding section-by-section analysis.

through (3) for consistency with the language used in the community development categories under § ____.13. Each of these factors is discussed in more detail below.

The agencies believe that these factors capture three distinct, though interrelated, aspects of unmet community development needs. The impact and responsiveness factors in final § ____.15(b)(1) and (2) in the final rule cover different dimensions of poverty, as discussed in more detail in each section below. Persistent poverty counties, as covered under § ____.15(b)(1), represent more dispersed, often nonmetropolitan areas where a substantial share of residents have experienced poverty over many years. Census tracts with a poverty rate of 40 percent or higher, as covered under § ____.15(b)(2), are disproportionately located in metropolitan areas. These census tracts also represent areas with highly concentrated poverty within a more recent timeframe that might not otherwise be captured by the persistent poverty county definition. The agencies believe that expressly adopting impact and responsiveness factors regarding both persistent poverty counties and census tracts with a poverty rate of 40 percent or higher appropriately captures a balance of high need areas in both metropolitan and nonmetropolitan areas, as well as a balance of more long-standing and more recent, higher levels of economic hardship.

Additionally, the impact and responsiveness factor in final § ____.15(b)(3) highlights areas where there is a low level of community development financing, which could be found in both metropolitan and nonmetropolitan areas. Collectively, the agencies believe the final impact and responsiveness factors in § ____.15(b)(1) through (3) will recognize loans, investments, and services in communities with significant community development needs. The agencies have considered comments, but for the reasons discussed below, are not adopting additional or alternative geographic designations, such as an impact and responsiveness factor based on area median income.

Benefits or serves one or more persistent poverty counties (§ ____.15(b)(1)). With respect to persistent poverty counties under final § ____.15(b)(1), final § ____.12 defines the term as meaning a county that has had poverty rates of 20 percent or more for 30 years, as publicly designated by the Board, FDIC, and OCC, compiled in a list, and published annually by the FFIEC. Under the final rule, the agencies are adopting a standard for measuring persistent poverty counties that is consistent with common practice at other Federal agencies,[565] and that is designed to provide for statistical reliability while also allowing for regular data updates as conditions change. The final rule has been revised from the proposal (referencing the decennial census) to provide the agencies additional flexibility to adapt to changing or new data sources, including the ability to recognize how data on poverty rates may change over time, without having to modify the regulation. Doing so will also allow the agencies to adapt to a more standardized Federal agency definition of persistent poverty county over time, as recommended by the Government Accountability Office.[566] The agencies intend to base an initial standard on data from the U.S. Census Bureau's American Community Survey and decennial censuses. In addition, the agencies expect to use equivalent statistical products to measure persistent poverty in areas not covered by both the American Community Survey and decennial census, such as Puerto Rico, the U.S. Virgin Islands, Guam, the Marshall Islands, and American Samoa, which should address the commenter recommendation to include U.S. territories in the definition.

Currently, the agencies estimate that 5.6 percent of the U.S. population lives in persistent poverty counties.[567] Persistent poverty counties are disproportionately nonmetropolitan, with an estimated 13.6 percent of the population of nonmetropolitan areas living in persistent poverty counties.[568] Mapping of persistent poverty counties shows that many are in the Mississippi Delta, Appalachia, ''colonias'' in the Rio Grande River valley, and American Indian and Alaska Native Areas as designated by the U.S. Census Bureau.[569] As noted in the proposal, Congress has directed other agencies, including the U.S. Department of the Treasury's Community Development Financial Institutions Fund, the USDA, the U.S. Economic Development Administration, and the U.S. Environmental Protection Agency, to allocate funding to persistent poverty counties.

The agencies continue to believe that the impact and responsiveness factor for persistent poverty counties as adopted will recognize and encourage loans, investments, and services in areas that have experienced high levels of economic hardship over many years, and where community development needs can be significant. Additionally, the agencies believe that designating geographic areas at the county level offers a high degree of clarity and simplicity regarding which qualifying activities would meet the criterion.

Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher (§ ____.15(b)(2)). For the reasons noted above and upon consideration of comments received, the agencies are adopting as an additional impact and responsiveness factor in final § ____.15(b)(2) to consider whether a loan, investment, or service benefits or serves one or more census tract with a poverty rate of 40 percent or higher. This impact and responsiveness factor is intended to complement the impact and responsiveness factor regarding persistent poverty counties. The agencies believe that expressly including census tracts with a poverty rate of 40 percent or higher captures high need areas with particularly high levels of spatially concentrated poverty. Census tracts covered by this factor might not be captured by the persistent poverty definition for various reasons. For example, these census tracts might have experienced high levels of poverty only in more recent years rather than over the past 30 years; or these census tracts might experience high poverty levels but are located in a county that is not a persistent poverty county, such as a high poverty neighborhood in a densely populated urban area. Census tracts with a poverty rate of 40 percent or higher are severely disadvantaged to a degree that is reflected in several outcomes, even when compared with persistent poverty counties. The agencies estimate that employment rates are lower, a higher share of housing units are vacant, and median household incomes are lower than they are in persistent poverty counties, on average.[570] The agencies further believe

565 *See, e.g.,* USDA Economic Research Service, ''Poverty Area Measures'' (Aug. 8, 2023), *https://www.ers.usda.gov/data-products/poverty-area-measures/.*

566 GAO, ''Areas with High Poverty: Changing How the 10–20–30 Funding Formula Is Applied Could Increase Impact in Persistent Poverty Counties'' (May 2021), *https://www.gao.gov/assets/gao-21-470.pdf.*

567 Statistics used to characterize persistent poverty counties and census tracts with a poverty rate of 40 percent or higher are based on data in the 2015–2019 American Community Survey and classifications of persistent poverty counties from Poverty Area Measures published by the USDA Economic Research Service in November 2022.

568 *See id.*

569 *Id.;* T. M. Tonmoy Islam, Jenny Minier, and James P. Ziliak, ''On Persistent Poverty in a Rich Country,'' 81 S. Econ. J. 653–78 (2015).

570 Statistics on employment rates, housing vacancies, and median household incomes are from

Continued

40 percent is an appropriate benchmark for the impact and responsiveness factor, as it is double the 20 percent threshold used in the persistent poverty definition in § ____.15(b)(1),[571] is consistent with readily available statistical measures,[572] and has been used in research on the effects of concentrated poverty.

Adopting an impact and responsiveness factor for census tracts with more than 40 percent poverty is intended in part to help address commenter concerns that persistent poverty counties are disproportionately nonmetropolitan. Relative to persistent poverty counties, which as noted above are disproportionately nonmetropolitan, agency staff estimate that census tracts with a poverty rate of 40 percent or higher are disproportionately metropolitan; 3.1 percent of the population of metropolitan areas lives in one of these extreme poverty census tracts, compared with 2.4 percent of the population of nonmetropolitan areas.[573] Overall, 3.0 percent of the population lives in census tracts with a poverty rate of 40 percent or higher.[574]

The agencies acknowledge that there is some overlap between persistent poverty counties and census tracts with a poverty rate of 40 percent or higher. Accounting for this overlap, 7.8 percent of the U.S. population lives in either a persistent poverty county or a census tract with a poverty rate of 40 percent or higher.[575] Thus, the agencies believe that adopting both of these impact and responsiveness review factors will more comprehensively recognize activities in areas of economic distress where loans, investments, or services will be particularly impactful or responsive.

Benefits or serves one or more geographic areas with low levels of community development financing (§ ____.15(b)(3)). Finally, to highlight areas where CRA community development capital is more limited, the agencies are adopting the proposed impact and responsiveness factor for areas with low levels of community development financing, renumbered from the proposal as § ____.15(b)(3). As discussed in the proposal, because comprehensive CRA community development financing data is not currently available at local levels, the agencies expect first to analyze data collected pursuant to the final rule, and will then determine the appropriate approach for identifying areas with low levels of community development loans, investments, and services, and making that information available. The agencies acknowledge commenter views that extenuating circumstances may contribute to low levels of community development financing, such as limited opportunities or few organizations actively engaged in community development. Additionally, some areas could be areas with few needs. However, the agencies believe it is important to highlight these geographic areas as areas where there may be opportunities to try to develop the community development ecosystem needed to effectively deploy community development financing resources when appropriate.

Additional commenter suggestions on geographic designations. The agencies have considered comments suggesting additional or alternative geographic designations, but are not adopting alternative or expanded definitions such as those based on incomes relative to area median income, or adopting alternative impact and responsiveness factors such as a separate factor for rural communities. The agencies believe that the impact and responsiveness factors adopted in § ____.15(b)(1) through (3) appropriately capture high needs areas taking into account both areas with either high and persistent or exceptionally high levels of poverty and areas with low levels of community development financing activity.

The agencies believe that using poverty rates appropriately captures areas where incomes are low, since poverty is itself defined based on household incomes. As census tracts with a poverty rate of 40 percent or higher contain a substantial share of households earning low incomes, the agencies believe that adopting this impact and responsiveness factor is responsive to comments emphasizing that it is more challenging to serve areas where incomes are generally low. Furthermore, area median incomes may be depressed across broad areas with high levels of need.

On balance, the agencies believe that poverty measures are a useful and appropriate measure, as shown by their widespread use. At the same time, the agencies acknowledge commenter concerns about high needs areas in higher income areas. The agencies believe that the inclusion of an impact and responsiveness factor for areas with low levels of community development financing activity also should mitigate commenter concerns about a lack of incentives in high cost areas, because this impact and responsiveness factor is not tied to determinations of income or poverty levels,[576] and a low level of community development financing could be a reflection of its high cost in a particular area. As relevant data will inform the identification of these areas, the agencies believe that a separate demonstration that activities in these areas meet unmet needs should not be necessary.

With respect to rural areas, the agencies believe that the approach adopted in the final rule multiple impact and responsiveness factors addressing community development needs on a geographic and demographic basis recognizes activities benefiting many rural areas. As discussed above and below, these include factors focusing on areas where there is a demonstrated high level of need, such as persistent poverty counties. The agencies recognize that there are many ways to define ''rural,'' and are sensitive to the diversity of experiences in rural areas. However, the agencies do not believe that an impact and responsiveness factor for activities in all rural areas would be appropriate, since a designation as rural is not necessarily synonymous with having a high level of need.

The agencies have determined not to adopt an impact factor for activities in majority-minority census tracts as suggested by commenters. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Additionally, to the extent that community development loans, investments, and services in a particular geographic area do not fall under one of the adopted geographic-based impact and responsiveness factors, the agencies note that those activities could potentially be considered under other

the 2015–2019 American Community Survey and are reported as weighted averages across tracts. Statistics used to characterize persistent poverty counties and census tracts with a poverty rate of 40 percent or higher are based on data in the 2015–2019 American Community Survey and classifications of persistent poverty counties from Poverty Area Measures published by the USDA Economic Research Service in November 2022.

[571] USDA Economic Research Service, ''Poverty Area Measures'' (Aug. 8, 2023), *https://www.ers.usda.gov/data-products/poverty-area-measures/.*

[572] *See, e.g.,* HUD Office of Policy Development and Research, ''Moving to Opportunity for Fair Housing Demonstration Program: Interim Impacts Evaluation'' (Sept. 2003), *https://www.huduser.gov/portal//Publications/pdf/MTOFullReport.pdf.*

[573] *See id.*

[574] *See id.*

[575] *Id.*

[576] Bank loans, investments, and services subject to the impact and responsiveness review would need, *prima facie,* to support community development under final § ____.13, incorporating relevant criteria for the applicable community development category. *See* final § ____.13 and the corresponding section-by-section analysis.

impact and responsiveness factors, such as those serving low-income individuals, families, or households (§ ____.15(b)(5)) or supporting small businesses or small farms (§ ____.15(b)(6)). Finally, as noted above, the list of impact and responsiveness factors is non-exhaustive. To the extent that an activity in a particular geographic area is not directly covered by one of the adopted impact and responsiveness factors, yet is still highly impactful or responsive, it could still be considered as such under § ____.15.

Section ____.15(b)(4) Supports an MDI, WDI, LICU, or CDFI, Excluding Certificates of Deposit With a Term of Less Than One Year

The Agencies' Proposal

In § ____.15(b)(3), the agencies proposed an impact factor for bank activities that support MDIs, WDIs, LICUs, and U.S. Treasury Department-certified CDFIs.[577] The agencies highlighted in the proposal these organizations' missions of meeting the credit needs of low- and moderate-income and other underserved individuals, communities, and small businesses; the community development needs and communities served by these organizations; as well as the statute's express emphasis on cooperation with MDIs, WDIs, and LICUs.

The agencies solicited comment on whether proposed § ____.15(b)(3) should exclude placements of short-term deposits or other activities. The agencies also solicited feedback on whether criteria for review under this proposed impact factor should specifically emphasize equity investments, long-term debt financing, donations, and services, and whether other activities should be emphasized.

Comments Received

Commenters generally supported the proposed impact factor for activities supporting MDIs, WDIs, LICUs, and CDFIs. A number of commenters emphasized their support for including CDFIs, highlighting the critical role that these institutions play in meeting the unique credit and capital needs of underserved communities, and emphasizing the need for CDFIs to raise capital for community development projects. A few commenters stated that the rule should incentivize investments into CDFIs that are minority lending institutions.

Additional entities in scope. Some commenters suggested that additional entities be included in the proposed impact factor, given the communities and needs served by some other entities. Commenter suggestions included, for example, extending eligibility in this impact factor for activities supporting or in partnership with nonprofit organizations holding a NeighborWorks charter, land banks and land banking activities, minority credit unions, community development credit unions, cooperatives with a focus on revenue share or dividend-based equity investments, SBICs, and RBICs.

Activities in scope. Commenters offered varying views on whether proposed § ____.15(b)(3) should exclude placements of short-term deposits or other activities. Several commenters supported including short-term deposits, asserting, for example, that short-term deposits can offer important and needed liquidity to lend, maintain asset size, and represent a commitment of capital to under-resourced institutions that can have a positive community benefit. In contrast, other commenters asserted that short-term deposits should not be considered in the impact factor, in part because underwriting community development activities often requires long-term and patient debt capital, and projects can take several years to become economically viable. Further, these commenters asserted that short-term deposits do not add as much value to communities compared to equity and equity-like investments. Many commenters stated that all types of investments should be considered as part of the proposed impact factor, although some of these commenters suggested that long-term investments, including long-term deposits, should receive greater impact consideration.

A number of commenters supported an emphasis on equity investments, and long-term debt financing, donations, and services as particularly responsive, noting the greater impact of these forms of support on low- and moderate-income individuals and communities. Some commenters also suggested that particular activities within the proposed impact factor should receive more emphasis to recognize their impact and value, such as investments in smaller MDIs, WDIs, LICUs, and CDFIs, equity investments in MDIs and equity investments in LICUs serving low-income minority communities or communities with significant unmet community development needs.

Final Rule

The final rule adopts proposed § ____.15(b)(3), renumbered as § ____.15(b)(4), as an impact and responsiveness factor considering whether loans, investments, and services support an MDI, WDI, LICU, or CDFI, but revised from the proposal to exclude certificates of deposit with a term of less than one year. The final rule also makes a conforming edit to eliminate the express reference to ''Treasury Department-certified'' CDFIs, because CDFI is now defined in final § ____.12, meaning a U.S. Treasury Department-certified CDFI.[578] As noted in the proposal, and as also discussed in the section-by-section analysis of final § ____.13(k), the agencies believe that these organizations' missions of and track record in meeting the credit needs of low- or moderate-income and other underserved individuals and communities, as well as small businesses, are highly aligned with CRA's core purpose of encouraging banks to meet the credit needs of their entire community, including low- and moderate-income populations. These organizations often also have intimate knowledge of local community development needs and opportunities, allowing them to conduct highly responsive activities.

The agencies have considered comments but are not adding additional entities to the final impact and responsiveness factor, for reasons also discussed in the section-by-section analysis to § ____.13(k). In addition to their mission and track record, noted above, MDIs, WDIs, LICUs, and CDFIs generally undergo rigorous and verifiable certification processes[579] and are financial institutions that provide critical capital access and credit to underserved communities. The agencies further believe that emphasizing partnerships with the entities covered by § ____.15(b)(4) is consistent with the CRA's express emphasis on cooperation

[577] *See* U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''CDFI Certification,'' *https://www.cdfifund.gov/programs-training/certification/cdfi.*

[578] *See* final § ____.12 (''Community Development Financial Institution (CDFI)'') and the corresponding section-by-section analysis above.

[579] *See, e.g.,* OCC, ''Policy Statement on Minority Depository Institutions'' (July 26, 2022), *https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-92a.pdf*; 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*; FDIC, ''Statement of Policy Regarding Minority Depository Institutions,'' 86 FR 32728 (June 23, 2021); U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''CDFI Certification,'' *https://www.cdfifund.gov/programs-training/certification/cdfi. See also* 12 CFR 701.34 (NCUA standards for designating a Federal credit union as a ''low-income credit union'').

with MDIs, WDIs and LICUs,[580] as well as with the key role that CDFIs—like MDIs, WDIs, and LICUs—play in the capital and financial ecosystem in low- or moderate-income communities.[581]

The agencies also considered comments received that discussed whether to exclude short-term deposits from this impact and responsiveness factor. On consideration of the comments and further deliberation, the agencies are excluding certificates of deposit with terms of less than one year from this impact and responsiveness review factor in the final rule. The agencies recognize that certificates of deposit with terms of less than one year may provide less benefit for community development projects financed by CDFIs, MDIs, WDIs and LICUs than do other types of capital investment structures, as some commenters noted. Limiting consideration under the impact and responsiveness review factor in this manner is intended to recognize activities that are more impactful and responsive to community credit needs, including other types of certificates of deposit that provide more stable, longer-term funding to CDFIs, MDIs, WDIs and LICUs. In addition, the agencies believe that, as some commenters noted, certain short-term deposits can provide important needed liquidity to lend and maintain asset size, and can represent a commitment of capital to under-resourced institutions that can have a positive community benefit. Accordingly, the final rule provides the flexibility to provide recognition under the impact and responsiveness review factor for other forms of short-term deposits. The agencies also note that exclusion from this impact and responsiveness factor does not preclude certificates of deposits with a term of less than one year that support a MDI, WDI, LICU, or CDFI from qualifying for community development consideration under § ____.13(k).[582]

Further, the agencies considered commenter feedback regarding adopting specific criteria within § ____.15(b)(4) to further emphasize equity investments, long-term debt financing, donations, and services. The agencies appreciate that these types of activities can be important to community development efforts; on balance, however, the agencies believe that the final rule should provide flexibility to encourage a range of activities that will meet differing local needs across communities. In addition, the final rule emphasizes some of these community development loans, investments, and services in other parts of the CRA evaluation. For example, the Community Development Financing Test (§ ____.24) is adopting a Bank Nationwide Community Development Investment Metric for large banks with assets over $10 billion, which will specifically measure the dollar volume of the bank's community development investments, excluding mortgage-backed securities, that benefit or serve all or part of the nationwide area compared to the deposits located in the nationwide area for the bank.[583]

Section ____*.15(b)(5) Benefits or Serves Low-Income Individuals, Families, or Households*

The Agencies' Proposal

Proposed § ____.15(b)(4) established an impact factor for activities that serve low-income individuals and families, generally defined under proposed § ____.12 as those with an income of less than 50 percent of the area median income in a census tract.[584] The agencies sought feedback on 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. The alternative would have been intended to 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.

Comments Received

Of those commenting on this aspect of the proposal, some supported the impact factor as proposed, including because households with incomes below 50 percent of the area median income are harder to serve and, relatedly, the 50 percent threshold fills a gap that is often unmet by the market. A few commenters expressed concern with the proposed 50 percent threshold and the 30 percent alternative as both being potentially too low, with a commenter suggesting a multiplier to recognize activities reaching individuals or families with incomes at 30 percent of the area median income or below. Relatedly, a few other commenters noted that the thresholds could exclude the share of units within a LIHTC property that are affordable at 60 percent or 80 percent of the area median income. Some commenters stated that the agencies should not lower the threshold to 30 percent of area median income because providing affordable housing opportunities to very low-income families is especially difficult in high-cost markets.

Final Rule

The final rule adopts proposed § ____.15(b)(4), renumbered as § ____.15(b)(5), and revised to state that the agencies consider whether a community development loan, investment, or service "benefits or serves low-income individuals, families, or households." The final rule makes technical edits from the proposal from "serves" to "benefits or serves" for consistency with the language used in the community development categories under § ____.13, and adds "or households" for clarity, to conform with edits made to other community development provisions in the final rule. The definition of "low-income" has been revised, as discussed in the section-by-section analysis of § ____.12, but still generally references an income that is less than 50 percent of the area median income.

The agencies note that, by focusing on low-income individuals, families, and households, final § ____.15(b)(5) is intended to be consistent with the Retail Lending Test approach, in that the Retail Lending Test evaluates closed-end home mortgage lending and automobile lending using borrower distribution metrics that separately consider lending to low-income individuals.[585] The agencies are also

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[580] *See* 12 U.S.C. 2903(b) (providing that the agencies may consider, in assessing a bank's record of meeting the credit needs of its community, the bank's activities in cooperation with MDIs, WDIs, and LICUs). *See also* 12 U.S.C. 2907(a) (providing that CRA credit may be granted to banks for donating, selling on favorable terms, or making available on a rent-free basis to any branch that is located in a predominantly minority neighborhood of an MDI or WDI).

[581] *See, e.g.,* Anna Alvarez Boyd, Board of Governors of the Federal Reserve System, and Charlene Van Dijk, Federal Reserve Bank of Atlanta, "An Overview of Community Development Financial Institutions," Consumer Compliance Outlook, Federal Reserve System (2022), *https://www.consumercomplianceoutlook.org/2022/first-issue/overview-of-community-development-financial-institutions/.*

[582] The agencies note that certificates of deposit may also qualify for community development consideration if they meet of one or more of the other community development categories in § ____.13, regardless of term length.

[583] For further detail regarding this provision, see final § ____.24(e)(2)(iii) and the accompanying section-by-section analysis below. *See also, e.g.,* final § ____.15(b)(10) and the accompanying section-by-section analysis below, regarding the impact and responsiveness factor for investments in projects financed with LIHTCs or NMTCs.

[584] *See also* final § ____.12 (definition of "income level" and, within that definition, "low-income") and the accompanying section-by-section analysis above.

[585] *See* final § ____.22(d) and the accompanying section-by-section analysis below, discussing the separate analyses under the Retail Lending Test of

adopting this impact and responsiveness factor in order to take into account that low-income individuals, families, and households have high community development needs and can experience challenges obtaining basic financial products and services, securing stable employment opportunities, finding affordable housing, and accessing digital infrastructure.[586] The agencies also recognize that community development loans, investments, and services supporting activities that serve low-income individuals, families, or households often entail a high level of effort and complexity on the part of the bank and community partners.

The agencies have considered comments that the 50 percent area median income threshold used for this impact and responsiveness factor in the final rule will exclude some impactful and responsive activities from consideration under this provision, including certain LIHTC activity designed for affordability at 60 percent or 80 percent of the area median income. However, the agencies continue to believe that using a 50 percent area median income standard for low-income throughout the regulation is important to reduce complexity and confusion, and that a 50 percent of area median income appropriately tailors the impact and responsiveness factor to address hard-to-serve community development needs, as discussed above. Additionally, the agencies note that such activities may be included under other impact and responsiveness factors, such as the added impact and responsiveness factor in § ____.15(b)(10) regarding projects financed with LIHTCs and NMTCs.

The agencies have also considered the alternative approach of setting an income threshold of less than 30 percent of the area median income. In determining not to adopt this approach, the agencies have considered that, while a lower threshold could put more of a focus on the activities that serve the most vulnerable, there also might be comparatively fewer community development opportunities for banks that would primarily serve individuals, families, or households in this income category. The agencies have also considered that a lower threshold could exclude from consideration under this impact and responsiveness factor activities that are responsive to needs of low-income communities, such as affordable housing opportunities to low-income (30–50 percent area median income) families in high-cost markets. Similar to the discussion above, such activities may be included under other impact and responsiveness factors, such as the impact and responsiveness factor addressing High Opportunity Areas in § ____.15(b)(7) and discussed further below.

Section ____.15(b)(6) Supports Small Businesses or Small Farms with Gross Annual Revenues of $250,000 or Less

The Agencies' Proposal

Proposed § ____.15(b)(5) set forth an impact factor for activities that support small businesses or small farms with gross annual revenues of $250,000 or less. This factor was intended to recognize bank activities that address the unique credit needs of the smallest businesses and farms, in alignment with the Retail Lending Test approach in proposed § ____.22(d)(2)(iii), which would separately evaluate a bank's distribution of loans to small businesses and small farms with gross annual revenues of $250,000 or less.[587] The agencies sought feedback on whether this impact factor should instead be set at a higher gross annual revenue threshold, for example at $500,000; or lower, for example at $100,000. The agencies also solicited comment 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 proposed impact factor.

Comments Received

Commenters generally supported including an impact factor for activities supporting small businesses or small farms, but commenters provided a variety of views on the proposed gross annual revenue threshold. Some commenters expressed support for the proposed standard of gross annual revenue of $250,000 or less because, for instance, the threshold would incorporate many family care and childcare businesses into this impact factor. Other commenters expressed support for the proposed standard, but urged the agencies to consider a tiered approach under which the agencies would separately evaluate activities that support businesses with revenues less than $100,000 and that support businesses with revenues between $100,000 to $250,000 in order to help ensure that the smallest businesses are served, an approach they favored as consistent with current CRA small business lending reporting requirements.[588] Several commenters noted that businesses with revenues under $100,000 are more likely to be startups and owned by women or people of color.

A few commenters expressed support for the lower alternative threshold of $100,000 or less, to allow the agencies to better target very small businesses and small farms. One commenter recommended the proposed standard align with SBA criteria for Small Disadvantaged Businesses[589] and the USDA definition for socially disadvantaged farm or farmer.[590]

Some commenters expressed support for higher thresholds, such as the alternative contemplated in the proposal of $500,000 gross annual revenues or less, or higher thresholds ranging from $1 million to $5 million. In this regard, one commenter stated, for example, that a higher threshold would be more appropriate from the standpoint of risk to the bank.

Finally, a commenter urged consistency between the impact factor threshold and the threshold used in the Retail Lending Test, stating there would be no discernable benefit from having different thresholds, and that consistency would promote compliance.

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retail lending to low-income individuals and to middle-income individuals.

[586] *See, e.g.,* 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), *https://www.dallasfed.org/~/media/documents/cd/pubs/digitaldivide.pdf;* 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*; Nicole Bateman and Martha Ross, ''The Pandemic Hurt Low Wage Workers the Most and So-Far, the Recovery has Helped Them the Least'' Brookings Institution (July 2021), *https://www.brookings.edu/articles/the-pandemic-hurt-low-wage-workers-the-most-and-so-far-the-recovery-has-helped-them-the-least/;* Kelly D. Edmiston, Federal Reserve Bank of Kansas City, ''Why Aren't More People Working in Low- and Moderate-Income Areas?'' (Jan. 2, 2020), *https://www.kansascityfed.org/Economic%20Review/documents/919/2019-Why%20Aren't%20More%20People%20Working%20in%20Low-%20and%20Moderate-Income%20Areas%3F.pdf/.*

[587] The proposed Retail Lending Test approach in § ____.22(d)(2) would also separately evaluate a bank's distribution of loans to small businesses and farms with gross annual revenues of more than $250,000, but less than or equal to $1 million. *See* final § ____.22(d) and the accompanying section-by-section analysis.

[588] *See, e.g.,* current 12 CFR ____.42(b)(1).

[589] *See, e.g.,* SBA, ''Small Disadvantaged Business'' (Sept. 28, 2023), *https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business.*

[590] *See, e.g.,* USDA Economic Research Service, ''Socially Disadvantaged, Beginning, Limited Resource, and Female Farmers and Ranchers'' (Mar. 22, 2023), *https://www.ers.usda.gov/topics/farm-economy/socially-disadvantaged-beginning-limited-resource-and-female-farmers-and-ranchers/.*

More generally, a commenter suggested that small business-related provisions should focus on the number of small business loans made, rather than the total dollar volume.[591]

Final Rule

The final rule adopts proposed § ____.15(b)(5), renumbered as § ____.15(b)(6), establishing an impact and responsiveness factor for loans, investments, or services that support small businesses or small farms with gross annual revenues of $250,000 or less. In deliberating on whether to finalize this impact and responsiveness factor, the agencies considered commenter feedback regarding the appropriate threshold as well as the feedback on the threshold used in the Retail Lending Test.[592] As is also discussed in the section-by-section analysis of § ____.22, on balance, the agencies believe that the $250,000 gross annual revenue threshold adopted under the final rule will recognize activities that are particularly responsive and impactful to smaller businesses and farms. The impact and responsiveness factor under final § ____.15(b)(6) will apply to a small business loan or small farm loan that qualifies as a community development loan under § ____.13 (which could include a loan that is also separately considered under the Retail Lending Test).

The adopted threshold is intended to recognize a focus on the small business and small farm borrowers with high credit needs and that can be the most difficult to serve. The agencies believe that a higher threshold might not sufficiently encourage banks to seek out activities serving smaller businesses or farms. At the same time, the agencies considered that, while a lower gross annual revenue threshold might focus on businesses and farms with the greatest unmet credit needs, the adopted threshold will encourage banks to help meet the credit needs of a larger share and greater diversity of small businesses with significant credit needs in their communities.

The agencies also considered commenter feedback suggesting alternative criteria or a tiered evaluation approach for this impact and responsiveness factor, but, on further deliberation, decided not to adopt these suggestions. The agencies believe that uniform thresholds across the final rule will promote clarity, align bank data requirements, and facilitate identifying opportunities and needs for CRA activity. The impact and responsiveness factor in final § ____.15(b)(6) will help accomplish these objectives by aligning with the lowest tier threshold adopted under the Retail Lending Test, evaluating bank lending to smaller businesses and smaller farms, identified as those having gross annual revenues of $250,000 or less.[593] The agencies also believe that the final rule's simple and straightforward impact and responsiveness factor regarding smaller businesses and farms will support greater certainty and transparency for banks and other stakeholders.

Section ____.15(b)(7) Directly Facilitates the Acquisition, Construction, Development, Preservation, or Improvement of Affordable Housing in High Opportunity Areas

The Agencies' Proposal

The agencies also proposed an impact factor for activities that directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas (proposed § ____.15(b)(6)). The proposal defined High Opportunity Areas to align with the FHFA definition of High Opportunity Areas, including: (1) areas designated by HUD as a ''Difficult Development Area'' (DDA); or (2) areas designated by a State or local Qualified Allocation Plan as High Opportunity Areas, and where the poverty rate falls below 10 percent (for metropolitan areas) or 15 percent (for nonmetropolitan areas).[594] The agencies also solicited comment on whether the proposed approach to use the FHFA definition of ''High Opportunity Areas'' is appropriate, and whether there are other options for defining High Opportunity Areas. Responsive comments are discussed in the section-by-section analysis of final § ____.12 regarding the definition of High Opportunity Area.

Comments Received

Commenters addressing this aspect of the proposed rule generally supported it, with feedback including that High Opportunity Areas feature better schools, jobs, and opportunities, and that affordable housing in such areas represents an important step in addressing neighborhood segregation. One commenter supportive of the proposal nonetheless cautioned against designing the CRA final rule in a way that diminishes support for housing developments in areas that are not designated as high opportunity, but that are typically in dire need of investments.

Various commenters also suggested that specific activities be given increased consideration under the proposed impact factor, including, among others, homeownership opportunities for low- and moderate-income individuals in High Opportunity Areas and financing that supports units with higher percentages of low-income tenants in high-cost-burdened geographic areas and areas with low vacancy rates. Some commenters offered suggestions for additional impact factors related to affordable housing, such as projects that are especially affordable or have longer affordability terms and covenants; and housing counseling and mobility counseling designed to connect consumers with these housing opportunities, among others.

Final Rule

The final rule adopts proposed § ____.15(b)(6), renumbered as § ____.15(b)(7), which provides an impact and responsiveness review factor that considers whether loans, investments, or services directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas. As explained in more detail in the section-by-section analysis of § ____.12, under the final rule, a High Opportunity Area is defined as an area identified by the FHFA for purposes of the Duty to Serve Underserved Markets regulation in 12 CFR part 1282, subpart C. This definition generally includes geographic areas where the cost of residential development is high[595] and affordable housing opportunities may be limited.

As noted by the agencies in the proposal, the agencies consider affordable housing in High Opportunity Areas to have a high level of impact and responsiveness. This impact and responsiveness factor is intended to recognize qualifying homeownership opportunities for low- and moderate-income individuals in High Opportunity Areas and also to include qualifying loans, investments, and services that support projects with high percentages

[591] For further discussion of the consideration of dollar volume under the Community Development Financing Test, see the section-by-section analysis of § ____.24.

[592] *See* final § ____.22(e)(2)(ii) and the accompanying section-by-section analysis below.

[593] *See* final § ____.22(e)(2)(ii)(C) and (E) and the accompanying section-by-section analysis below.

[594] *See* proposed § ____.12 (''High opportunity area''); *see also* final § ____.12 (''High Opportunity Area'') and the accompanying section-by-section analysis.

[595] *See, e.g.,* HUD, Office of Policy Development and Research, ''Qualified Census Tracts and Difficult Development Areas'' (2022), *https://www.huduser.gov/portal/datasets/qct.html.*

of low-income tenants in high-cost-burdened geographic areas or areas with low vacancy rates in High Opportunity Areas.

The agencies do not believe that inclusion of this impact and responsiveness factor diminishes support for housing developments in areas that are not designated as High Opportunity Areas, particularly in light of other aspects of the proposal. The final rule includes a separate category of community development focused more broadly on loans, investments, and services that support affordable housing, discussed in detail in the section-by-section analysis of final § ____.13(b). In addition, the agencies believe that other impact and responsiveness factors will recognize affordable housing in other ways, such as the impact and responsiveness factor adopted in § ____.15(b)(10) regarding investments in projects financed with LIHTCs or NMTCs, and the impact and responsiveness factors in § ____.15(b)(1) through (3) for loans, investments, and services in specific geographic areas with significant community development needs. The agencies also believe that these aspects of the proposal may help to address suggestions by other commenters for additional impact factors related to affordable housing.

Section ____.15(b)(8) Benefits or Serves Residents of Native Land Areas

The Agencies' Proposal

Under § ____.15(b)(7), the agencies proposed as an impact factor whether bank activities ''[b]enefit Native communities, such as qualifying activities in Native Land Areas under [proposed] § ____.13(l).'' This factor was intended to recognize the credit and community development needs of Native and tribal communities as discussed in the proposal, which make bank activities that serve these communities especially responsive.

This proposed impact factor would include all eligible community development activities taking place in Native Land Areas. This includes activities as defined under proposed § ____.13(l) (finalized as § ____.13(j)), as well as other eligible community development activities that benefit or serve Native Land Areas and meet other eligibility criteria in § ____.13. For example, an affordable housing project that is located in a Native Land Area or an activity in a Native Land Area undertaken with a CDFI would be included under this proposed impact factor.

The agencies sought feedback on whether this proposed impact factor should be defined to include activities benefiting Native communities not located in Native Land Areas, and if so, how to define those activities. Such an approach would be intended to 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.[596]

Comments Received

Commenters generally supported proposed § ____.15(b)(7). Commenters noted, among other reasons, that Native communities and tribal lands are consistently underserved and have unique priorities and needs, which can make lenders more reluctant to serve those areas. Commenters also generally supported including activities benefiting Native and tribal communities that are not located in Native Land Areas. For example, a commenter stated that the proposed approach is an effective way to provide certainty to lenders in the evaluation and ''scoring'' process, while encouraging projects that may require investments both on and off Native Land Areas. Another commenter observed that some tribal citizens reside in areas outside of Tribal Nation jurisdictional boundaries, but still receive essential services provided by the commenter, and that tribal governments, businesses, or corporations are the main employers of those residents not living in Native Land Areas.

A few commenters suggested other ways to provide an increased emphasis for activities benefiting Native Land Areas, as defined in the proposed rule. For instance, a commenter suggested that in order to incentivize projects in Native Land Areas, activities that benefit Native Land Areas should be given greater weight than those that benefit Native communities. Other commenters suggested alternative ways to define activities that could be considered under the impact factor, such as activities that primarily benefit low- or moderate-income Native individuals; or that primarily benefit tribal members in general (in that regardless of income, activities should be considered high-impact and responsive). Other commenters suggested partial consideration be provided for activities provided to Native communities and Black Native Freemen, regardless of residence, even if less than 50 percent of beneficiaries are low- and moderate-income; or greater emphasis for activities in hard-to-reach areas, given barriers to entry due to land ownership, tax status, and other constraints.

Some commenters gave suggestions on how to define ''Native communities.'' Among suggestions, commenters suggested defining ''community'' to include membership in a government-recognized Native or tribal community, and/or otherwise qualifying for government resources; organizations that are recipients of Federal funds intended to enroll Natives in urban areas; or U.S. territories.[597]

Final Rule

The final rule, renumbered as § ____.15(b)(8), adopts as an impact and responsiveness factor whether loans, investments, and services benefit or serve residents of Native Land Areas. The final rule revises the proposed impact factor from ''Native communities'' to ''residents of Native Land Areas,'' (as defined in § ____.12), and does not adopt the cross-reference to § ____.13(j).

In arriving at the final rule, the agencies considered the unique status of and credit and community development needs in Native Land Areas. As discussed in more detail elsewhere in this **SUPPLEMENTARY INFORMATION**, Native Land Areas in particular have often experienced limited benefits from bank access or investments, which the agencies believe make bank loans, investments, and services in these geographic areas particularly impactful and responsive. For example, complex land ownership structures associated with Native Land Areas can make economic development in those lands particularly difficult, which the agencies believe supports incorporating a more specific focus and emphasis on those geographic areas in modernized CRA regulations. For further discussion on these challenges, see the section-by-section analysis of the Native Land Areas category of community development in § ____.13(j). The final rule is thus revised to clarify and strengthen the nexus to residents of Native Land Areas.

Additionally, as discussed in more detail in the section-by-section analysis of § ____.12 (''Native Land Area''), the Native Land Area definition is designed to be comprehensive, to align with

[596] *See, e.g.,* The Indian Relocation Act of 1956, Public Law 84–959, 70 Stat. 986; National Archives, ''American Indian Urban Relocation,'' *https://www.archives.gov/education/lessons/indian-relocation.html.*

[597] For a more detailed discussion of public comments on the definition of ''Native Land Area,'' see the section-by-section analysis of § ____.12.

existing Federal Indian Law regarding lands and communities with unique political status, and to support application of the rule with durable, publicly available data sources. The proposed impact factor contained an undefined term (''Native communities''), which comments suggested could have different meanings. Rather than defining ''Native communities'' in one or a combination of several ways some commenters suggested, the agencies believe that revising the final rule with reference to Native Land Areas, a term used elsewhere in the rule consistent with existing law, will facilitate compliance and supervision and make banks' ability to engage in and track activities that might be considered under this impact and responsiveness factor more practicable.

The final rule also no longer cross-references the Native Land Areas community development category finalized in § ____.13(j), for simplicity and to ensure clarity that the impact and responsiveness review factor is available with respect to any community development loan, investment, or service that qualifies under § ____.13, provided that the loan, investment, or service benefits or serves residents of Native Land Areas. Examples of activities that might be considered under this impact factor include: a project to finance a tribal health care facility [598] that qualifies as an essential community facility under § ____.13(f) and that benefits or serves residents of a Native Land Area, or a housing project financed with a Native CDFI that qualifies under § ____.13(k) and that benefits or serves residents of a Native Land Area.

The agencies have carefully considered comments suggesting that the proposed impact and responsiveness factor be defined in the final rule to include loans, investments, or services benefiting or serving Native communities located outside of Native Land Areas. The agencies recognize that many Native communities live outside of Native Land Areas, and are sensitive to the many complexities and needs underlying and associated with these communities. However, for the reasons discussed above, the agencies believe that adopting an impact and responsiveness factor recognizing loans, investments, and services addressing the particular and significant community development needs in Native Land Areas is appropriate and will provide a greater degree of clarity and consistency across the rule and in its application. Relatedly, the agencies have taken into account potentially considerable practical challenges of implementing a broader impact and responsiveness factor focused on a highly dispersed population.[599]

The agencies believe that other impact and responsiveness factors adopted under the final rule will recognize activities that benefit or serve Native communities more broadly. These include impact and responsiveness factors discussed above focused on activities in other geographic areas with high community development needs (final § ____.15(b)(1) through (3)); low-income individuals, families, and households (final § ____.15(b)(5)); and businesses and farms with gross annual revenues of $250,000 or less (final § ____.15(b)(6)). These also include the impact and responsiveness factor adopted in § ____.15(b)(4) regarding loans, investments, and services supporting an MDI, WDI, LICU, or CDFI, a subset of which are focused on serving Native communities, such as Native MDIs or Native CDFIs as designated by the CDFI Fund.[600]

The agencies have also considered comments encouraging additional emphasis for other particular activities within this impact and responsiveness factor, but are not otherwise revising the rule. The agencies believe that the combination of the new community development category for loans, investments, and services in Native Land Areas in final § ____.13(j) and the final impact and responsiveness factor in § ____.15(b)(8), along with other provisions in the final rule that would recognize bank investments benefiting Native communities, such as the impact and responsiveness factors noted above, appropriately help encourage banks to meet credit needs in these harder to serve parts of banks' communities. The agencies believe that these components of the final rule facilitate flexibility to address the diverse and myriad needs of Native communities.

Section ____.15(b)(9) Is a Grant or Donation

The Agencies' Proposal

Proposed § ____.15(b)(8) included qualifying grants or contributions as an impact factor. As noted in the proposal, the Community Development Financing Metric in proposed § ____.24(b) would be based on the dollar amount of financing activities (including loans, investments, and grants or contributions) relative to deposits, and thus would not account for the fact that a grant has no repayment obligation, unlike a typical community development loan or qualifying investment. The impact factor was designed to account for high-impact, smaller dollar transactions to complement their inclusion in the Community Development Financing Metric, recognizing that grants or donations are often smaller dollar volumes than community development loans or investments. Additionally, the impact factor was intended to recognize banks that provide important sources of capital that help community development organizations to build capacity and maintain sustainability.

Comments Received

Commenters offered varying views on the agencies' proposal to include as an impact factor activities that are a qualifying grant or donation. Some commenters supported including qualifying grant contributions as an impact factor. A few commenters noted that grants are especially impactful, while another highlighted the importance of grant capital for funding CDFIs. One commenter noted that grant interventions can be particularly effective during crises for small businesses. Other commenters, however, raised questions about the proposed impact factor. For example, one commenter expressed concern about an over-emphasis on grants, asserting that grants do not directly expand access to credit, while loans are directly related to credit.

Some commenters also offered suggested modifications or clarifications to the proposal. A few commenters remarked that the current CRA framework values loans over grants and donations and suggested additional emphasis, an outcome-based metric, or multipliers that would better account for the impact of grants to the organizations that depend on them. Commenters further suggested that to best encourage making grants, separate impact factors should be created for grants to nonprofit organizations, community-based organizations, CDFIs, and grant investments that serve low- or moderate-income households.

Final Rule

For the reasons described in the proposal and as noted above, the final

[598] *See* U.S. Dept. of Health & Human Svc, Indian Health Service, ''Health Facilities Construction'' (Oct. 2016), *https://www.ihs.gov/newsroom/factsheets/healthfacilitiesconstruction/*.

[599] *See also* the section-by-section analysis of final § ____.12 (''Native Land Area''), regarding consideration of incorporating into the definition of Native Land Area areas outside of geographic areas enumerated in the final rule definition.

[600] *See* CDFI Fund, ''Native Initiatives,'' *https://www.cdfifund.gov/programs-training/programs/native-initiatives*.

rule adopts proposed § ____.15(b)(8), renumbered as § ____.15(b)(9), generally as proposed, to recognize whether a loan, investment, or service is a grant or donation. As noted above and consistent with comments received, this final rule impact and responsiveness factor is intended to recognize that grants or donations tend to be smaller in dollar amount relative to larger-dollar volume financing activities, but often are particularly impactful. The agencies believe that an impact and responsiveness factor is appropriate to ensure grants continue to receive appropriate recognition when considered along with all other community development financing activities. The final rule deletes the word ''qualifying'' from the proposal as superfluous, as the impact and responsiveness review only considers grants or donations that qualify as community development under § ____.13.

The agencies have considered comments suggesting modifications or clarifications to the proposed rule, including that the rule should give special emphasis to or create separate impact factors for various kinds of grants or donations. The agencies believe that the broader impact and responsiveness factor in the final rule is appropriate to afford flexibility needed to address the different needs of various communities. On balance, the agencies believe that the simplicity of the final impact and responsiveness factor for grants or donations will better foster clarity and certainty than alternatives suggested. The agencies have also considered that identifying for special emphasis grants or donations to specific types of organizations or that meet specific community development categories would be challenging or impracticable, noting that different stakeholders may have varying and equally valid views on which grants or donations, organizations, or community development categories are more impactful than others.

Section ____.15(b)(10) Is an Investment in Projects Financed With LIHTCs or NMTCs

Comments Received

As discussed in more detail below, commenters suggested a wide variety of additional types of activities that should be included as impact factors. Among these, a number of commenters recommended adding investments in LIHTCs and NMTCs. Among other points, commenters asserted that the LIHTC program is one of the most important policy tools for creating affordable rental housing. Commenters noted that LIHTCs are distributed through a highly competitive process to the most impactful properties meeting the State or locality's affordable housing needs. One commenter raised concerns that insufficient CRA credit has deterred investors from LIHTC investments. A few commenters stated that creating a separate impact factor recognizing LIHTC investments would increase investor demand for these investments and thus increase equity yield for projects to offset rising construction costs. Other commenters noted that including an impact factor focused on LIHTC and NMTC investments could also be an important mitigating factor to counteract removal of the separate investment test or lack of a Community Development Financing Investment subtest for investments.[601]

Several commenters stated that banks should receive extra consideration for syndicating and/or sponsoring funds supporting LIHTC and NMTC projects, consistent with the OCC 2020 CRA Final Rule. Commenters also suggested other types of investments designed to meet community needs for inclusion as impact factor categories, including Opportunity Zone investments and Historic Tax Credits.

Final Rule

Upon consideration of commenter feedback, the final rule adopts a new impact and responsiveness review factor in § ____.15(b)(10) for an investment in projects financed with LIHTCs or NMTCs. The agencies believe that adding an impact and responsiveness factor for these investments will mitigate commenter concerns about the final rule potentially discouraging tax credit transactions relative to the current CRA regulations, by eliminating the separate investment test in the current CRA evaluation framework for large banks, in favor of evaluating community development loans and investments together in the Community Development Financing Metric.[602] As discussed further in the section-by-section analysis of § ____.24, the agencies appreciate concerns about the importance of and need for community development investments. In addition, the agencies understand that, as some commenters suggested, CRA-motivated capital is one of the primary sources of funding for LIHTC and NMTC transactions. Accordingly, the agencies are adopting an impact and responsiveness factor for these project types to recognize these investments. This impact and responsiveness factor is part of a holistic consideration of a bank's community development financing performance, which also includes, for banks with assets greater than $10 billion, a Bank Nationwide Community Development Investment Metric and a Nationwide Community Development Benchmark.[603] The investment metric and benchmark are designed to better understand the level of community development investments that banks are making, as discussed further in the section-by-section analysis of § ____.24.

The agencies have considered but are not adopting commenter suggestions to adopt an impact and responsiveness factor addressing tax credits and investments other than LIHTCs and NMTCs. LIHTCs and NMTCs, as defined in final § ____.12, are Federal programs that the agencies believe are clearly aligned with the intent of the CRA, and have a demonstrated impact in providing affordable housing and encouraging community development and economic growth.[604] While other types of tax credits or investments, such as Historic Tax Credits or investments in Opportunity Zone funds can help finance projects that have important community benefits, these programs have varying criteria that may not always align with the intent of CRA. For example, Historic Tax Credits can be used to finance the renovation of historic properties in any community, and there is no requirement that these projects be located in low- or moderate-income tracts or benefit low- or moderate-income individuals or small businesses.[605] However, the agencies note that projects financed by other types of tax credits or investments might be covered by other impact and responsiveness factors, depending on

[601] *See* final § ____.24 and the accompanying section-by-section analysis below.

[602] For further discussion of the final rule's approach to community development investments, see final § ____.24 and the accompanying section-by-section analysis.

[603] *See* final § ____.24(e)(2)(iii) and (iv) and the accompanying section-by-section analysis.

[604] *See* OCC, ''Low-Income Housing Tax Credits: Affordable Housing Investment Opportunities for Banks,'' Community Development Insights (Mar. 2014), *https://www.occ.gov/publications-and-resources/publications/community-affairs/community-developments-insights/pub-insights-mar-2014.pdf* (2014); NYU Furman Center, ''The Effects of the Low-Income Housing Tax Credit (LIHTC)'' (May 2017) *https://furmancenter.org/files/NYUFurmanCenter_LIHTC_May2017.pdf;* U.S. Dept. of Treasury, Community Development Financial Institutions Fund, ''The Urban Institute's New Markets Tax Credit Program Evaluation: Key Findings and Lessons for Future Evaluations,'' *https://www.cdfifund.gov/sites/cdfi/files/documents/urban-institute-summary-cover-memo.pdf.*

[605] *See* U.S. National Park Svc., ''Historic Preservation Tax Incentives,'' *https://www.nps.gov/subjects/taxincentives/index.htm.*

the geographic area in which they are located and the purpose of the project or the population served. For example, a community development project financed with Historic Tax Credits located in a census tract with greater than 40 percent poverty could be covered by § ____.15(b)(3) if it otherwise met the criteria in § ____.13, such as if the project is done in conjunction with LIHTCs under § ____.13(b)(1) or if it is a revitalization or stabilization project that meets the criteria of § ____.13(e).

Section ____.15(b)(11) Reflects Bank Leadership Through Multi-Faceted or Instrumental Support

The Agencies' Proposal

The agencies proposed to consider as an impact factor whether bank activities reflect bank leadership through multi-faceted or instrumental support (proposed § ____.15(b)(9)). The agencies explained that multi-faceted support would include 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 would 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.

Comments Received

Commenters offering views on proposed § ____.15(b)(9) supported this impact factor. For example, one commenter emphasized the role that deeper technical assistance and capacity building can play for organizations that serve low- or moderate-income communities, and that these efforts cannot be adequately captured by looking solely at the associated dollar value. The commenter asserted that an impact factor is critical to ensuring that financial institutions are adequately incentivized. Another commenter stated that emphasizing multi-faceted support would help encourage financial institutions to engage in activities that can make a lasting impact on a community's development and affordable homeownership opportunities. A separate commenter stated that an impact review should recognize activities that reflect multi-faceted partnerships, leadership, and innovation, based on data relating to whether the activity involved one or more forms of financing or technical assistance, whether the bank was in a leadership position, or whether the activity was innovative for the bank or geographic area.

Final Rule

The final rule, renumbered as § ____.15(b)(11), adopts as proposed an impact and responsiveness factor for loans, investments, and services that reflect bank leadership through multi-faceted or instrumental support. In adopting this impact and responsiveness factor, the agencies intend to incorporate into the final rule considerations regarding complexity and leadership under the current CRA regulations, but with greater specificity and a more direct tie to impact and responsiveness. The agencies note that activities involving multi-faceted 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. Further, as noted by a commenter, bank efforts cannot always be adequately captured by looking solely at the associated dollar value of an activity.

Section ____.15(b)(12) Is a New Community Development Financing Product or Service That Addresses Community Development Needs for Low- or Moderate-Income Individuals, Families, or Households

The Agencies' Proposal

Under proposed § ____.15(b)(10), the agencies would consider whether an activity results in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals and families. This proposed impact factor built upon the emphasis on the innovativeness of activities under the current community development evaluation framework,[606] and was intended to ensure that bank activities are also impactful and responsive to the needs of low- and moderate-income populations. Consideration afforded under this proposed impact factor would help to encourage banks and community partners to conceive of new strategies for addressing community development needs, especially needs that existing products and services do not adequately address. The proposed emphasis on activities that support developing new products and services was intended to ensure that the CRA continually improves the landscape of product offerings for low- or moderate-income individuals and families.

Comments Received

Commenters that addressed proposed § ____.15(b)(10) generally supported the proposal, but suggested modifications. For example, one commenter stated that the proposed impact factor would encourage innovation and solution-oriented CRA activities, and suggested that financial institutions helping to create or commit to a new fund or activity, with greater risks and benefits, should receive more favorable CRA consideration. Another commenter suggested that the agencies clarify that activities currently considered to be "innovative," "complex," or "flexible" under the existing CRA regulations would receive a greater impact score even though the proposal used different terminology. On the other hand, one commenter cautioned that the proposed review factor should include safeguards to ensure that predatory or usurious products are not given consideration, while another commenter stated that consideration should be explicitly granted for products that assist low- and moderate-income borrowers to reduce their reliance on predatory products.

Final Rule

The final rule adopts proposed § ____.15(b)(10), renumbered as § ____.15(b)(12), to establish an impact and responsiveness factor for loans, investments, and services that result in a new community development financing product or service that addresses community development needs for low- or moderate-income individuals, families, or households. The final rule makes technical edits from the proposal by adding "or households" for clarity, to conform with edits made to other community development provisions in the final rule. The agencies believe that the impact and responsiveness factor as adopted will appropriately help encourage banks to meet the credit needs of their entire communities by continually improving the landscape of product offerings for low- or moderate-income individuals, families, and households that are new to the bank or to a particular market. Further, the agencies believe that this impact and responsiveness factor will facilitate bank-community partnerships to identify new strategies for addressing community development needs, especially those not adequately addressed by existing products. For

[606] *See* current 12 CFR ____.24(e)(2) and Q&A § ____.24(e)–2. *See also* current 12 CFR ____.22(b)(5) and Q&A § ____.21(a)–2 and (a)–4 and Q&A § ____.22(b)(5)–1.

example, a loan or investment 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 and responsiveness factor, to the extent that it involves a new strategy to meet a community development need. The final rule is also consistent with the current CRA framework to provide consideration for activities that are innovative.

The agencies intend for this particular impact and responsiveness factor to recognize innovation broadly, but are sensitive to commenter concerns regarding predatory or usurious products. Under the final rule, the agencies determine whether a loan or investment supports community development when the loan or investment is originated, made, or purchased. If the agencies later identify that the community development loan or investment involves evidence of discriminatory or other illegal credit practices pursuant to § ____.28(d), the agencies will consider that information in the bank's CRA evaluation.[607] Further, loans, investments, or services that assist low- and moderate-income borrowers in reducing reliance on predatory products could qualify under this impact and responsiveness factor if such products are new and meet community needs.

Additional Comments on Proposed § ____.15

In addition to the impact and responsiveness factors discussed above, commenters recommended that the agencies adopt a wide range of additional factors. For example, a number of commenters recommended adding an impact factor for special purpose credit programs, such as those that focus on consumer or home mortgage lending, and community development special purpose credit programs. The agencies note that special purpose credit programs are largely covered under the Retail Services and Products Test in § ____.23(c)(2)(v) in the evaluation of credit products and programs, as discussed in greater detail in the section-by-section analysis of § ____.23(c)(2).

Other commenter recommendations included adding an impact factor for activities benefiting low- or moderate-income individuals with disabilities, with commenters offering this idea also suggesting that specific weighting of the impact factors analysis in comparison to community development metrics would be helpful; an impact factor related to health initiatives, with the agencies encouraged to improve data collection and pursue routine partnerships with healthcare and public health entities to obtain data; and an impact factor for activities that support increasing the supply of high quality, affordable early childhood education and care facilities, which were emphasized as having compounding consequences for family stability, economic opportunity, and child health and development.

Regarding these recommendations from commenters, the agencies note that many of these activities may qualify for CRA consideration under § ____.13, to the extent that they meet the relevant eligibility criteria. For instance, the above-noted activities benefiting low- or moderate-income individuals with disabilities may qualify under the community supportive services category in § ____.13(d), and healthcare and childcare facilities may qualify under the essential community facilities category in § ____.13(f). Additionally, depending on the particular facts and circumstances, other impact and responsiveness factors adopted under the final rule may already cover these kinds of activities, such as § ____.15(b)(5) for loans, investments, and services that serve low-income individuals, families, or households, and § ____.15(b)(9) for grants or donations.

Similar considerations apply to other potential impact factors recommended by commenters. These include, among others, impact factors recognizing: land bank investments; disaster preparedness and climate resiliency activities (including those in the most vulnerable low- and moderate-income minority communities); local community needs; deep impact lending; military communities and qualifying activities on military installations; collaboration with public agencies; broadband and digital inclusion projects; community engagement strategies; activities that support mission-driven nonprofit developers; loans for first generation homebuyers; and particularly responsive community development activities that fight involuntary relocation. Some commenters recommended impact factors for activities that close wealth gaps and promote economic activities, with suggestions including, among others, impact factors for engaging in activities that are particularly impactful for borrowers and minorities; for investments in historically redlined communities or that impact racial segregation; and for activities that close wealth gaps for racial, ethnic, national origin, limited English proficiency, lesbian, gay, bisexual, transgender, and queer (LGBTQ), or other underserved groups.

The agencies have considered these recommendations from commenters and acknowledge that there are many types of loans, investments, or services that may be responsive or impactful to a community. As suggested above, many activities associated with commenter-recommended impact factors could potentially already be recognized under one of the twelve impact and responsiveness factors adopted in final § ____.15(b). In addition, the agencies believe that the impact and responsiveness factor categories specified in § ____.15(b) reflect an appropriate set of categories to consider as part of evaluating a bank's community development performance, in furtherance of the purpose of the CRA. The adopted factors are ones that are supported by clear standards, tend to involve a higher degree of complexity and effort by a bank, and as noted above, tend to be particularly responsive and impactful. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-specific provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

The list of impact and responsiveness factors adopted in the final rule covers a wide range of potentially impactful and responsive activities but, as noted above, is not intended to be exhaustive. The agencies do not believe that identifying every kind of impactful and responsive activity in this section of the regulation is practicable or possible. The adopted impact and responsiveness factors are intended to standardize a set of categories that will be consistently reviewed as a part of an impact and responsiveness review, but they do not preclude agency consideration of other factors and activities.

Sections ____.16 Through ____.19 Assessment Areas and Areas for Eligible Community Development Activity

Current Approach

Under the CRA, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered,[608] and the agencies are required to assess a bank's record of meeting the credit needs of its entire community, including low- and

[607] *See* current § ____.28(c), proposed § ____.28(d), and final § ____.28(d). *See also* the section-by-section analysis of final § ____.28(d) for further discussion of practices that can lead to a ratings downgrade.

[608] *See* 12 U.S.C. 2901(a)(3).

moderate-income neighborhoods.[609] Accordingly, one of the CRA regulations' core requirements is that each bank delineate areas within which its CRA performance will be assessed, referred to in the current CRA regulations as the bank's assessment areas.[610]

Current CRA regulations require a bank, other than a wholesale or limited purpose bank, to delineate one or more assessment areas that include the geographies in which the bank's main office, branches, and deposit-taking ATMs are located, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans.[611] These assessment areas are generally required to consist of one or more MSAs or metropolitan divisions, or one or more contiguous political subdivisions, such as counties, cities, or towns.[612]

For a wholesale or limited purpose bank, the current CRA regulations require such a bank to delineate assessment areas generally consisting 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.[613]

Within certain limitations, a bank may adjust the boundaries of an assessment area to include only the portion of a political subdivision that it reasonably can be expected to serve.[614] Limitations applicable to the delineation of assessment areas include that each bank assessment area: (1) must consist only of whole geographies (*i.e.,* census tracts), and (2) may not extend substantially beyond an MSA boundary or beyond a State boundary unless the assessment area is located in a multistate MSA.[615] Further, the current CRA regulations provide that each assessment area may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts.[616] These provisions work congruently with ECOA and the Fair Housing Act, to combat redlining. Consequently, it is crucial that a bank delineate assessment areas that accurately reflect the communities it serves.

As an exception to these requirements, a bank whose business model 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.[617]

The agencies use the assessment areas delineated by a bank in the evaluation of the bank's performance unless the agencies determine that the assessment areas do not comply with the requirements of the current regulation.[618]

Currently, assessment areas are used in different ways in CRA examinations. Examiners evaluate a bank's retail lending and retail services performance within assessment areas under the lending test; retail lending outside of a bank's assessment areas is not evaluated using the lending test criteria. However, under existing guidance, examiners will give consideration for loans to low- and moderate-income persons and small business and farm loans outside of a bank's assessment area(s) provided that the bank has adequately addressed the needs of borrowers within its assessment area(s). Pursuant to the guidance, such loans will not compensate for poor lending performance within the bank's assessment areas.[619] With respect to the evaluation of a bank's community development performance—including community development loans, investments, and services—examiners consider a bank's activities within its assessment area(s) or within the broader statewide or regional area that includes the bank's assessment area(s).[620] Broader consideration of a bank's community development performance reflects the agencies' view that community development organizations and programs are efficient and effective ways for banks to promote community development, and that these organizations and programs often operate on a statewide or even multistate basis.[621] For this reason, the bank's assessment area(s) 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 area(s).[622] In addition, the agencies may consider community development activities in broader statewide or regional areas that do not benefit the assessment area if the bank has been responsive to community development needs and opportunities in its assessment area(s).[623]

The agencies proposed to revise the current assessment area framework by requiring all banks evaluated under the CRA to continue to delineate facility-based assessment area(s) as discussed in the section-by-section analysis of final § ____.16, and requiring large banks to delineate a new type of assessment area referred to as retail lending assessment area(s), as discussed in the section-by-section analysis of final § ____.17. In addition, the agencies proposed to evaluate the retail lending performance of large banks, and certain intermediate banks, in their outside retail lending areas, as discussed in the section-by-section analysis of final § ____.18. The agencies also proposed to consider qualifying community development loans, investments, and services outside of a bank's facility-based assessment areas within the states and multistate MSAs in which the bank has a facility-based assessment area, and in the nationwide area, as discussed in the section-by-section analysis of final § ____.19.

Section ____.16 Facility-Based Assessment Areas

The agencies proposed generally to maintain the current requirement that a bank delineate assessment areas where the bank has its main office, branches, and deposit-taking ATMs, with certain modifications.[624] The agencies intended the proposal to reflect the fact that a bank's facilities remain an essential way of defining the local communities that are part of a bank's entire community. Accordingly, the agencies referred to these assessment areas in the proposal as ''facility-based assessment areas,'' distinguishing them from the retail lending assessment areas in proposed § ____.17.

[609] *See* 12 U.S.C. 2903(a)(1). *See also* 12 U.S.C. 2906(a)(1).

[610] *See* current 12 CFR ____.41(a).

[611] *See* current 12 CFR ____.41(c)(2). For this purpose, the agencies define geography as a census tract delineated by the U.S. Bureau of the Census in the most recent decennial census. *See* current 12 CFR ____.12(k). Loans considered for determining assessment areas under this provision ''includ[e] home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed.'' *See* current 12 CFR ____.41(c)(2).

[612] *See* current 12 CFR ____.41(c)(1).

[613] *See* current 12 CFR ____.41(b).

[614] *See* current 12 CFR ____.41(d).

[615] *See* current 12 CFR ____.41(e)(1) and (4).

[616] *See* current 12 CFR ____.41(e)(2) and (3).

[617] Current 12 CFR ____.41(f); *see also* 12 U.S.C. 2902(4).

[618] *See* current 12 CFR ____.41(g).

[619] *See* Q&A § ____.22(b)(2) and (3)–4.

[620] *See* current 12 CFR ____.12(h)(2)(ii) (community development loans); ____.23(a) (community development investments); ____.24(b) (community development services); *see also* current 12 CFR ____.25(e)(2) (community development loans, investments, and services made by wholesale or limited purpose banks); Q&A § ____.26(d)–2 (community development loans, investments, and services made by intermediate small banks).

[621] *See* Q&A § ____.12(h)–6.

[622] *See id.*

[623] *See id.*

[624] *See* current 12 CFR ____.41.

Relative to the current rule, the modifications proposed by the agencies included: (1) replacing the term ''deposit-taking ATM'' with ''deposit-taking remote service facility;'' and (2) requiring a large bank to delineate a facility-based assessment area consisting of a single MSA, one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State, but consistent with the current rule, permitting a small or intermediate bank to delineate a facility-based assessment area that includes part of, but not the entirety of, one or more counties.

The agencies received numerous comments on the facility-based assessment area proposal from many different types of commenters. As discussed in greater detail below, many commenters supported the facility-based assessment area proposal, including the modifications relative to the current rule. However, other commenters expressed concerns, especially regarding the types of bank facilities that would trigger the facility-based assessment area requirement, and the requirement for large banks to delineate facility-based assessment areas composed of whole counties.

The agencies are adopting the facility-based assessment area proposal with certain changes, as discussed below.

Section ____.16(a) In General

As under the current rule, proposed § ____.16(a) required that a bank delineate one or more facility-based assessment areas within which the agencies evaluate the bank's record of helping to meet the credit needs of its community pursuant to the standards in the proposed rule. Further, proposed § ____.16(a) stated that the agencies do not evaluate the bank's delineation of its facility-based assessment areas as a separate performance criterion, but the agencies review the delineation for compliance with the requirements of this section.

A number of commenters expressed general support for the agencies' facility-based assessment area proposal. However, the agencies generally did not receive comments on the specific language of § ____.16(a).

The agencies are finalizing the first sentence of § ____.16(a) substantially as proposed, with some technical changes. Specifically, final § ____.16(a) refers to a bank's record of helping to meet the credit needs of its entire community (rather than just its ''community'' as proposed) to better track the language of the statute.[625] In addition, final § ____.16(a) states more precisely that the agencies evaluate a bank within in its facility-based assessment areas pursuant to the performance tests and strategic plan described in § ____.21 (rather than pursuant to ''the standards in this part'' as proposed).

The agencies determined that the second sentence of proposed § ____.16(a) is not necessary because, as discussed below, final § ____.16(e) specifies that the agencies use the facility-based assessment areas delineated by a bank in its evaluation of the bank's CRA performance unless the agencies determine that a facility-based assessment areas does not comply with the requirements of § ____.16. For this reason, the agencies are not adopting the second sentence of proposed § ____.16(a). The agencies note that this change is not intended to alter any requirement pertaining to facility-based assessment areas or how these areas are used in CRA evaluations.

Section ____.16(b)(1) Geographic Requirements for Facility-Based Assessment Areas—Facilities Triggering Delineation

The Agencies' Proposal

Proposed § ____.16(b)(1) provided that banks must delineate facility-based assessment areas that include each county in which a bank has a main office, a branch, any other staffed bank facility that accepts 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). In addition, the proposal specified that facilities in paragraph (b) refers to those that are open to the general public and excludes nonpublic facilities. The agencies stated that the addition of other staffed bank facilities, together with proposed changes to the ''branch'' definition, were intended to capture new bank business models, regardless of how the bank refers to such staffed physical locations, when those locations are open to the public and collect deposits from customers. The agencies requested comment on how to treat bank business models where staff assist customers to make deposits on their phone or mobile device while the customer is onsite.

The proposal did not require delineation of a facility-based assessment area based solely on the existence of a loan production office.

Comments Received

A number of commenters provided feedback on the types of facilities that should trigger the facility-based assessment area requirement.

Main office and branches. Several commenters expressed support for retaining the current rule's requirement that a bank must delineate facility-based assessment areas based on the location of its main office and branches. In addition, several commenters addressed what should constitute a branch for purposes of the CRA regulations. These comments are discussed in the section-by-section analysis of § ____.12.

Any other staffed bank facilities that accept deposits. In general, commenters who addressed this aspect of the proposal supported the proposal to require banks to delineate facility-based assessment areas in counties in which the bank has any other staffed bank facility that accepts deposits, other than a main office, branch, or deposit-taking remote service facility. Commenters that supported this aspect of the proposal noted that requiring banks to delineate facility-based assessment areas based on the location of other staffed bank facilities that accept deposits aligns with the premise of the CRA that a bank absorbing deposits from a community has certain obligations to serve that community.

A number of commenters responded to the agencies' request for comment on the treatment of business models where bank staff assist customers with making deposits on their phones or mobile devices while customers are onsite at a staffed physical location. A few commenters noted generally that this business model represents an innovation in banking that allows bank employees to spend more time on customer services (such as financial education, consulting, and investment services) rather than engaged in transactions.

Many of the commenters that addressed this issue stated that the agencies should require a bank to delineate a facility-based assessment area around locations where bank staff assist on-site customers with making deposits on the customers' phones or mobile devices. For example, a few commenters emphasized that bank staff at such locations acquire knowledge of community needs, and thus that the bank should be held accountable for serving those needs. At least one commenter went further, stating that any remote location at which bank staff offer products and services available at a branch should be considered a branch for purposes of delineating facility-

[625] *See* 12 U.S.C. 2903(a)(1).

based assessment areas. On the other hand, a commenter warned against strictly construing any requirement to delineate a facility-based assessment area where bank staff assist on-site customers with making deposits on the customers' mobile devices so as not to discourage community development activities, such as mobile branches on wheels.

However, many other commenters opposed requiring delineation of a facility-based assessment area where bank staff assist on-site customers with making deposits on the customers' phones or mobile devices. For example, one commenter noted that it was not aware of any instances of bank staff assisting a customer with making a deposit on a customer-owned mobile device while the customer is on-site, and thus believed that requiring the delineation of facility-based assessment areas on this basis was unnecessary. Other commenters that opposed requiring delineation of a facility-based assessment area in this situation stated that if bank staff assist customers in making deposits on their mobile devices, these deposits should be treated as originating from the customer's home or business address if the deposits are sent electronically.

Deposit-taking remote service facility. A number of commenters addressed the proposed requirement to delineate facility-based assessment areas based on the location of deposit-taking remote service facilities.[626] Some of these commenters expressed support for the agencies' proposal to require banks to delineate facility-based assessment areas around deposit-taking remote services facilities. A few commenters recommended that, for purposes of delineating facility-based assessment areas, the definition of remote service facility should be sufficiently broad to capture innovations in banking services traditionally offered through physical branches.

However, a few commenters opposed requiring a bank to delineate a facility-based assessment area based solely on the location of its deposit-taking remote service facilities. A few commenters asserted that a deposit-taking remote service facilities should not trigger the full lending, service, and community development obligations of a facility-based assessment area because, among other reasons, banks typically do not have staff physically present in those areas to be able to generate loans or carry out community development financing activities or services. A commenter noted that requiring delineation of a facility-based assessment area based solely on a remote service facility would limit a bank's ability to place a deposit-taking remote service facility in a market as part of a strategy to transition toward a broader range of services in that market, or to serve only a specific market segment, such as business customers at a loan production office.

Other commenters suggested placing certain limitations on when a remote service facility would trigger a facility-based assessment area. For example, a few commenters recommended that a deposit-taking remote service facility in a county that is immediately adjacent to a county where the bank already has a branch presence should not require the delineation of a new facility-based assessment area because the remote service facility was likely placed there in order to serve existing bank customers who work in or travel to the neighboring county. However, these commenters noted that where a bank establishes deposit-taking remote service facilities in a county that is not adjacent to the county where the bank has an existing facility-based assessment area, then the bank should be required to delineate a facility-based assessment area in that county based solely on the presence of deposit-taking remote service facilities.

A few commenters recommended that a bank should have the option, rather than be required, to delineate a facility-based assessment area based on the location of its deposit-taking remote service facilities. At least one of these commenters reasoned that requiring delineation of a facility-based assessment area provides a strong disincentive against establishing temporary remote deposit facilities, such as in the case of a natural disaster or a special event.

Non-proprietary remote service facilities. As discussed in the section-by-section analysis of § ____.12, commenters disagreed on whether the proposed requirement to delineate facility-based assessments areas based on where a bank maintains deposit-taking remote service facilities should extend to remote service facilities not owned or operated by, or operated exclusive for, a bank, such as third-party ATM networks.

Loan production offices. Several commenters noted that the proposal for delineating facility-based assessment areas would generally exclude loan production offices, insofar as such facilities do not accept deposits or are not open to the general public. A majority of these commenters recommended including loan production offices as a facility for purposes of delineating facility-based assessment areas. These commenters noted that loan production offices factor into a bank's overall lending performance in low- or moderate-income communities. These commenters also noted that loan production offices are often the only lending or banking-related presence in rural areas and small towns, suggesting their presence should confer a CRA obligation. Some of these commenters argued that, alternatively, if loan production offices do not trigger the delineation of a facility-based assessment area, the presence of loan production offices should trigger the delineation of at least a retail lending assessment area.

However, a few commenters supported the agencies' proposal not to include loan production offices as a facility for purposes of delineating a facility-based assessment area. At least one of these commenters noted that loan production offices are not branches and are sometimes used by a bank to help determine whether a branch should be established in a new area.

Final Rule

The agencies are adopting a modified version of proposed § ____.16(b)(1). Final § ____.16(b)(1) provides that, except as provided in paragraph (b)(3), a bank's facility-based assessment areas must include each county in which a bank has a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding counties in which the bank has originated a substantial portion of its loans (including home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans). Unlike under the proposal, final § ____.16(b)(1) does not require a bank to delineate a facility-based assessment area based on the location of any other staffed bank facility that accepts deposits (other than a main office, branch, or deposit-taking remote service facility).

In addition to this substantive change, final § ____.16(b)(1) incorporates several technical changes relative to the proposal. Specifically, final § ____.16(b)(1) clarifies that paragraph (b)(3) (which, as discussed below, permits small and intermediate banks to delineate facility-based assessment areas composed of partial counties) is an exception to the ''each county'' requirement. Further, the final rule adds multifamily loans to the parenthetical

[626] Commenters also discussed the proposed definition of ''remote service facility.'' These comments are discussed in greater detail in the section-by-section analysis of final § ____.12.

list of loan types so that this list includes all of the product lines included in the retail lending volume screen portion of the Retail Lending Test; these same types of loans may also be considered under the Small Bank Lending Test.[627] Finally, the final rule refers to ''surrounding counties,'' rather than ''surrounding geographies'' as proposed, consistent with the county-based geographic requirements described below.

Any other staffed bank facilities that accept deposits. The final rule does not include the proposed requirement that a bank's facility-based assessment areas include each county in which the bank has any other staffed bank facility that accepts deposits (other than a main office, branch, or deposit-taking remote service facility). The agencies believe that the remaining list of bank facilities that trigger facility-based assessment area delineation requirements (*i.e.,* main office, branch, deposit-taking remote service facility) is sufficiently comprehensive that it is not necessary to include other staffed bank facilities that accept deposits. In particular, the agencies are not aware of the existence of a staffed bank facility that accepts deposits that would not qualify as a main office or branch. The agencies will continue to monitor whether other types of deposit-taking facilities emerge in the future that do not qualify as a main office, branch, or deposit-taking remote service facility, and that may warrant addition to the list of facilities that trigger the facility-based assessment area delineation requirement.

For similar reasons, the agencies are declining to specify whether a facility where bank staff assist customers with making a deposit on a mobile phone or other mobile device triggers the facility-based assessment area delineation requirement. The agencies believe that, depending on the facts and circumstances, such a facility may qualify as a branch pursuant to the appropriate agency's licensing policies. Further, to the extent that such a facility does not qualify as a branch, the agencies do not want to disincentive bank staff from providing incidental support to customers at non-branch facilities. The agencies will continue to monitor banking developments and provide additional guidance as appropriate.

Deposit-taking remote service facilities. The final rule also retains the proposed requirement that a bank's facility-based assessment areas include each county in which the bank has a deposit-taking remote service facility.[628] The agencies believe that requiring a bank to delineate a facility-based assessment area based on where it maintains a deposit-taking remote service facility is consistent with the statute because of the statutory definition of ''domestic branch,'' discussed above, which includes other deposit-taking facilities.[629]

The agencies have considered concerns raised by some commenters that a bank may need to delineate two separate facility-based assessment areas if it maintains, for example, a branch in one county and a deposit-taking remote service facility in an adjacent county. However, under the geographic requirements of the final rule discussed below, this result would be required only in cases where (1) one county is a metropolitan county (*i.e.,* located within an MSA) and the other county is a nonmetropolitan county, or (2) the counties are nonmetropolitan counties in adjoining states. By contrast, if both counties are located in the same MSA, or if both counties are located in the nonmetropolitan area of the same State, then the bank could delineate a single facility-based assessment area that includes both counties. The agencies note that the CRA statute requires the agencies, in the written evaluation of a bank for each State in which it maintains one or more branches, to separately present conclusions for each metropolitan area in which the bank maintains a branch, and conclusions for the nonmetropolitan area of the State if the bank maintains a branch in such nonmetropolitan area.[630] The agencies believe that allowing a single facility-based assessment area to consist of both metropolitan and nonmetropolitan areas, as in the case described above, would create challenges in assigning conclusions consistent with this statutory requirement because the agencies would not be able to distinguish between a bank's metropolitan area and nonmetropolitan area performance within a State.

Non-proprietary remote service facilities. As discussed in the section-by-section analysis of § ____.12, the term ''remote service facility'' includes only those remote service facilities that are owned or operated by, or operated exclusively for, a bank. As such, the final rule does not require a bank to delineate a facility-based assessment area based on the location of other remote service facilities, such as a network ATM operated by third party.

Loan production offices. The final rule does not require banks to delineate facility-based assessment areas based solely on the location of loan production offices. The agencies considered commenter feedback that indicated a loan production office should trigger a facility-based assessment area delineation because it is a bank facility and may be part of the bank's strategy to meet the credit needs of the community it serves. However, based on the agencies' supervisory experience, the agencies believe that loan production offices vary widely in terms of service and product offerings, the number of customers served, and the capacity and resources to meet community credit needs. For example, a loan production office may not offer the types of loans evaluated under the Retail Lending Test, may not accept deposits, and may not be open to the public. For this reason, the agencies are declining to apply the facility-based assessment area requirement based solely on the location of a loan production office. However, under the final rule Retail Lending Test, the agencies will evaluate the major product lines of certain large banks in retail lending assessment areas where they have concentrations of closed-end home mortgage and small business loans.[631] Similarly, the agencies will evaluate the major product lines of large and certain intermediate and small banks in the bank's outside retail lending area (*i.e.,* the nationwide area outside of the bank's facility-based assessment areas and retail lending assessment areas).[632] Thus, under the final rule, a geographic area in which a bank maintains loan production offices may be delineated as a retail lending assessment or included in the bank's outside retail lending area, as applicable.

Section ____.16(b)(2) and (3) Geographic Requirements for Facility-Based Assessment Areas—Boundaries

The Agencies' Proposal

Proposed § ____.16(b)(2) required that a bank's facility-based assessment area 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. In addition, consistent with current

[627] *See* final § ____.22(c) and final § ____.29.

[628] The final rule's definition of ''remote service facility'' is discussed in greater detail in the section-by-section analysis of final § ____.12.

[629] 12 U.S.C. 2906(e)(1).

[630] *See* 12 U.S.C. 2906(d)(3)(A).

[631] Retail lending assessment areas are discussed in the section-by-section analysis of final § ____.17.

[632] Outside retail lending areas are discussed in the section-by-section analysis of final § ____.18.

guidance,[633] proposed § ____.16(b)(2) specified that a facility-based assessment area may not extend beyond an MSA boundary or beyond a State boundary unless the facility-based assessment area is located in a multistate MSA or combined statistical area.

However, proposed § ____.16(b)(3) provided an exception for an intermediate or small bank by which such a 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, provided that a facility-based assessment area that includes a partial county consists only of whole census tracts, and complies with the limitations discussed below in § ____.16(c). As a result, under the proposal, large banks would no longer be allowed to delineate a partial county for facility-based assessment areas, as under the current rule.[634] The agencies reasoned that this change would create a more consistent delineation standard for the delineation of assessment areas for large banks; encourage these banks to serve low- or moderate-income individuals and census tracts in counties where their deposit-taking facilities are located; help safeguard and support fair lending; and support the proposed use of metrics and associated data to evaluate bank performance. The agencies requested feedback on whether both small and intermediate banks should continue to have the option of delineating partial counties or whether they should be required to delineate whole counties as facility-based assessment areas to increase consistency across banks.

Comments Received

Numerous commenters offered views on the proposed geographic requirements that would apply to the delineation of facility-based assessment areas.

Whole-county requirement for large banks. Many commenters addressing the proposed geographic requirements for large banks' facility-based assessment areas supported this aspect of the proposal, including the proposed requirement that large banks' facility-based assessment areas consist of one or more MSAs, metropolitan divisions, or contiguous counties within an MSA, metropolitan division, or the nonmetropolitan area of a State. In general, these commenters expressed that partial-county delineations may result in the geographic scope of a bank's CRA evaluation not accurately reflecting the area that a large bank can reasonably be expected to serve, and that partial-county delineations could allow a large bank to reduce its lending in low- or moderate- income and majority-minority census tracts. A commenter stated that requiring large banks to delineate facility-based assessment areas composed of whole counties would facilitate peer comparison and simplify analysis from a metrics standpoint.

However, most commenters that addressed the proposed geographic requirement for large banks' facility-based assessment areas opposed this aspect of the proposal, with some suggesting that some or all large banks should continue to have the option to delineate facility-based assessment areas composed of partial counties. These commenters pointed to a variety of reasons supporting the view that large banks should retain the ability to delineate a facility-based assessment area composed of partial counties. For example, some commenters noted that certain bank characteristics, including a limited capacity to serve an entire county, a limited branch network in a county, and the location of the bank's branch or branches, could make it challenging to serve an entire county. In another example, a commenter suggested that serving a facility-based assessment area composed of whole counties would be so challenging that it would require the bank to divert resources from other programs, including those that serve low- or moderate-income communities.

Commenters also noted that characteristics of a county could make it challenging to serve the entirety of that county, including the geographic size or other geographic characteristics, economic characteristics, the population and population density, and the level of competition among other banks in the county. A commenter described the proposed whole-county delineation requirement for large banks as mandating an unrealistic facility-based assessment area, which would lead to unrealistic benchmarks and conclusions. Specifically, the commenter cited the example of Los Angeles County, stating that several large banks operate three or fewer branches in the county, and that those banks would be required to delineate the whole county as a facility-based assessment area. The commenter stated that the county consists of approximately 2,500 census tracts, and questioned how these large banks can be asked to serve a whole county of this size with so few branches.

Some commenters that criticized the proposed whole-county delineation requirement for large banks suggested that the whole-county requirement could be appropriate for large banks of a higher asset threshold, but that large banks of a smaller asset size, such as those below $5 billion or $10 billion in assets, should have the flexibility to define assessment area using partial counties.

Partial-county allowance for small and intermediate banks. A majority of commenters that addressed the proposed geographic requirements for facility-based assessment areas of small and intermediate banks supported the proposal to continue to allow these banks to delineate facility-based assessment areas that include only the portion of a county that such a bank reasonably can be expected to serve. These commenters generally noted that small and intermediate banks are less likely to have the capacity and resources to serve an entire county.

However, many other commenters recommended that small and intermediate banks be held to the same whole-county delineation standard for facility-based assessment area delineation as proposed for large banks. In general, these commenters expressed that partial-county delineations may result in the geographic scope of the bank's CRA evaluation not accurately reflecting the area the bank can reasonably be expected to serve. In addition, some commenters expressed concerns that partial-county delineations could result in redlining by allowing a bank to exclude low- or moderate-income and majority-minority census tracts. In addition, a few commenters noted that small and intermediate banks are often the only banks present in rural counties, and that partial-county delineations for these banks could result in underserved rural areas being excluded from facility-based assessment areas.

Final Rule

The agencies are adopting the geographic requirements for facility-based assessment areas in proposed § ____.16(b)(2) and (3) with some modifications. Final § ____.16(b)(2) provides that, except as provided in paragraph (b)(3), each of a bank's facility-based assessment areas must consist of a single MSA, one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State.

Relative to the proposal, final § ____.16(b)(2) incorporates some clarifications and non-substantive changes to streamline the drafting of

[633] *See* current 12 CFR ____.41(e)(4); *see also* Q&A § ____.41(e)(4)–1 and –2.

[634] *See* current 12 CFR ____.41(d).

proposed § ____.16(b)(2). First, the final rule specifies that the geographic requirements of this paragraph apply to each of a bank's facility-based assessment areas. Second, the final rule omits the proposed references to metropolitan divisions; the agencies believe these references are superfluous because metropolitan divisions consist of whole counties, and banks are not required to follow metropolitan division boundaries when delineating facility-based assessment areas. Third, and as discussed below, the final rule eliminates the proposed language concerning the circumstances under which a facility-based assessment area is permitted to extend beyond an MSA boundary or a State boundary. As a result, under the final rule, a facility-based assessment may not extend beyond an MSA boundary and may not extend beyond a State boundary unless the facility-based assessment area is located within a multistate MSA.

Final § ____.16(b)(3) provides that an intermediate 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 the limitations in paragraph (c). Final § ____.16(b)(3) also provides that a facility-based assessment area that includes a partial county must consist of contiguous whole census tracts. The agencies believe that the requirement that partial-county delineations must consist of contiguous census tracts was implicit in the proposal, but that it is appropriate to make this requirement explicit in the final rule, paralleling the contiguous county requirement in final § ____.16(b)(2).

MSA and State boundaries. Under the final rule, a bank may not delineate a facility-based assessment area that extends beyond an MSA boundary, and a bank may not delineate a facility-based assessment area that extends beyond a State boundary unless the facility-based assessment area is located in a multistate MSA. By contrast, the proposal would have permitted facility-based assessment areas located in combined statistical areas to extend beyond an MSA or State boundary. The agencies have reconsidered the issue and, for the reasons discussed below, are adopting a final rule that is consistent with current § ____.41(e)(4), which provides that an assessment area may not extend substantially beyond an MSA boundary or beyond a State boundary unless the assessment area is located in a multistate MSA.[635]

The agencies believe that allowing a facility-based assessment area to consist of an entire combined statistical area would create challenges in assigning conclusions consistent with statutory requirements. Specifically, the statute requires the agencies, in the written evaluation of a bank, to present conclusions separately for each metropolitan area in which the bank maintains a branch.[636] Further, the statute requires the agencies to present, in the written evaluation of an interstate bank's performance within a State, conclusions separately for each metropolitan area in which the bank maintains a branch, and for the remainder of the nonmetropolitan area of the State if the bank maintains one or more branches in such nonmetropolitan area.[637] Because a combined statistical area may include a combination of metropolitan and nonmetropolitan counties, or may contain multiple distinct MSAs, the agencies would need to assign conclusions to one or more subparts of a facility-based assessment area consisting of a combined statistical area. For similar reasons, the agencies believe that applying the Community Development Financing Test in a facility-based assessment area consisting of a combined statistical area would be challenging because the Community Development Financing Test involves separate benchmarks for metropolitan and nonmetropolitan areas.[638]

Whole- and partial-county delineations. Under the final rule, large banks must delineate facility-based assessment areas composed of whole counties, but small and intermediate banks are permitted to adjust the boundaries of their facility-based assessment areas to include only those contiguous census tracts within a county that such banks can reasonably be expected to serve. The agencies' determination that large banks, but not small and intermediate banks, should be required to delineate facility-based assessment areas composed of whole counties balances multiple competing considerations.

On the one hand, the agencies believe that requiring large banks to delineate facility-based assessment areas composed of whole counties helps to encourage those banks to serve low- or moderate-income individuals and census tracts in counties where the bank's deposit-taking facilities are located and helps to safeguard and support fair lending. In particular, requiring a bank to delineate facility-based assessment areas composed of whole counties could reduce the risk that a facility-based assessment area may exclude low- or moderate-income or majority-minority census tracts from the facility-based assessment area. In addition, and as discussed in greater detail in the section-by-section analysis of final § ____.24, whole-county delineations facilitate the application of the Community Development Financing Test because the relevant metrics and benchmarks are calculated at the county level, and cannot be calculated at the census tract level without increasing the reporting burden on banks. Similarly, and as discussed in the section-by-section analysis of § ____.28, whole-county delineations for large banks facilitate the final rule's approach to weighting facility-based assessment area conclusions because these weights are based on a combination of a bank's retail loan and deposits data, and deposits data are reported at the county level for large banks with assets of over $10 billion, pursuant to final § ____.42(b)(3). Under an alternative approach in which large banks are able to delineate partial-county facility-based assessment areas, to calculate a weight for each area, large banks with assets over $10 billion would need to report deposits data at a more granular geographic level, such as census tracts, which the agencies believe would increase burden and privacy concerns.

On the other hand, the agencies have considered that requiring banks to delineate facility-based assessment areas composed of whole counties could result in facility-based assessment areas that are challenging for some large banks to serve, and may have an impact on compliance burden, such as costs associated with monitoring the bank's performance in and relevant benchmarks across the entire county, rather than a smaller geographic area. This is particularly the case with very large counties or counties with dividing geographic features (*e.g.,* a large body of water that divides the county in two) in which a bank has a limited presence.

The agencies believe that the final rule strikes an appropriate balance between these competing considerations. In circumstances in which large banks cannot serve their whole counties due to geographic barriers, limited presence, or other factors, the agencies would take these factors into consideration as performance context when evaluating a large bank's performance in such a

[635] The agencies acknowledge that current guidance suggests that banks may delineate assessment areas that extend beyond MSA boundaries in a combined statistical area. *See* Q&A § ____.41(e)(4)–1.

[636] *See* 12 U.S.C. 2906(b)(1)(B).

[637] *See* 12 U.S.C. 2906(d)(2).

[638] These benchmarks are discussed in greater detail in the section-by-section analysis of § ____.24(b)(2).

facility-based assessment area, as is generally the case under existing standards. Accordingly, the agencies believe that the application of performance context appropriately mitigates these concerns with respect to this final rule's whole-county delineation requirement for large banks, while retaining the benefits of the overall approach as described above. For these reasons, final § ____.16(b)(2) requires large banks to delineate facility-based assessment areas composed of whole counties.

By contrast, final § ____.16(b)(3) allows small and intermediate banks to delineate partial-county facility-based assessment areas, as under the current rule, because these banks generally have less capacity than large banks to serve whole counties and to adapt to new regulatory requirements. The agencies have considered commenters' concerns that allowing partial-county delineations could result in the exclusion of low- or moderate-income, majority-minority, underserved, or rural census tracts from a facility-based assessment area. However, the agencies believe that other provisions of the final rule, including the limitations in final § ____.16(c), discussed below, sufficiently address this risk.

Section ____.16(c) Other Limitations on the Delineation of a Facility-Based Assessment Area

The Agencies' Proposal

Proposed § ____.16(c) would retain the current rule that a bank's facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition. The agencies stated in the proposal that these prohibitions affirm a bank's CRA obligation to serve its entire community, including low- or moderate-income individuals and census tracts, and should remain a vital component of the assessment area framework.

Comments Received

Several commenters provided feedback regarding the proposed limitations on the delineation of facility-based assessment areas in proposed § ____.16(c). These commenters generally recommended that the agencies strengthen the prohibitions that a bank's facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts. For example, a commenter recommended clarifying under what circumstances a bank's assessment areas would be deemed to reflect illegal discrimination and suggested that the agencies establish a rebuttable presumption that a bank's facility-based assessment area reflects illegal discrimination where its facility-based assessment area consists of a partial political subdivision that excludes contiguous neighborhoods of color. Many commenters stated that racial demographics should be considered when delineating facility-based assessment areas, emphasizing that minority communities should not be arbitrarily excluded. For example, a commenter suggested that where a small or intermediate bank delineates a facility-based assessment areas containing part of a county, examiners should review the partial-county delineation to ensure that it does not unreasonably exclude minority communities; if examiners determine the bank has unreasonably excluded minority communities, this finding should adversely impact the bank's CRA rating.

Final Rule

The agencies are adopting the limitations on the delineation of facility-based assessment areas in proposed § ____.16(c) substantially as proposed. Relative to the proposal, the final rule includes drafting changes to clarify that the bank's capacity and constraints, including its size and financial condition, are considerations that the agencies will take into account in determining whether a facility-based assessment area arbitrarily excludes low- or moderate-income census tracts.[639]

The agencies acknowledge comments that recommended more specific and stringent standards to safeguard against illegal discrimination and arbitrary exclusion. Whether a facility-based assessment area reflects illegal discrimination is a fact-and-circumstances-specific determination, and for this reason, the agencies are not adopting more specific standards, such as the rebuttable presumption suggested by some commenters, within the regulatory text. The agencies note that other parts of the final rule, such as the adverse effect of discriminatory or other illegal credit practices provided in final § ____.28(d), help safeguard and support fair lending, consistent with the agencies' goal of confirming that CRA and fair lending responsibilities are mutually reinforcing. Moreover, consistent with current CRA examination procedures, examiners will continue to review a bank's delineation of any facility-based assessment areas, whether composed of partial or whole counties, for compliance with the requirements of § ____.16, which includes ensuring that the facility-based assessment area does not reflect illegal discrimination and does not arbitrarily exclude any low- or moderate-income areas.[640]

Section ____.16(d) Military Banks

The Agencies' Proposal

Proposed § ____.16(d) would retain the flexibility in the current rule afforded to a military bank whose customers are not located within a defined geographic area to delineate its entire deposit customer base as its assessment area, consistent with the CRA statute.[641]

Comments Received

As discussed in the section-by-section analysis of § ____.12, a commenter recommended expanding the proposed definition of ''military bank'' to include a branch located on a military installation so that such a branch could delineate its entire deposit customer base as an assessment area, as provided in proposed § ____.16(d), regardless of whether the bank as a whole qualifies as a military bank. As an alternative to expanding the ''military bank'' definition in this way, the commenter suggested allowing a bank that operates a branch on a military installation to delineate a geographic-based facility-based assessment area defined by the boundaries of the military installation. The commenter explained that one of these alternatives is necessary because it can be challenging for a branch located on a military installation to serve a broader geographic area given

[639] *See* Q&A § ____.41(e)(3)–1.

[640] *See, e.g.,* Large Institution CRA Examination Procedures (April 2014) at 4. In addition, examiners review a bank's CRA assessment areas as part of the redlining analysis in fair lending examinations. Specifically, the redlining analysis considers the following indicators of potential discriminatory redlining, among others: (1) explicit demarcation of credit product markets that excludes MSAs, political subdivisions, census tracts, or other geographic areas within the bank's lending market or CRA assessment areas and having relatively high concentrations of minority residents, and (2) the bank's CRA assessment area appears to have been drawn to exclude areas with relatively high concentrations of minority residents. *See* Interagency Fair Lending Examination Procedures (August 2009) at 10–11.

[641] *See* 12 U.S.C. 2902(4). *See also* current 12 CFR ____.41(f). The agencies proposed to define ''military bank'' to mean 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. *See* proposed § ____.12.

restrictions on public access to military installations.

Final Rule

The agencies are finalizing a modified version of proposed § ____.16(d). The final rule provides that, notwithstanding the other requirements of § ____.16, a military bank whose customers are not located within a defined geographic area may delineate the entire United States and its territories as its sole facility-based assessment area. The final rule uses the defined term ''facility-based assessment area,'' rather than ''assessment area'' as proposed, to clarify that the area is not a retail lending assessment area or outside retail lending area, which would be evaluated only under the Retail Lending Test. In addition, the agencies believe that the term ''sole'' clarifies that a military bank that elects to delineate its facility-based assessment area pursuant to § ____.16(d) would have only one facility-based assessment area, and would not delineate other geographic areas for evaluation.[642]

The agencies considered the challenges identified by commenters regarding the operation of branches on military installations. However, the agencies have determined not to modify the facility-based assessment area delineation requirements for these branches. The agencies believe that the final rule approach is sufficiently flexible such that banks that operate branches on military installations, or in other areas where public access is restricted, would not be penalized for doing so. In particular, the agencies expect that examiners would consider the public accessibility of a branch as performance context when evaluating the bank's performance in the facility-based assessment area surrounding the branch. Other areas of the final rule also permit examiners the flexibility to consider the unique circumstances of branches on military installations. For example, pursuant to final § ____.22(c), in the case of a bank that operates a branch on a military installation but that does not meet or surpass the Retail Lending Volume Screen threshold in the facility-based assessment area, examiners could consider the restrictions on public access to the branch as part of the bank's institutional capacity and constraints.[643]

Section ____.16(e) Use of Facility-Based Assessments Areas

As under the current rule, proposed § ____.16(e) stated that the agencies use the facility-based assessment areas delineated by a bank in their evaluation of the bank's CRA performance unless the agencies determine that the facility-based assessment areas do not comply with the requirements of proposed § ____.16.

The agencies did not receive any comments on this aspect of the proposal. As such, the agencies are finalizing § ____.16(e) as proposed.

Section ____.17 Retail Lending Assessment Areas

In proposed § ____.17, the agencies proposed a new requirement for large banks to delineate retail lending assessment areas where a large bank has concentrations of home mortgage or small business loans outside of its facility-based assessment areas. The agencies proposed to evaluate a large bank's performance in retail lending assessment areas under the proposed Retail Lending Test, but not under other performance tests. As stated in the proposal, the agencies intended the proposed retail lending assessment area approach, as with facility-based assessment areas, to establish local communities in which a bank is evaluated for its CRA performance, and to reflect ongoing changes in the banking industry. The agencies further stated in the proposal that evaluating large banks' retail lending performance on a local basis in retail lending assessment areas would accord with CRA's focus on a bank's local performance in helping to meet community credit needs, promote transparency by providing useful information to the public and banks regarding their performance in specific markets, and improve parity between banks that lend primarily through branches and those banks with different business models.

The agencies received a significant amount of feedback related to the retail lending assessment area proposal from a wide array of commenters. Commenters expressed a range of views regarding the overall retail lending assessment area approach, with many commenters supporting the proposal, and many other commenters opposing it, especially due to concerns about the compliance burden of the proposal. Commenters also provided feedback on specific aspects of the retail lending assessment area proposal, including which large banks should be required to delineate retail lending assessment areas, geographic requirements for retail lending assessment areas, and the number and types of retail loans that would trigger the retail lending assessment area requirement.

For the reasons discussed below, the agencies are including the retail lending assessment area approach in the final rule. However, in response to commenter feedback, the agencies are adopting several modifications to the retail lending assessment area proposal to better align the retail lending assessment area approach with the agencies' policy objectives. In particular, and as described below, the final rule (1) tailors the retail lending assessment area requirement by exempting large banks that conduct more than 80 percent of their retail lending in facility-based assessment areas from the retail lending assessment area requirement; (2) reduces the number of retail lending assessment areas that affected large banks will need to delineate by increasing the proposed home mortgage loan and small business loan count thresholds for triggering retail lending assessment areas; (3) reduces the number of product lines evaluated in retail lending assessment areas by modifying the evaluation of a large bank's retail lending performance in retail lending assessment areas so that only closed-end home mortgage loans and small business loans are evaluated, and only if they exceed the applicable loan count threshold; and (4) narrows the geographic scope of certain retail lending assessment areas by tailoring the proposed geographic requirements for retail lending assessment areas in the nonmetropolitan area of a State to exclude any counties in which a large bank did not originate any reported closed-end home mortgage loans or small business loans.

Overall Retail Lending Assessment Area Approach

The Agencies' Proposal

To facilitate evaluation of whether and to what extent banks are meeting the credit needs of their entire communities, proposed § ____.17 complemented the existing framework for evaluating large banks' retail lending in facility-based assessment areas by requiring large banks to delineate retail lending assessment areas where they have concentrations of certain retail loans (*i.e.,* home mortgage loans or small business loans) outside of facility-based assessment areas. The agencies proposed to evaluate a large bank's performance in retail lending assessment areas under the proposed

[642] The evaluation of military banks under the final rule is discussed in greater detail in the section-by-section analysis of final § ____.21(a)(5).

[643] *See* final § ____.22(c)(3)(i)(B).

Retail Lending Test, but not under other performance tests.

Comments Received

Numerous commenters addressed the overall retail lending assessment area approach. Many commenters expressed support for establishing retail lending assessment areas, but many others either opposed the concept altogether or recommended changes to reduce the compliance burden associated with retail lending assessment areas. Additionally, some commenters offered views on alternative ways to evaluate retail lending outside of facility-based assessment areas.

Support for retail lending assessment areas. A number of commenters expressed support for the agencies' proposal to require retail lending assessment areas where large banks do not maintain deposit-taking facilities but have concentrations of home mortgage loans and/or small business loans. Many of these commenters asserted that the agencies' proposal represents an appropriate response to changes in banking over time, such as the increase in retail lending offered via non-branch-based delivery channels and would improve parity in the same geographic area between banks that operate via branches and banks that begin to make loans in the same market without establishing a branch. For example, some commenters stated that the proliferation of online lending and other non-branch-based delivery channels increasingly allows for a bank to serve a local community without the presence of a deposit-taking facility located within the community, and that the CRA evaluation framework should evolve to reflect this development. Other commenters noted that the retail lending assessment area approach would ensure that a large bank that closes its deposit-taking facilities in a geographic area but continues to conduct a significant volume of retail lending through online or other channels in that area, would continue to have that retail lending evaluated on a local basis. A few commenters also stated that evaluating banks in retail lending assessment areas would be consistent with the purpose and principles of the CRA statute.

Commenters that supported the overall retail lending assessment area approach also pointed to various benefits that they believe would follow from the approach. For example, some commenters noted that the proposed retail lending assessment area approach, together with the proposed outside retail lending area approach, would result in the majority of bank retail lending being evaluated under the CRA, and would increase bank accountability for serving low- and moderate-income communities as a result. A number of commenters stated that the proposed retail lending assessment area approach would improve CRA coverage in underserved geographic areas, with various commenters suggesting that rural areas, banking deserts, impoverished communities, majority-minority communities, and Native Land areas would particularly benefit from the proposed approach. A few commenters stated that expanding assessment areas beyond facility-based assessment areas would likely result in more lending to low- and moderate-income borrowers and communities, noting that research demonstrates that banks make a higher percentage of their loans to low- and moderate-income borrowers and in low- and moderate-income census tracts in their assessment areas compared to areas not designated as assessment areas.

Policy concerns with retail lending assessment areas. Conversely, many commenters opposed or raised significant concerns with the proposed retail lending assessment area approach.

First, many of the commenters that opposed or expressed concerns with the proposed retail lending assessment area approach asserted that the addition of retail lending assessment areas would introduce significant complexity into CRA evaluations and impose substantial compliance burdens on banks. Several of these commenters estimated that, under the proposal, some banks would be required to delineate large numbers of new retail lending assessment areas and expressed that monitoring where a bank might trigger retail lending assessment areas, including retail lending performance metrics and performance ranges in those areas, would entail significant compliance costs. A few commenters stated that the compliance burden associated with the retail lending assessment area proposal would be particularly acute for smaller large banks (*e.g.,* large banks with assets under $10 billion), which these commenters said are not currently staffed or equipped with appropriate technology to satisfy CRA requirements in retail lending assessment areas. At least one commenter stated that the compliance burden of the proposed retail lending assessment area approach was not worth the relatively low weight that retail lending assessment areas would typically receive under the proposed Retail Lending Test, based on lower levels of bank retail lending and deposit dollar volumes in these markets.

Some commenters that emphasized the compliance burdens associated with the retail lending assessment area proposal offered suggestions for how the agencies could modify the proposal to reduce the compliance impact. For example, many of these commenters supported an exemption from the retail lending assessment area requirements for primarily branch-based banks and increased loan count thresholds for triggering retail lending assessment areas, as described below. At least one commenter suggested including a cap on the number of retail lending assessment areas that a large bank must delineate to mitigate concerns that some banks would be required to delineate a large number of retail lending assessment areas. At least one other commenter suggested that the agencies should create data and mapping tools to assist banks with delineating assessment areas.

Second, some commenters that opposed or expressed concerns with the proposed retail lending assessment area approach warned of unintended consequences that they believed would result from retail lending assessment areas. For example, many commenters expressed concerns that the proposed retail lending assessment areas could result in banks limiting retail lending activity, which some of these commenters asserted would be contrary to the intent of the CRA and the agencies' proposal. In particular, commenters warned that banks might curtail their retail lending outside of facility-based assessment areas, such as by closing loan production offices and reducing indirect lending, to avoid surpassing the loan count thresholds that would trigger the delineation of retail lending assessment areas. Further, commenters warned that banks that have already surpassed the loan count thresholds and would therefore be required to delineate retail lending assessment areas might withdraw from these geographic areas, particularly if it would be too challenging to meet performance standards in a retail lending assessment area without a physical presence or local community knowledge or expertise.

Other commenters identified other potential unintended consequences of retail lending assessment areas. For example, several commenters asserted that the addition of retail lending assessment areas would competitively disadvantage banks relative to nonbank lenders and credit unions who are not subject to the CRA, thereby exacerbating trends of home mortgage and small business lending shifting outside the regulated banking system. A few commenters stated that as banks dedicate more resources to serve retail lending assessment areas, banks' capacity to be responsive to community needs within facility-based assessment areas would necessarily be reduced. A few commenters suggested that the proposed retail lending assessment area approach could cause banks to rethink their business models, including by slowing their deposit and loan growth through digital channels. Another commenter stated that expanding assessment areas would make it even harder for low-income areas that need banking services to be served, noting that many low-income individuals are disadvantaged when relying on online services.

Third, some commenters expressed concerns that the retail lending assessment area proposal would not target geographic areas with the greatest needs and would not benefit low- or moderate-income and underserved communities. For example, a few commenters made the point that subjecting digital banks to retail lending assessment areas would not target underserved geographies with the greatest credit needs, with at least one such commenter recommending that the agencies focus on incentivizing digital lenders to conduct CRA activities where there is the most need. Other commenters asserted that retail lending assessment areas would be located predominantly in large cities and would not benefit underserved areas outside of these cities. At least one commenter indicated that retail lending assessment areas would not address the problem of a bank taking deposits from a market but not lending in that market, and would not prevent a bank from engaging in redlining.

Legal concerns regarding retail lending assessment area proposal. Some commenters opposed to the proposed retail lending assessment area approach raised legal concerns regarding this aspect of the proposal. First, some commenters questioned whether the agencies' analysis supporting the retail lending assessment area proposal was legally adequate under the Administrative Procedure Act. Several commenters suggested that the agencies' justification for the retail lending assessment area proposal did not demonstrate that the agencies engaged in reasoned decision-making, for example, stating that the agencies failed to demonstrate the potential benefits of retail lending assessment areas would exceed the significant burden they would impose on banks or otherwise did not provide an adequate rationale for specific aspects of the retail lending assessment area proposal. A few commenters stated that the proposal did not include enough information for commenters to be able to assess the impact of the retail lending assessment area proposal, such as where particular retail lending assessment areas would be located.

Second, some commenters questioned whether the agencies have the legal authority under the CRA to evaluate banks' retail lending in geographic areas where they do not maintain deposit-taking facilities. For example, these commenters pointed to certain provisions of the statute to support the proposition that a bank's community refers only to the geographic areas around deposit-taking facilities, including references to banks' local communities in the findings and purpose section of the statute,[644] the provisions of the statute regarding written evaluations,[645] and the provision concerning banks that serve military personnel.[646]

Alternatives to retail lending assessment areas. Some commenters that opposed or expressed concerns with retail lending assessment areas suggested a variety of alternative approaches for evaluating banks' retail lending outside of facility-based assessment area.

First, some commenters suggested evaluating all of a large bank's retail lending outside of its facility-based assessment areas at a broader geographic level, such as at the State or institution level only. In general, these commenters stated that an institution-wide evaluation would: (1) provide a more complete view of a bank's retail lending distributions; (2) maximize geographic coverage; and (3) afford neutral treatment to a bank's business model, consistent with the agencies' goals for CRA modernization. At least one of these commenters suggested that an institution-level evaluation could be supplemented by providing banks positive consideration for strong lending performance in underserved geographic areas.

Second, other commenters suggested evaluating large banks in retail lending assessment areas only at a bank's option, emphasizing the compliance burden of the retail lending assessment area proposal.

Third, some commenters suggested that banks should be required to delineate assessment areas in geographic areas with the greatest need, such as rural areas, majority-minority areas, and Native Land areas. These commenters generally expressed concerns that, under the proposed approach, retail lending assessment areas would not necessarily cover these geographic areas, and thus would not necessarily incentivize banks to increase lending in the areas of greatest need.

Finally, many commenters recommended requiring banks to delineate an assessment area where they have concentrations of deposits outside of facility-based assessment areas, either as an alternative or in addition to the agencies' proposed retail lending assessment areas. Some of these commenters provided the view that, compared to retail lending assessment areas, deposit-based assessment areas would be more consistent with the CRA's emphasis on banks' reinvesting in the communities from which they draw deposits. Some commenters added that deposit-based assessment areas would be especially important for capturing banks whose business models involve collecting deposits through non-branch channels, but that do not necessarily engage in lending in the communities from which those deposits are drawn. A few commenters suggested that the agencies could wait until the proposed deposit data collection and reporting provisions are implemented, and then revisit the issue of whether to require delineation of deposit-based assessment areas. In contrast, another commenter opposed establishing deposit-based assessment areas because it would require deposit data collection and reporting requirements for all large banks.

Final Rule

For the reasons discussed below, the agencies are including the retail lending assessment area approach in the final rule. However, in response to commenter feedback and in consideration of the agencies' policy objectives, the agencies are also adopting several modifications to the retail lending assessment area proposal. Specifically, the final rule: (1) tailors the retail lending assessment area requirement to a narrower subset of large banks by exempting large banks that conduct more than 80 percent of

[644] *See, e.g.,* 12 U.S.C. 2901(a)(3) (referring to banks' obligation to ''help meet the credit needs of the local communities in which they are chartered'').

[645] *See, e.g.,* 12 U.S.C. 2906(b)(1)(B) (requiring the agencies to present certain information related to a bank's performance ''separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branches'').

[646] *See* 12 U.S.C. 2902(4) (permitting a bank ''whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic'' to ''define its 'entire community' to include its entire deposit customer base without regard to geographic proximity'').

their retail lending in facility-based assessment areas from the retail lending assessment area requirement; (2) reduces the number of retail lending assessment areas that affected large banks will need to delineate by increasing the proposed home mortgage loan and small business loan count thresholds for triggering retail lending assessment areas; (3) reduces the number of product lines evaluated in retail lending assessment areas by modifying the evaluation of a large bank's retail lending performance in retail lending assessment areas so that only closed-end home mortgage loans and small business loans are evaluated, and only if they exceed the applicable loan count threshold; and (4) narrows the geographic scope of certain retail lending assessment areas by tailoring the proposed geographic requirements for retail lending assessment areas in the nonmetropolitan area of a State to exclude any counties in which a large bank did not originate any reported closed-end home mortgage loans or small business loans. These modifications to the proposal are discussed in detail below.

Legal authority. The agencies have considered all of the issues raised by commenters regarding their legal authority to require large banks to delineate retail lending assessment areas and to evaluate the retail lending performance of large banks in those areas. Consistent with the agencies' views stated in the proposal, and upon further deliberation and consideration, the agencies have concluded that the CRA authorizes the agencies to evaluate large banks' retail lending performance in geographic areas where banks have concentrations of retail loans. In particular, the CRA requires the agencies to assess a bank's record of meeting the credit needs of its *entire community,* without defining what constitutes a bank's entire community.[647] Further, the references to a bank's *local communities* in the congressional findings and purpose section of the statute do not define what geographic areas constitute a bank's local communities.[648]

The CRA includes provisions that specifically relate to the preparation of written evaluations that support the conclusion that the geographic areas where a bank maintains deposit-taking facilities are considered part of the bank's entire community.[649] However, nothing in these provisions indicates that a bank's entire community consists of *only* these geographic areas. Similarly, the provision of the statute concerning banks that serve the needs of military personnel, also cited by some commenters, does not support the view that other types of banks' local communities or entire communities are limited to areas with geographic proximity to a deposit-taking facility.[650]

The CRA delegates authority to the agencies to prescribe regulations to carry out the purposes of the CRA.[651] To achieve its purposes, the CRA requires the agencies to assess whether a bank is meeting the credit needs of all parts of the communities it serves, without excluding the low- and moderate-income neighborhoods in those communities.[652] The agencies have determined, based on their supervisory experience and expertise, that a large bank's ''entire community'' can reasonably be considered to include areas where the bank is conducting meaningful banking activity by making a substantial number of retail loans. The agencies have concluded that retail lending assessment areas fall within the requirements imposed on the agencies by the CRA to assess a bank's record of meeting the credit needs of its entire community, and properly further the purpose of the statute to encourage banks to meet the credit needs of all parts of communities in which they meaningfully operate and that they serve.

Policy objectives of retail lending assessment areas. In developing the overall retail lending assessment area approach in the proposed and final rules, the agencies seek to achieve several different policy objectives.

First, the overall retail lending assessment area approach adapts to ongoing changes to the banking industry. The current CRA regulations generally define assessment areas in connection with a bank's main office, branches, and deposit-taking ATMs. However, the agencies recognize that changes in technology and in bank business models have resulted in banks' entire communities extending beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities. To reflect these changes in banking, and to make the assessment area framework more durable over time, the agencies are complementing the existing facility-based assessment area framework in the final rule with a retail lending assessment area requirement tailored to certain large banks.

Second, the retail lending assessment area approach improves parity in the evaluation framework for large banks with different business models. For example, under the current approach, a bank that maintains branches in multiple States and conducts retail lending in the geographic areas served by those branches would have its retail lending evaluated in multiple assessment areas based on the location of its branches; however, an online bank that conducts a similar amount of retail lending in the same geographic areas would not be required to delineate assessment areas in these areas under current standards, and would only be evaluated in one assessment area based on the location of the bank's main office. Under the retail lending assessment area approach of the final rule, however, the online bank may be required to delineate retail lending assessment areas in the geographic areas where it makes a concentration of retail loans, or these loans may be included in the bank's outside retail lending area evaluation, resulting in more comparable CRA evaluations for both banks despite their different business models.

Third, in accounting for ongoing changes to the banking industry and improving parity in the evaluation framework for large banks with different business models, the agencies also seek to retain an emphasis on a large bank's performance in meeting the credit needs of the local communities it serves, consistent with the focus of the CRA. Specifically, the agencies seek to emphasize performance in specific geographic areas by assigning conclusions that reflect the large bank's retail lending performance in those areas, rather than only assigning conclusions at an aggregate level. For example, under the retail lending assessment area approach, a bank that is not meeting the retail credit needs of a specific geographic area in which it has

[647] *See* 12 U.S.C. 2903(a)(1) (requiring that the agencies ''assess [an] institution's record of meeting the credit needs of its entire community'').

[648] *See* 12 U.S.C. 2901(a)(3) (finding that ''regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered'') and 12 U.S.C. 2901(b) (stating that the purpose of the CRA is ''encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.'').

[649] *E.g.,* 12 U.S.C. 2906 (requiring the agencies to prepare a written evaluation of a bank's CRA performance for each metropolitan area and, in the case of an interstate bank, each State and/or multistate metropolitan area in which the bank maintains a branch).

[650] *See* 12 U.S.C. 2902(4) (authorizing a bank whose business predominately consists of serving the needs of military personnel who are not located within a defined geographic area to define ''its entire deposit customer base without regard to geographic proximity'' as ''its 'entire community' '').

[651] *See* 12 U.S.C. 2905.

[652] *See* 12 U.S.C. 2903(a).

made a significant volume of retail loans will receive a conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' in that retail lending assessment area, reflecting the bank's performance in that specific geographic area. As discussed below, the agencies considered an alternative approach in which all of a large bank's retail lending outside of its facility-based assessment areas would only be evaluated in the aggregate (*i.e.,* assigning a single conclusion that reflects the bank's performance with respect to all of its retail lending outside of its facility-based assessment areas), rather than assigning conclusions that reflect the bank's performance in specific geographic areas outside of the bank's facility-based assessment areas where the bank has concentrations of retail lending. For the reasons discussed below, the agencies are not adopting this alternative approach.

Fourth, the retail lending assessment area approach, in combination with the outside retail lending area approach discussed in the section-by-section analysis of final § ____.18, increases the share of retail lending by large banks that is considered in CRA evaluations. Under the current approach, retail lending conducted outside of a bank's assessment areas is not evaluated using the Lending Test criteria; this lending is only considered if the bank has adequately addressed the needs of borrowers within its assessment areas, and does not compensate for poor lending performance within the bank's assessment areas.[653] The retail lending assessment area approach in the final rule applies a metrics-based evaluation approach to retail loans in retail lending assessment areas (and outside retail lending areas) and generally increases the share of retail lending by banks that is evaluated in this manner.

Finally, the agencies seek to achieve the policy objectives described above while also appropriately adjusting for the level of complexity and impact on large banks that would have new retail lending assessment area evaluations. The agencies acknowledge that the retail lending assessment area approach may result in additional compliance costs for large banks; in particular, the agencies have considered feedback from industry commenters that the compliance costs related to the retail lending assessment area approach include costs associated with identifying and delineating retail lending assessment areas, costs associated with reporting the location of retail lending assessment areas, potential costs associated with monitoring performance in retail lending assessment areas, and potential costs associated with meeting performance standards in retail lending assessment areas. The agencies believe that aggregate compliance costs related to the retail lending assessment area approach is correlated with the number of large banks that are required to delineate one or more retail lending assessment areas, the total number of retail lending assessment areas overall, and the number of product lines evaluated within retail lending assessment areas. The retail lending assessment area approach in the final rule is intended to address compliance cost concerns, while simultaneously ensuring that the agencies' other objectives, described above, are achieved.

Modifications to the proposed retail lending assessment area approach. In developing the final rule, the agencies have considered the proposed retail lending assessment area approach in light of the policy objectives described above and public comments on this aspect of the proposal. The agencies continue to believe that evaluating the retail lending performance of certain large banks in geographic areas where they have concentrations of retail loans accomplishes the agencies' policy objectives; accordingly, the final rule includes a retail lending assessment area approach. However, as noted above, the final rule includes several modifications to the retail lending assessment area proposal to better align the retail lending assessment area approach with the agencies' policy objectives.

First, and as described below in the section-by-section analysis of final § ____.17(a), the agencies are adopting the alternative approach discussed in the proposal of exempting from the retail lending assessment area requirement large banks that conduct more than 80 percent of their retail lending in facility-based assessment areas.[654] The agencies believe that this exemption appropriately narrows the scope of the retail lending assessment area requirement to large banks that conduct a significant portion (*i.e.,* 20 percent or more) of their retail lending outside of facility-based assessment areas. This exemption further recognizes that conclusions assigned to the retail lending performance of predominantly branch-based banks in their facility-based assessment areas typically already capture a large majority of these banks' retail lending. In addition, the agencies believe this exemption aligns with the other objectives of adapting to changes in the banking landscape, improving parity in the evaluation framework for branch-based and non-branch based large banks, and minimizing the number of retail lending assessment areas and the number of affected large banks while still achieving the agencies' other policy objectives.

Second, and as described below in the section-by-section analysis of final § ____.17(c), the agencies are increasing, relative to the proposal, the respective loan count thresholds in the final rule for triggering the requirement to delineate retail lending assessment areas from the proposed levels to 150 closed-end home mortgage loans and 400 small business loans. In response to changes to the major product lines evaluated under the Retail Lending Test discussed in the section-by-section analysis of final § ____.22(d), the agencies are also limiting the proposed home mortgage loan count threshold to closed-end home mortgage loans only. In comparison to the proposal, which would have required a large bank to delineate a retail lending assessment area if it originated at least 100 home mortgage loans (*i.e.,* open-end home mortgage loans or closed-end home mortgage loans) or 250 small business loans in a geographic area, the final rule increases these loan count thresholds by 50 percent (for closed-end home mortgage loans only) and 60 percent for small business loans. The agencies believe that these revised loan count thresholds in the final rule strike an appropriate balance between, on the one hand, increasing the share of retail lending that is considered in CRA evaluations and the share of retail lending with respect to which a bank's performance is assigned a conclusion in a specific geographic area, and on the other hand, minimizing the number of retail lending assessment areas and affected large banks while still achieving the agencies' other policy objectives.

Third, and as described below in connection with the section-by-section analysis of final § ____.17(d), the agencies are modifying the evaluation of a large bank's retail lending performance in retail lending assessment areas so that the only retail product lines that may evaluated as a major product line in a retail lending assessment area are closed-end home mortgage loans and small business loans. Further, closed-end home mortgage loans or small business loans are major product lines in a retail lending assessment area only if the product line exceeds the applicable loan

[653] *See* Q&A § ____.22(b)(2) and (3)–4.

[654] *See* final § ____.17(a)(2) and final appendix A, paragraph II.a.1.

count threshold in the retail lending assessment area (*i.e.,* 150 closed-end home mortgage loans, and 400 small business loans). As a result, the number of product lines evaluated in retail lending assessment areas will decrease relative to the proposed approach. The agencies believe that this modification will appropriately focus the retail lending evaluation in retail lending assessment areas on the particular concentration of retail loans responsible for triggering the retail lending assessment area and, in so doing, will reduce the potential compliance costs associated with monitoring performance in these areas.

Finally, and as described below with the section-by-section analysis of final § ____.17(b), the agencies are tailoring the geographic requirements for retail lending assessment areas located in the nonmetropolitan area of a State to exclude any counties in which a large bank did not originate any reported closed-end home mortgage loans or small business loans during the calendar year. As a result, the geographic scope of these retail lending assessment areas will be more focused in comparison to the proposed approach and will limit the evaluation of a large bank's performance in these retail lending assessment areas to the counties in which a bank has conducted retail lending.

Impact of modifications to the proposed retail lending assessment area approach. To assess the cumulative impact of the modifications to the proposed retail lending assessment area approach, the agencies conducted an analysis of the proposed retail lending assessment area approach and the final rule approach using data from the 2018, 2019, and 2020 calendar years.[655] Specifically, assuming that the proposed approach and the final rule approach had been in effect during those years, the agencies calculated the number and share of large banks that would have had to delineate one or more retail lending assessment areas in any of those three years (''affected large banks''), and the number of retail lending assessment areas that would have been delineated in aggregate across all affected large banks under the proposed and final rule approaches, respectively. This analysis, shown in Table 1, showed that the modifications adopted in the final rule, relative to the proposal, would have reduced the number and percentage of affected large banks by about half, from 125 to 63 large banks, and from 33.5 percent to 16.9 percent of large banks in the sample. In addition, the modifications adopted in the final rule approach would have reduced the number of retail lending assessment areas delineated across all affected large banks by almost half, from 1,591 to 863 retail lending assessment areas.

The agencies also analyzed the distribution of the number of retail lending assessment areas across affected large banks that would have been delineated had the proposed approach and the final rule approach been in effect during the 2018, 2019, and 2020 calendar years. As shown in Table 2, among large banks that would have had been required to delineate one or more retail lending assessment areas during the period from 2018 to 2020, most affected large banks would have been required to delineate five or fewer retail lending assessment areas. Under the final rule approach, 24 affected large banks would have been required to delineate more than five retail lending assessment areas, compared to 38 affected large banks under the proposed approach.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

Table 1 of § __.17: Comparison of Proposed and Final Rule Retail Lending Assessment Area Approaches Using 2018-2020 Historical Data

	Final Rule Approach	Proposed Rule Approach
Number of Affected Large Banks	63	125
Percentage of Large Banks that are Affected Large Banks	16.9	33.5
Number of Retail Lending Assessment Areas	863	1591

[655] The agencies used closed-end home mortgage and small business data from the CRA Analytics Data Tables for the years 2016–2020 to perform an analysis of the final rule retail lending assessment area approach and potential alternative approaches. The sample for the analysis included all CRA reporters, except for wholesale, limited purpose, and strategic plan banks which are excluded.

Table 2 of § __.17: Distribution of Retail Lending Assessment Areas Across Affected Large Banks under Proposed and Final Rule Approaches (2018-2020)

Number of Retail Lending Assessment Areas	Final Rule Approach	Proposed Rule Approach
0	310	248
1	19	54
2-5	20	33
6-10	11	11
11-49	8	21
50+	5	6

Note to Tables 1 and 2: Figures reflect hypothetical retail lending assessment area delineations for the 2018-2020 calendar years under the final rule approach and proposed approach. The analysis used data from the CRA Analytics Data Tables. "Affected Large Banks" are those that would have been required to delineate at least one retail lending assessment area in at least one year. A geographic area was counted as a retail lending assessment area for a large bank if the bank would have been required to delineate a retail lending assessment area in that geographic area in at least one calendar year from 2018-2020. The analysis applied the proposed and final rule approaches of requiring retail lending assessment areas to be delineated based on originated loan count thresholds that are applied to the two calendar years prior to each calendar year. The analysis included open-end home mortgages in 2016 and 2017, but not 2018, 2019, and 2020, because HMDA data do not distinguish between open-end and closed-end home mortgage loans prior to 2018. The analysis included all CRA-reporting large banks, except for wholesale, strategic plan, and limited purpose banks, which are excluded. The analysis included a total of 373 large banks.

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C

Availability of data tools. The agencies recognize that large banks that are not exempt from the requirement to delineate retail lending assessment areas will bear some compliance costs, such as costs associated with identifying and delineating retail lending assessment areas, and the costs associated with reporting the location of retail lending assessment areas. In addition, large banks may expend further resources to monitor their performance and meet performance standards in retail lending assessment areas. The agencies will develop and make freely available tools that would leverage reported loan data to help banks identify geographic areas where retail lending assessment areas may be required, and to calculate the retail lending distribution benchmarks that applied to those retail lending assessment areas in recent years. The agencies believe that such tools would also be responsive to some commenters' concerns that large banks may lack the technology and staffing necessary to satisfy CRA requirements in retail lending assessment areas.

Impact of retail lending assessment areas on retail lending outside of facility-based assessment areas. The agencies acknowledge that commenters disagreed on the likely impact of the proposed overall retail lending assessment area approach. In particular, some commenters stated that the approach would incentivize banks to improve their retail lending performance in retail lending assessment areas. Other commenters predicted that banks would reduce their retail lending outside of facility-based assessment areas to avoid the requirement to delineate retail lending assessment areas.

As further described in the section-by-section analysis of final § ____.22, the agencies conducted an analysis using historical data to estimate the recommended conclusions that banks would have received had the final rule Retail Lending Test been in effect in 2018–2020. Regarding large banks' performance in retail lending assessment areas, the agencies estimate that 77.7 percent of retail lending assessment areas delineated by large banks included in the analysis would have received either a ''Low Satisfactory,'' ''High Satisfactory,'' or ''Outstanding'' recommended conclusion, which the agencies believe demonstrates that a ''Low Satisfactory'' or higher conclusion is generally attainable for large banks in retail lending assessment areas. The agencies further note that, while an estimated 20.6 percent of retail lending assessment areas would have received recommended conclusions of ''Needs to Improve,'' and 1.8 percent would have received a recommended conclusion of ''Substantial Noncompliance,'' only approximately 7 percent of large banks included in the analysis would have received a ''Needs to Improve'' Retail Lending Test conclusion when overall retail lending performance is calculated at the institution level (and no large banks included in the analysis would have received a ''Substantial Noncompliance'' conclusion at the institution level). This analysis informs the agencies' belief that the retail lending assessment area approach is reasonable and not unduly burdensome, because the retail lending of a significant majority of affected banks in this analysis is consistent with a ''Low Satisfactory,'' ''High Satisfactory,'' or ''Outstanding'' estimated conclusion, both for retail lending assessment areas, and at the institution level.

Alternatives to retail lending assessment areas. In developing the overall retail lending assessment area approach in the proposed and final rules, the agencies considered alternative ways of modernizing the CRA evaluation framework to provide a more comprehensive evaluation of a large bank's retail lending, including in areas outside of facility-based assessment areas.[656]

First, as suggested by some commenters, the agencies considered an approach under which a large bank's retail lending outside of its facility-based assessment areas would be evaluated only at a broader geographic level, such as at the State or institution level. The agencies decided not to adopt this approach for large banks for several reasons. Under this approach, a bank would not receive a conclusion reflecting its retail lending performance in any specific geographic area outside of its facility-based assessment areas, including specific geographic areas in which it originated a significant number of loans. Compared to such an aggregate approach, the agencies believe that assigning conclusions that reflect a large bank's retail lending performance in retail lending assessments area comports with the CRA's focus on a bank meeting the credit needs of the local communities it serves. Further, assigning conclusions that reflect a large bank's performance in geographic areas where it has concentrations of retail loans provides more specific information to the bank and the public regarding the bank's performance particular geographic areas. Additionally, an institution-level only approach to evaluating a large bank's retail lending outside of its facility-based assessment areas would not achieve the agencies' objective of improving parity in the CRA evaluation framework for large banks with different business models. For example, under the institution-level only approach, a large branch-based bank would have much of its retail lending evaluated within its facility-based assessment areas, and would be assigned conclusions reflecting the bank's retail lending performance in those areas, with only its remaining retail lending evaluated on an aggregate basis at the institution level. By contrast, a large online bank with a similar volume and geographic dispersion of retail lending would have most of its retail lending (*i.e.,* all of its retail lending outside the sole assessment area around the bank's main office) evaluated on an aggregate basis, with no conclusions that reflect performance in specific areas. Under the retail lending assessment area approach of the final rule, however, the large online bank may be required to delineate retail lending assessment areas, and the agencies would assign conclusions reflecting the large bank's retail lending performance in these retail lending assessment areas, resulting in more comparable CRA evaluations for both banks despite their different business models.

Second, the agencies considered making retail lending assessment areas optional but not required, as some commenters requested. However, the agencies believe that an optional evaluation approach would not achieve the agencies' policy objectives since banks could opt out of retail lending assessment areas entirely under this alternative. The agencies are concerned that over time, an optional retail lending assessment area approach would make the assessment area framework less durable to ongoing changes in the banking industry, particularly with any expansion of digital banking. Specifically, if an increasing share of large bank retail lending occurs outside of facility-based assessment areas, and if the agencies could evaluate that lending in retail lending assessment areas only at a bank's option, the policy objectives of increasing the share of retail lending that is considered in CRA evaluations and that is evaluated in specific geographic areas would be undermined. Further, the policy objective of improving parity in the evaluation framework for banks with different business models would be undermined if, for example, non-branch-based banks could opt out of the retail lending assessment area approach.

Third, as suggested by some commenters, the agencies considered requiring large banks to delineate assessment areas in geographic areas with the greatest credit needs, rather than delineating retail lending assessment areas. However, the agencies note that CRA encourages banks to help meet the credit needs of the local communities they serve, and does not require banks to begin serving communities they do not already serve.[657] In addition, the agencies believe it is appropriate to evaluate banks' retail lending performance in the communities it serves, regardless of the presence of other banks in those communities. Further, regarding the concern expressed by commenters that retail lending assessment areas would only be located in large cities, the agencies' analysis of the impact of the final rule Retail Lending Test using historical data indicates that there would have been a mixture of both metropolitan and nonmetropolitan areas in which one or more retail lending assessment areas were located.[658]

Finally, the agencies considered requiring large banks to delineate deposit-based assessment areas in geographic areas outside of facility-based assessment areas where the bank draws a certain volume of deposits. The agencies have considered that there may be benefits to deposit-based assessment areas. However, the deposits data necessary to assess the potential impact of a potential deposit-based assessment area approach are not currently available because the FDIC's Summary

[656] This discussion focuses on approaches to evaluating the retail lending of large banks outside of facility-based assessment areas. The final rule approach for evaluating intermediate and small banks' retail lending outside of facility-based assessment areas is discussed further in the section-by-section analysis of final § ___.18.

[657] *See* 12 U.S.C. 2901(b).

[658] The agencies' analysis using historical data estimated that 18 percent of the RLAAs that would have been delineated during the 2018–2020 evaluation period would have been located in the nonmetropolitan area of a State.

of Deposits, which is the only source of information available on the geographic dispersion of bank deposits, apportions each bank's total deposits across its main office and its branches, all of which are located within its facility-based assessment areas, even when the deposits are collected from depositors outside of the bank's facility-based assessment areas. As a result, deposits collected from beyond a bank's facility-based assessment areas are assigned in the Summary of Deposits to branches within its facility-based assessment areas, making it impossible to determine how much of a bank's deposits were sourced outside of its facility-based assessment areas or from where those deposits were collected. Without such data, the agencies cannot determine, under various potential thresholds, the number of deposit-based assessment areas, the number of affected large banks, or the degree to which deposit-based assessment areas may capture retail lending outside of facility-based assessment areas. In addition, due to the lack of deposits data, the agencies are not able to analyze different policy options related to deposit-based assessment areas, such as whether the threshold for requiring delineation of a deposit-based assessment area should be a certain percentage of a large bank's total deposits in a geographic area, a certain dollar volume of deposits in a geographic area, a certain number of depositors in a geographic area, or based on other factors. For these reasons, the agencies did not adopt the deposit-based assessment area approach.

Section ____.17(a) In General—Banks Subject to the Retail Lending Assessment Area Requirement

The Agencies' Proposal

The agencies proposed to apply the retail lending assessment area requirement solely to large banks, including large banks that elect to be evaluated under an approved strategic plan.[659] In addition, the agencies also sought feedback on an alternative approach that would tailor the retail lending assessment area requirement by exempting large banks from the requirement to delineate retail lending assessment areas if such banks conduct a significant majority of their retail lending, such as more than 80 or 90 percent of their retail loans, inside their facility-based assessment areas. This exemption would exclude banks that are primarily branch-based from the retail lending assessment area requirement, reflecting the view that such banks' overall Retail Lending Test conclusion could be reasonably derived by focusing on the activity within their facility-based assessment areas. Under this alternative, the retail loans of an exempt bank outside of the bank's facility-based assessment areas would not be evaluated within a retail lending assessment area, but the agencies would evaluate this lending under the proposed outside retail lending area approach discussed in the section-by-section analysis of final § ____.18.

Comments Received

Numerous commenters addressed the types of banks that should be subject to the proposed requirement to delineate retail lending assessment areas.

Tailoring of retail lending assessment area requirement by bank size. Some commenters supported the proposal not to apply the retail lending assessment area requirement to small and intermediate banks. As noted previously, a few commenters stated that the compliance burden associated with the retail lending assessment area proposal would be particularly acute for smaller large banks, with at least one such commenter recommending that the retail lending assessment area requirement should apply only to large banks with at least $10 billion in assets.

Conversely, a few commenters suggested expanding the universe of banks subject to retail lending assessment area requirement. Some of these commenters favored requiring at least some intermediate banks to delineate retail lending assessment areas. For example, at least one commenter asserted that intermediate banks, especially those with over $1 billion in assets, have sufficient capacity and knowledge of local markets to serve retail lending assessment areas. A few other commenters suggested that intermediate banks should be required to delineate retail lending assessment areas if they are not primarily branch-based. A few commenters asserted that all banks, including small banks and intermediate banks, should be evaluated in retail lending assessment areas because banks of any size may conduct a significant amount of lending activity outside of their facility-based assessment areas.

Tailoring of retail lending assessment area requirement by business model. Many commenters favored some form of an exemption from the requirement to delineate retail lending assessment areas for large banks that lend primarily within their facility-based assessment areas. In general, these commenters stated that it is not necessary to evaluate primarily branch-based banks in retail lending assessment areas because their retail lending is already concentrated in facility-based assessment areas. These commenters also stated that the retail lending assessment area requirement is appropriately applied to online banks but should not impose additional burden on traditional branch-based banks. These commenters offered various suggestions in terms of the percentage of retail lending that a large bank must conduct within its facility-based assessment areas to benefit from any exemption, with commenter suggestions generally ranging from 50 to 90 percent.

However, several other commenters opposed providing any exemption from the retail lending assessment area requirement for large banks that primarily lend within facility-based assessment areas. These commenters generally stated that large banks should be evaluated for their retail lending performance in all areas where they conduct a meaningful amount of lending, and that an exemption could result in substantial amounts of retail lending for which a conclusion is not assigned in a specific geographic area, especially in rural areas. At least one commenter stated that it is not necessary to exempt primarily branch-based banks from the retail lending assessment area requirement because the proposed approach would appropriately account for differences in bank business models by giving more weight to those assessment areas where a bank's retail lending is concentrated, while still holding banks accountable for performance wherever they conduct retail lending business.

Beyond an exemption for primarily branch-based banks, a few commenters offered alternative approaches for tailoring the retail lending assessment area requirement based on a large bank's business model. A few commenters suggested that the agencies should qualitatively assess a large bank's business model and practices to identify and exempt those banks whose lending and account-opening activities are not conducted through a branch network. At least one commenter asserted that the agencies should exempt strategic plan banks from the retail lending assessment area requirement to preserve the flexibility of the strategic plan option.

Final Rule

The agencies are adopting a modified version of proposed § ____.17(a). Similar to the proposal, final § ____.17(a)(1) provides that, based upon the criteria described in § ____.17(b) and (c), a large bank must delineate retail lending assessment areas within which the

[659] *See* proposed § ____.17(a).

agencies evaluate the bank's record of helping to meet the credit needs of its entire community pursuant to the Retail Lending Test.

However, as discussed below, the agencies are adopting an exemption from the retail lending assessment area requirement for large banks that conduct a substantial majority of their retail lending in facility-based assessment areas. Specifically, final § ____.17(a)(2) provides that a large bank is not required to delineate retail lending assessment areas for a particular calendar year if, in the prior two calendar years, the large bank originated or purchased within its facility-based assessment areas more than 80 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans (if automobile loans are a product line for the large bank), as described in paragraph II.a.1 of final appendix A.

In addition, final § ____.17(a)(3) provides that if, in a retail lending assessment area delineated pursuant to § ____.17(c), the large bank did not originate or purchase any reported loans in any of the product lines that formed the basis of the retail lending assessment area delineation pursuant to § ____.17(c)(1) or (2) (*i.e.,* the closed-home mortgage loan and small business loan count thresholds), the agencies will not consider the retail lending assessment area to have been delineated for that calendar year. The agencies believe this limitation was implicit in the proposal, but that it is helpful for the final rule to explicitly state that the agencies will not evaluate a bank's retail lending performance in a retail lending assessment area in which a large bank did not originate or purchase any reported closed-end home mortgage loans or small business loans, as applicable, in the calendar year.

Application to large banks. The agencies continue to believe that it is appropriate to apply the retail lending assessment area requirement to large banks, but not small or intermediate banks. The agencies see significant benefits to increasing the share of retail lending for which a conclusion is assigned reflecting the bank's performance in a specific geographic area. However, the agencies believe that these benefits must be weighed against the potential additional compliance burden of the approach, such as compliance costs associated with identifying and delineating retail lending assessment areas, and reporting the location of retail lending assessment areas. On balance, the agencies believe it is appropriate to tailor the retail lending assessment area requirement to large banks, recognizing that large banks generally have more resources and therefore greater capacity than small and intermediate banks to adapt to new regulatory provisions such as retail lending assessment areas. The agencies note that, as discussed in the section-by-section analysis of final § ____.18, under the final rule, the agencies will evaluate the retail lending performance of an intermediate bank, and a small bank that opts to be evaluated under the Retail Lending Test, in its outside retail lending area if the bank conducts a majority of its retail lending outside of its facility-based assessment areas.

The agencies have carefully considered comments regarding the potential burden that the retail lending assessment area approach may impose on large banks, including specific commenter suggestions for further tailoring the proposed requirement to a narrower subset of large banks. The agencies appreciate these concerns and suggestions and, as described below, are adopting an exemption to the retail lending assessment area requirements for primarily branch-based large banks.

Exemption for primarily branch-based large banks. To further tailor the application of the retail lending assessment area requirement, final § ____.17(a)(2) sets forth an exemption from the retail lending assessment area requirement for certain large banks. Specifically, a large bank is not required to delineate retail lending assessment areas in a particular calendar year if, in the previous two calendar years, the large bank originated or purchased within its facility-based assessment areas more than 80 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans (if automobile loans are a product line for the large bank). The 80 percent calculation is further described in paragraph II.a.1 of final appendix A.

The agencies believe that it is appropriate to exempt primarily branch-based large banks from the retail lending assessment area requirement for two main reasons. First, such an exemption would tailor the approach by focusing the retail lending assessment area framework on those large banks for which facility-based assessment area evaluations alone do not capture the vast majority of the bank's retail lending. For large banks conducting 80 percent or less of their retail lending within facility-based assessment areas, the agencies believe that evaluating retail lending performance in retail lending assessment areas is an appropriate way to update where large banks are locally evaluated for their retail lending performance. For large banks that conduct more than 80 percent of their retail lending within facility-based assessment areas, the agencies believe that a sufficient share of the bank's retail lending is already evaluated, and conclusions are already assigned reflecting the bank's retail lending performance, in specific geographic areas. The agencies note that, under the final rule, large banks that are exempt from the retail lending assessment area requirement will still be evaluated for their retail lending performance outside of their facility-based assessment areas through the outside retail lending area evaluation, as discussed in the section-by-section analysis of final § ____.18.

Second, such an exemption would have the benefit of resulting in a significant number of large banks no longer having any retail lending assessment area requirement, compared to the proposed approach. The agencies believe this will reduce the aggregate compliance burden associated with the retail lending assessment area approach, as discussed above.

80 percent threshold. Under the final rule, as discussed above, large banks that conduct more than 80 percent of their retail lending, based on a combination of loan dollars and loan count as defined in § ____.12, within their facility-based assessment areas are exempt from the retail lending assessment area requirement. In determining the level of the 80 percent threshold, the agencies considered a number of factors. The agencies considered commenter suggestions for lower thresholds and, as a preliminary matter, considered that a threshold below 50 percent would mean that, for up to half of a large bank's retail lending, the bank would not be assigned any conclusions that reflect the bank's retail lending performance in specific geographic areas. The agencies believe that evaluating up to half of a large bank's retail lending (*i.e.,* the retail lending outside of the large bank's facility-based assessment areas) only in the aggregate through the outside retail lending area evaluation could provide a misleading picture of the large bank's overall retail lending performance if, for example, strong performance in parts of the outside retail lending area obscured poor performance in other parts of the outside retail lending area. For this reason, the agencies are adopting a heightened standard rather than a simple majority standard.

In addition, the agencies believe that the 80 percent threshold, compared to other potential threshold levels, achieves an appropriate balance of increasing the share of a large bank's retail lending for which a conclusion is assigned reflecting the bank's performance in a specific geographic area while limiting the number of large banks required to delineate retail lending assessment areas. In making this determination, the agencies considered, for a range of potential thresholds, the number of large banks that would be required to delineate at least one retail lending assessment area, the total share of retail lending across large banks that would have been evaluated within retail lending assessment areas, and the share of closed-end home mortgage and small business lending across large banks outside of their facility-based assessment areas that would have been evaluated in retail lending assessment areas had the final rule retail lending assessment area approach been in effect in the 2018, 2019, and 2020 calendar years. The agencies noted that a 90 percent threshold, relative to an approach with no exemption, only slightly reduced the number of affected large banks, from 88 to 83 large banks, while an 80 percent threshold provided a more significant reduction to 63 large banks. The agencies further noted that the 80 percent threshold reduced the percentage of closed-end home mortgage lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas from 35.9 to 23.0 percent, and for small business lending, a more modest reduction from 45.3 to 39.3 percent. While threshold options of 50, 60, and 70 percent would have further reduced the number of affected banks, these thresholds would also have resulted in lower percentages of closed-end home mortgage and small business lending outside of facility-based assessment areas being evaluated within retail lending assessment areas.

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Table 3 of § __.17: Impact of Different Retail Lending Assessment Area Exemption Thresholds Using 2018-2020 Historical Data

Threshold	Number of Affected Large Banks	Percentage of Large Banks that are Affected Large Banks	Percentage of Outside Closed-End Home Mortgage Lending Evaluated in Retail Lending Assessment Areas	Percentage of Outside Small Business Lending Evaluated in Retail Lending Assessment Areas
50%	31	8.3	15.1	14.4
60%	42	11.3	16.2	30.9
70%	49	13.1	21.4	35.5
80% (final rule)	63	16.9	23.0	39.3
90%	83	22.3	35.7	44.2
100% (no threshold)	88	23.6	35.9	45.3

Note: Figures reflect hypothetical retail lending assessment area delineations for the 2018-2020 calendar years under the final rule approach using different retail lending assessment area exemption threshold options. The analysis used data from the CRA Analytics Data Tables. "Affected Large Banks" are those that would have been required to delineate at least one retail lending assessment area in at least one year. "Outside" lending refers to closed-end home mortgage and small business lending by large banks outside of their facility-based assessment areas; these columns show the percentage, by loan count, of outside lending that would have been evaluated in retail lending assessment areas. The analysis applied the final rule approach of requiring retail lending assessment areas to be delineated based on originated loan count thresholds that are applied to the two calendar years prior to each calendar year. The analysis included open-end home mortgages in 2016 and 2017, but not 2018, 2019, and 2020, because HMDA data do not distinguish between open-end and closed-end loans prior to 2018. The analysis included all CRA-reporting large banks, except for wholesale, strategic plan, and limited purpose banks, which are excluded. The analysis included a total of 373 large banks.

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C

Calculation of 80 percent threshold. Under the final rule, and as specified in paragraph II.a.1 of final appendix A, the 80 percent threshold is calculated based on the share of a large bank's retail loans originated or purchased in its facility-based assessment areas, out of the bank's retail loans originated and purchased overall over the prior two calendar years. The retail loans included in this calculation are the large bank's originated and purchased home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the large bank.[660] The

[660] Under the final rule, and as discussed in the section-by-section analysis of final § ____.12 (definition of ''product line''), automobile loans are a product line for a bank if the bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to the Retail Lending Test.

retail loans included in the calculation of the 80 percent threshold are thus identical to the loans included in the numerator of the Bank Volume Metric calculated for purposes of the Retail Lending Volume Screen in final § ____.22(c). The agencies believe that it is important to harmonize the measures of a bank's retail lending used for various calculations where appropriate to simplify the final rule to the extent possible. Further, the agencies believe that these retail product lines can be viewed as a reasonable reflection of a bank's overall business model for a bank that is not a limited-purpose bank, and thus, it is appropriate to look to these loans for purposes of determining whether a large bank is primarily branch-based.

Under the final rule, the 80 percent threshold is calculated over the two calendar years preceding each calendar year. The agencies believe that calculating the 80 percent threshold over the two preceding calendar years will provide greater certainty to large banks regarding whether they qualify for the exemption, compared to a calculation based on a one-year lookback period.

The 80 percent threshold is calculated based on a combination of loan dollars and loan count as defined in final § ____.12. Specifically, the agencies calculate the share of the large bank's retail lending within its facility-based assessment areas based on loan dollars, and the same percentage based on loan count, then take the simple average of the two percentages. Using a combination of loan dollars and loan count is consistent with various other calculations in the final rule, and is intended to reflect both the total dollars of loans originated and purchased as well as the number of borrowers served, which the agencies believe appropriately reflects the degree to which a bank is serving a geographic area.

Alternative methods of identifying primarily branch-based banks. The agencies considered the alternative methods suggested by commenters for identifying primarily branch-based large banks. In particular, the agencies considered adopting a qualitative approach to identifying large banks that rely on non-branch delivery channels. However, the agencies believe that such an approach would be inconsistent with the agencies' goal of providing greater clarity and consistency in the application of the CRA regulations.

The agencies also considered exempting strategic plan banks from the retail lending assessment area requirement but decline to do so in the final rule. As discussed above, the agencies intend the retail lending assessment area approach, together with facility-based assessment areas, to establish the local communities in which a large bank is evaluated for its CRA performance, and the agencies believe that inconsistency with respect to such a core aspect of the CRA evaluation framework would not be desirable. The agencies do not believe it would be appropriate to create an incentive for banks to seek approval under a strategic plan to avoid otherwise applicable requirements to delineate retail lending assessment areas. As described in the section-by-section analysis of final § ____.27, the final rule includes other provisions that facilitate a customized approach to evaluating strategic plan banks; however, the retail lending performance of strategic plan banks will still be evaluated in retail lending assessment areas where applicable.[661]

Section ____.17(b) Geographic Requirements for Retail Lending Assessment Areas

The Agencies' Proposal

Under proposed § ____.17(b)(1), large banks would be required to delineate retail lending assessment areas consisting of either: (1) the entirety of a single MSA, excluding counties inside their facility-based assessment areas; or (2) all of the counties in a single State that are not included in an MSA, excluding counties inside their facility-based assessment areas, aggregated into a single retail lending assessment area. Similar to the proposal for facility-based assessment areas,[662] and consistent with the current regulations,[663] proposed § ____.17(b)(2) specified that 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.

The agencies sought feedback on what should happen if a bank's retail lending assessment area is located in the same MSA (or nonmetropolitan area of a State) where a smaller facility-based assessment area is located. Specifically, the agencies asked whether a bank in this case should be required to expand its facility-based assessment area to the whole MSA (or nonmetropolitan area of a State), or whether the bank should have the option to designate the portion of the MSA that excludes the facility-based assessment area as a new retail lending assessment area.

Comments Received

Geographic requirements. Some commenters expressed concerns that the proposed geographic requirements for retail lending assessment areas may not accurately reflect where a bank conducts retail lending business, potentially leading to unrealistic and misleading performance conclusion. For example, a few commenters recommended that only those counties within which a bank has a certain minimum number or percentage of retail loans should be included in a retail lending assessment area.

Several commenters provided views specific to retail lending assessment areas located in the nonmetropolitan area of a State. For example, at least one commenter expressed support for the proposed requirement that a retail lending assessment area in the nonmetropolitan area of a State must consist of that entire area, noting that this approach would help capture underserved nonmetropolitan areas. However, a few commenters suggested that the entire nonmetropolitan area of a State would often be too large for a bank to serve, especially in states with large rural geographic areas, due to limited bank capacity. At least one commenter indicated that it would be challenging for the agencies to consider performance context for an entire nonmetropolitan area of a State because these areas may vary considerably.

Retail lending assessment areas and facility-based assessment areas in the same MSA or nonmetropolitan area of a State. Some commenters addressed what should happen if a large bank's retail lending assessment area is located in the same MSA or the nonmetropolitan area of a State where a facility-based assessment area is located. Some of these commenters supported allowing banks to designate the portion of the MSA or the nonmetropolitan area of the State that is not part of the bank's existing facility-based assessment area as a new retail lending assessment area, consistent with the proposal. Other commenters supported the alternative approach of requiring banks that maintain a facility-based assessment area in the same MSA or nonmetropolitan area of a State where a retail lending assessment area is located to expand their facility-based assessment areas to encompass the entire MSA or nonmetropolitan area of a State. Some of these commenters favorably noted that the alternative approach would mean that a large bank would be evaluated under all four

[661] *See* final § ____.27(c)(3) and (g)(1).

[662] *See* proposed § ____.16(b)(2).

[663] *See* current 12 CFR ____.41(e)(4).

applicable performance tests in the entire MSA or nonmetropolitan area of the State due to expansion of its facility-based assessment area, rather than only evaluating the large bank in the retail lending assessment area under the proposed Retail Lending Test. At least one commenter recommended that the agencies apply either the proposed or the alternative approach depending, in each case, on which option would increase retail lending to underserved communities.

Legal concerns regarding geographic requirements. Some commenters raised legal concerns that the geographic requirements for retail lending assessment areas may not be consistent with the CRA. For example, at least one commenter stated that the agencies did not explain in the proposal how an MSA or the nonmetropolitan area of a State would constitute a ''local community.'' Commenter feedback included the observation that these retail lending assessment areas often cover relatively large geographic areas. The commenter also noted that the agencies did not discuss why smaller geographic base units for retail lending assessment areas were not considered.

Final Rule

The agencies are adopting, with revisions, the proposed geographic requirements for retail lending assessment areas. Specifically, final § ____.17(b)(1) provides that a retail lending assessment area must consist of either:

1. 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 any counties inside the large bank's facility-based assessment areas, or

2. All of the counties in the nonmetropolitan area of a State (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding any counties included in the large bank's facility-based assessment areas, and excluding any counties in which the large bank did not originate any closed-end home mortgage loans or small business loans that are reported loans during that calendar year.

In addition, the agencies are modifying the proposed prohibition on retail lending assessment areas extending beyond a State boundary. Specifically, final § ____.17(b)(2) provides that a retail lending assessment area may not extend beyond a State boundary unless the retail lending assessment area consists of counties in a multistate MSA. Final § ____.17(b)(2) does not permit a retail lending assessment area to extend beyond a State boundary on the basis that the retail lending assessment area consists of counties located in a combined statistical area.

Legal considerations. The agencies considered commenter feedback that requiring retail lending assessment areas to consist of an entire MSA or the entire nonmetropolitan area of a State may not be consistent with the statute. However, the agencies concluded that the geographic requirements for retail lending assessment areas in the final rule are within the scope of authority granted to the agencies under the CRA. As noted above, the CRA requires the agencies to assess a bank's record of meeting the credit need of its *entire community,* without defining what geographic areas constitute a bank's ''entire community.''[664] The statute further does not define what geographic units the agencies should use in assessing a bank's record of meeting the credit needs of its entire community. References to a bank's *local communities* in the congressional findings and purpose section of the statute, cited by some commenters, similarly do not specify what geographic area or geographic units constitute a local community.[665]

Accordingly, the agencies conclude that it is reasonable to interpret ''entire community'' for a large bank to include retail lending assessment areas consisting of an entire MSA or the nonmetropolitan area of a State. The agencies note that the statute clearly demonstrates that Congress intended the agencies to distinguish between a bank's performance in metropolitan areas and nonmetropolitan areas.[666] Further, Congress explicitly contemplated assigning conclusions that reflect a bank's performance in an entire MSA or in the entire nonmetropolitan area of a State, notwithstanding that the geographic scope of these areas.[667] As such, the agencies believe that using MSAs and the nonmetropolitan areas of States as the geographic base units for delineating retail lending assessment areas is consistent with the statute.

Geographic base units. In addition to these legal considerations, the agencies believe that using MSAs and nonmetropolitan areas of States as the geographic base units for delineating retail lending assessment areas is appropriate for other reasons. Using MSAs and the nonmetropolitan area of a State as geographic base units avoids having multiple retail lending assessment areas in a single MSA or in the nonmetropolitan area of a single State, which the agencies believe would add complexity. Further, and particularly in the case of the nonmetropolitan area of a State, using larger geographic base units (as opposed to counties or census tracts) ensures that a larger number of retail loans, including loans across multiple counties, are captured in a retail lending assessment area and helps to ensure that credit needs and opportunities in nonmetropolitan areas are taken into account when the agencies evaluate a bank's retail lending performance. Relatedly, the agencies considered that larger geographic base units may provide banks with greater flexibility and more opportunities to originate and purchase small business loans and small farm loans, and loans made to low- and moderate-income borrowers and in low- and moderate-income census tracts.

Entire-MSA retail lending assessment areas. The agencies believe it is appropriate to require retail lending assessment areas to consist of an entire MSA, excluding any counties inside facility-based assessment areas. Although some commenters expressed concern that a retail lending assessment area consisting of an entire MSA may not accurately reflect where a bank conducts retail lending business, the agencies believe that the benchmarks used to evaluate a large bank's retail lending performance should reflect the lending opportunities and credit needs of the entire MSA. For example, if a large bank makes loans only in an upper-income portion of an MSA, then excluding other portions of the MSA from the retail lending assessment area would result in relatively low benchmarks, even if the remainder of the MSA has significant lending opportunities and credit needs. Further, the agencies note that unlike in facility-based assessment areas (which are evaluated using the Retail Lending Volume Screen), a large bank is not required to conduct a certain amount of lending in a retail lending assessment area to achieve a particular performance conclusion, and the agencies will not consider as an additional factor the dispersion of a bank's closed-end home mortgage or small business lending within the retail lending assessment area. Thus, requiring a retail lending assessment area to consist of an entire MSA should not result in a requirement for a large bank to serve an area larger than its capacity to serve. Finally, the agencies note that the entire MSA

[664] *See* 12 U.S.C. 2903(a)(1).

[665] *See* 12 U.S.C. 2901(a)(3) and 2901(b).

[666] *See* 12 U.S.C. 2906(b)(1)(B) and 2906(d)(3)(A).

[667] *See id.*

approach for retail lending assessment areas is analogous to the approach under the current CRA regulations that permit assessment areas to consist of an entire MSA.

Retail lending assessment areas in the nonmetropolitan area of a State. Upon consideration of the comments, the agencies have decided in the final rule to exclude from all retail lending assessment areas in the nonmetropolitan area of a State any counties in which a large bank did not originate any reported closed-end home mortgage loans or small business loans during that calendar year. As a result, retail lending assessment areas in the nonmetropolitan area of a State will be more targeted, relative to the proposal, to where a large bank conducts retail lending business in nonmetropolitan areas. In making this change, the agencies have considered feedback from some commenters that the proposed requirement to delineate a retail lending assessment area consisting of the entire nonmetropolitan area of a State may result in retail lending assessment areas that are very expansive, particularly in geographically large states. The agencies have also considered commenter feedback that the proposed approach could result in benchmarks that are based on an entire nonmetropolitan area of a State that is not aligned with the actual geographies served by the bank. For example, the agencies considered that a bank might have a retail lending assessment area in the nonmetropolitan area of a State due to lending across two counties where it does not maintain deposit-taking facilities and that are adjacent to a facility-based assessment area of the bank. In this example, the agencies believe that benchmarks based on the entire nonmetropolitan area of the State would not accurately reflect the lending opportunities reasonably available to the bank, and that setting benchmarks based on only the counties in which the bank made loans is more appropriate. Further, the agencies have also considered that it could be challenging for the agencies to consider performance context in evaluating a large bank's retail lending performance in the entire nonmetropolitan area of a State. In light of these considerations, the agencies believe it may not be reasonable to evaluate a bank's retail lending performance in nonmetropolitan counties in which it did not originate any reported closed-end home mortgage loans or small business loans in a retail lending assessment area.

Combined statistical area retail lending assessment areas. Unlike under the proposal, the final rule does not permit a large bank to delineate a retail lending assessment area consisting of a combined statistical area. As with the proposal regarding retail lending assessment areas in the nonmetropolitan area of a State, the agencies have determined that retail lending assessment areas consisting of a combined statistical area may be too expansive—both for the appropriateness of the benchmarks used to evaluate the bank, and for the agencies to appropriately consider performance context. Further, evaluating a large bank's performance at the combined statistical area level may not provide as useful information regarding the bank's performance in specific geographic areas if, for example, the combined statistical area included multiple distinct MSAs. Finally, and as described in the section-by-section analysis of final § ____.16(b), allowing a retail lending assessment area to extend beyond an MSA boundary in a combined statistical area would create challenges in assigning conclusions consistent with statutory requirements.

Retail lending assessment areas and facility-based assessment areas in the same MSA or nonmetropolitan area of a State. Where a large bank's retail lending assessment area is located in the same MSA or nonmetropolitan area of a State where a smaller facility-based assessment area is located, the agencies considered requiring the large bank to expand its facility-based assessment area to include the entire MSA or entire nonmetropolitan area of the State. However, the final rule retains the proposed approach of allowing the large bank to designate the portion of the MSA or nonmetropolitan area of the State that excludes the facility-based assessment area as a retail lending assessment area. The agencies believe that this approach adequately captures the bank's retail lending performance in the MSA or nonmetropolitan area of a State. Further, in retaining the proposed approach, the agencies sought to preserve the current standard for delineating assessment areas around a bank's deposit-taking facilities, under which standard a bank must include the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans. In particular, a bank might originate or purchase a substantial portion of its loans around a deposit-taking facility located in an MSA or the nonmetropolitan area of a State, and also originate or purchase a significant, but comparably smaller, portion of its loans in the remaining portion of the MSA or nonmetropolitan area of a State. Requiring such a large bank to expand its facility-based assessment area to include these remaining portions of the MSA or the nonmetropolitan area of the State would result in the large bank becoming subject to all four large bank performance tests in the entire MSA or nonmetropolitan area of the State, including in geographic areas where the large bank does not maintain deposit-taking facilities. The agencies believe this may result in additional burden, and that the final rule approach adequately captures a large share of retail lending within CRA evaluations without imposing this additional burden.

Section ____.17(c) Delineation of Retail Lending Assessment Areas

The Agencies' Proposal

Under proposed § ____.17(c), a large bank would be required to delineate a retail lending assessment area in any MSA or in the nonmetropolitan area of any State 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 its facility-based assessment areas; or (2) at least 250 small business loans outside of its facility-based assessment areas. In proposing these loan count thresholds, the agencies considered what thresholds would appropriately align with the amount of lending typically evaluated in a facility-based assessment area. The agencies also considered what loan count thresholds would result in a substantial percentage of loans that a bank makes outside of facility-based assessment areas being evaluated within a retail lending assessment area. The agencies stated that 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.

Comments Received

A number of commenters provided feedback on whether the requirement to delineate a retail lending assessment area should be triggered by loan count thresholds or an alternative type of trigger. In addition, with respect to the proposed loan count thresholds, numerous commenters discussed the number and types of loans that should trigger the retail lending assessment area.

Use of loan count thresholds. Several commenters supported the proposed use of loan counts thresholds to trigger the retail lending assessment area requirement. However, numerous commenters opposed using loan count thresholds to trigger the retail lending assessment area requirement. For example, a few commenters stated that loan count thresholds could be manipulated and that large banks would cap their lending just below these thresholds to avoid triggering a retail lending assessment area. At least one commenter recommended that, if the final rule retains the use of loan count thresholds, the agencies should penalize banks that manipulate their retail lending activity to avoid triggering retail lending assessment areas. A few commenters asserted that using loan count thresholds could make it challenging for banks to identify which markets might trigger retail lending assessment areas due to fluctuations in retail lending volume.

Many commenters opposed to using loan count threshold offered alternative approaches for consideration, with some such commenters advocating for hybrid versions of the alternative approaches described below.

First, a number of commenters recommended a market share approach to triggering the retail lending assessment area requirement. These commenters suggested requiring delineation of a retail lending assessment area only when a bank's market share of retail lending surpasses a certain percentage, with some commenters suggesting 1 or 2 percent of aggregate lending. Arguments supporting this approach centered on eliminating retail lending assessment areas where a bank's lending was not material to the local market and decreasing the number of retail lending assessment areas required and the associated compliance burden for banks. Some commenters that supported the market share approach asserted that using a market share measure instead of the proposed loan count thresholds to trigger retail lending assessment area delineation would help to create retail lending assessment areas in smaller communities. At least one commenter stated that the market share approach is preferable to using loan count threshold because the latter might trigger retail lending assessment areas in areas that are already well-served by other lenders.

Second, some commenters suggested requiring a retail lending assessment area only when a bank's retail lending in the geographic area constitutes a certain minimum percentage of the bank's overall retail lending nationwide, with commenter suggestions ranging from 0.5 percent to 10 percent. In general, these commenters emphasized that such an approach would appropriately target retail lending assessment areas to those geographic areas where banks conduct material levels of lending activity. In addition, some of these commenters indicated that this approach would eliminate retail lending assessment areas where a bank's retail lending volume was not high enough to impact the bank's overall CRA retail lending performance, which would in turn reduce associated compliance burden for banks.

Finally, some commenters suggested other alternative standards for requiring delineation of retail lending assessment areas. For example, at least one commenter suggested that a threshold based on the dollar amount of retail lending, would better ensure that retail lending assessment areas were delineated in areas where banks have a material level of activity. At least one other commenter suggested that a bank should not be required to delineate a retail lending assessment area unless it draws a certain level of deposits from the geography, pointing to the CRA's focus on banks reinvesting in communities from which banks draw deposits. A few commenters suggested replacing the loan count thresholds with what they described as a clearer and more stable indicator of a bank's relevant activity, such as the presence of a loan production office. Similarly, some commenters recommended that if the agencies do not require a facility-based assessment area based on the presence of a loan production office then, at a minimum, the presence of a loan production office should trigger delineation of a retail lending assessment area.

Loan types considered in loan count thresholds. A number of commenters expressed views about the types of loans that should be included in or excluded from the proposed loan counts thresholds used to trigger retail lending assessment areas. For example, many commenters requested that the agencies count loans made by non-bank partners of the bank toward the proposed loan counts thresholds to hold banks more accountable for serving low- and moderate-income borrowers. A few commenters similarly recommended that loans of bank affiliates should count toward the loan count thresholds for triggering a retail lending assessment area.

With respect to the proposed home mortgage loan count threshold, a few commenters recommended excluding certain types of home mortgage loans from the threshold. For example, at least one commenter stated that counting second mortgage loans toward the loan count threshold for triggering a retail lending assessment area could discourage banks from engaging in this activity, which would be detrimental because many banks offer second mortgages to cover down payment and closing costs in conjunction with affordable home mortgage programs, such as State housing finance agency programs. A few commenters noted that home mortgage refinance lending volume is highly sensitive to interest rates and cannot reasonably be controlled by a bank, making these loans unsuitable for counting toward the home mortgage loan count threshold. At least one of these commenters stated that the lower interest rates of recent years have resulted in significant refinance activity, which could result in more banks being required to delineate retail lending assessment areas.

With respect to the proposed small business loan count threshold, a few commenters suggested not counting indirect small business loans. These commenters stated that delineating a retail lending assessment area based on a loan count threshold that includes indirect small business loans would be inappropriate because a third-party dealer or seller markets and originates these loans. Further, at least one of these commenters asserted that banks do not have control over the geographic distribution of these borrowers, nor are they in a position to conduct outreach to low- or moderate-income borrowers in the areas where the dealers are located. At least one other commenter recommended that the agencies consider whether to count small business credit card loans toward the small business loan count threshold, cautioning that this type of lending can be predatory and that distinguishing small business credit card accounts from personal credit card accounts may be difficult.

Some commenters suggested that the loan count thresholds for triggering retail lending assessment requirement should include other types of loans beyond home mortgage and small business loans. A few commenters recommended that the agencies adopt a consumer loan count threshold for triggering retail lending assessment areas (in addition to the proposed home mortgage and small business loan count thresholds), with one such commenter stating that 100 consumer loans should trigger the retail lending assessment area requirement. In general, these commenters asserted that adopting a consumer loan count threshold would result in retail lending assessment areas that more accurately reflect where a bank conducts business. Another commenter stated that the agencies should adopt separate loan count thresholds for credit card loans and non-credit card consumer loans. At least one commenter stated that the agencies did not provide sufficient justification in the proposal as to why home mortgage and small business loans, but not other types of retail loans, were appropriate for triggering retail lending assessment areas.

Loan count threshold levels. A number of commenters discussed the level of home mortgage and small business lending that should trigger the retail lending assessment area requirement. A few commenters asserted that the agencies did not provide sufficient rationale for why the proposed loan count thresholds were set at 100 home mortgage loans and 250 small business loans, and requested that the agencies provide more supporting data and analysis.

A few commenters suggested that the proposed loan count thresholds of 100 home mortgage loans and 250 small business loans were too high. Some of these commenters suggested lower loan count thresholds, such as 50 home mortgage loans and 100 small business loans, stating that lower thresholds would incorporate more rural geographic areas into retail lending assessment areas. Other commenters suggested that large banks should be evaluated in every geographic area in which they conduct any volume of retail lending and that, accordingly, no loan count thresholds are necessary.

However, many commenters recommended increasing the proposed home mortgage and small business loan count thresholds to decrease the number of retail lending assessment areas required, and to ensure that retail lending assessment areas reflect those geographic areas where a bank conducts a meaningful amount of retail lending. Most of these commenters suggested alternative loan count thresholds ranging from 250 to 500 home mortgage loans, and 350 to 750 small business loans.

Final Rule

Section ____.17(c) of the final rule provides that, subject to the geographic requirements in § ____.17(b), a large bank must delineate, for a particular calendar year, a retail lending assessment area in any MSA or the nonmetropolitan area of any State in which it originated at least 150 closed-end home mortgage loans that are reported loans in each year of the prior two calendar years, or at least 400 small business loans that are reported loans in each year of the prior two calendar years. The final rule thus differs from the proposal in that it: (1) includes only closed-end home mortgage loans in, excludes open-end home mortgage loans from, the home mortgage loan count threshold; and (2) increases the loan count thresholds from the proposed loan count thresholds of 100 home mortgage loans and 250 small business loans.

Use of loan count thresholds. After considering public comments, the agencies believe that it is appropriate to use loan count thresholds to trigger the retail lending assessment area requirement. The agencies believe that loan count thresholds remain the most transparent and straightforward approach to identifying geographic areas in which a large bank has concentrations of closed-end home mortgage and small business lending outside of its facility-based assessment areas. The number of loans is a reasonable proxy for a large bank's presence in a particular market, as each loan generally corresponds to one or more borrowers served by the bank.

The agencies considered comments about the potential variability of retail lending assessment area delineations over time. However, the agencies believe that the proposed approach of requiring a large bank to delineate a retail lending assessment area only when it has met the applicable loan count threshold in each year of the two prior calendar years will generally provide greater certainty and reduce variability, relative to an approach in which a single year of lending is sufficient to trigger a retail lending assessment area. In addition, the agencies intend to explore the development of data tools to help large banks monitor those geographic areas where they may be required to delineate a retail lending assessment area and monitor the retail lending distribution benchmarks for such geographic areas.

The agencies considered several alternatives to the use of loan count thresholds suggested by commenters. First, the agencies considered, but did not adopt, a market share approach in place of or in combination with the proposed loan count thresholds. Under such an approach, a large bank would be required to delineate a retail lending assessment area only if the bank's market share of retail lending in the geographic area met a certain threshold. The agencies believe that such an approach would be more complex to administer relative to the loan count threshold approach. In addition, under a market share approach, whether a bank is required to delineate a retail lending assessment area would depend on factors outside of the bank's control, namely the activity of other lenders in the market. Further, the threshold for triggering delineation of a retail lending assessment area could vary considerably from year to year depending on the total number of loans in the market, making retail lending assessment area delineations less predictable. Finally, under the market share approach, the number of loans that would be sufficient to trigger the retail lending assessment area requirement in particular MSAs or the nonmetropolitan areas of States could differ drastically depending on the total number of loans in the market. As a result, the retail lending performance of a large bank could be assigned a conclusion in one specific geographic area, but not another geographic area, despite having a similar number of loans in both geographic areas. The agencies believe that it is more desirable to have consistency in the number of loans used to designate retail lending assessment areas. For these reasons, the agencies have decided to not adopt a market share approach to delineating retail lending assessment areas.

Second, the agencies considered, but are not adopting, a bank-specific lending share approach in place of or in combination with the proposed loan count thresholds. Under such an approach, a large bank would be required to delineate a retail lending assessment area only if the bank's loans in the geographic area represented a certain percentage of the bank's overall retail lending nationwide. The agencies believe that the lending share approach would be somewhat more complex than using loan count thresholds, and would result in inconsistent standards for different banks. For example, under the lending share approach, two large banks could make the same number of closed-end home mortgage or small business loans within the same geographic area, but only one such bank could be required to delineate a retail lending assessment area. The agencies believe that banks engaged in a similar volume of lending in the same market should generally be evaluated in a consistent manner. For these reasons, the agencies have decided not to adopt the lending share approach.

Third, the agencies considered, but are not adopting, a deposit share approach in combination with the proposed loan count thresholds. Under such an approach, a large bank would be required to delineate a retail lending assessment area only if it meets an applicable loan count threshold and has a certain number of depositors in or draws a certain volume of deposits from a geographic area. However, as discussed above in connection with the potential deposit-based assessment area approach, the full range of deposits data needed to assess the potential impact of a deposit share approach to triggering the retail lending assessment area requirement is not currently available. However, the agencies note that, under the final rule, for large banks over $10 billion in assets and other banks that elect to report deposits data, the amount of the bank's deposits in a retail lending assessment area will affect the weighting of the retail lending assessment area in assigning conclusions at the State, multistate MSA, and institution levels, pursuant to section VIII of final appendix A. As a result, the weight assigned to each retail lending assessment area will reflect the volume of deposits that the bank draws from the geographic area.

Finally, the agencies considered requiring a large bank to delineate a retail lending assessment area in geographic areas where it maintains loan production offices. The final rule does not adopt this approach. The agencies believe that the products and services offered in, and the number of borrowers served by, a bank's loan production offices vary widely, and as such, it is preferable to use established loan count thresholds to delineate retail lending assessment areas. For example, the agencies note that a bank may establish a loan production office as an initial step to gain a foothold in a new market where the bank has made few or no loans. The agencies also note that, once a loan production office outside of a bank's facility-based assessment area becomes established and the office originates closed-end home mortgage loans or small business loans in a particular area, the final rule loan count thresholds will ultimately capture the loans originated from the office in a retail lending assessment area if the loan count thresholds are met.

Loan types considered. Under the final rule, only a large bank's closed-end home mortgage and small business loans would be considered for purposes of determining whether the retail lending assessment area requirement is triggered. Regarding feedback from some commenters that additional types of loans, particularly consumer loans, should count toward the loan count thresholds, the agencies have considered this feedback and determined that adopting additional loan count thresholds would necessitate additional data collection and reporting requirements. For example, the agencies believe that individual loan data collection and reporting for consumer loans, or potentially only automobile loans, would be necessary in order to use those product lines to establish loan count thresholds for the purposes of establishing retail lending assessment areas. As discussed further in the section-by-section analysis of final § ____.42, the agencies have determined to only require automobile lending data collection and maintenance, but not reporting, for large banks for which automobile loans are a product line (*i.e.,* majority automobile lenders, and banks that opt to have their automobile loans evaluated pursuant to the Retail Lending Test). Further, the agencies believe that the focus on closed-end home mortgage and small business lending is appropriate given the central importance of these products to meeting community credit needs and given the agencies' objective to minimize compliance costs by limiting data collection and reporting requirements. The agencies also note that consumer loans other than automobile loans will generally not be evaluated under the Retail Lending Test, but rather, will be considered under the responsive credit products component of the Retail Services and Products Test, as discussed in the section-by-section analysis of final § ____.23(c).

With respect to the home mortgage loan count threshold, the final rule would only consider a bank's closed-end home mortgage loans, and not open-end home mortgage loans as proposed. As discussed in the section-by-section analysis of final § ____.22(d), under the final rule, the geographic and borrower distributions of a bank's open-end home mortgage loans will not be evaluated under the Retail Lending Test. For this reason, the agencies removed open-end home mortgage loans from the home mortgage loan count threshold for purposes of triggering the retail lending assessment area requirement. For a large bank that originates open-end home mortgage loans, this change has the effect of making it less likely that the large bank's home mortgage lending meets any particular loan count threshold triggering the retail lending assessment area delineation requirement. For example, a large bank that originated 150 home mortgage loans in an MSA in each year of the prior two calendar years, 100 of which were open-end home mortgage loans and 50 of which were closed-end home mortgage loans, would have been required to delineate a retail lending assessment area under the proposed approach, but would not be required to delineate a retail lending assessment area under the final rule approach due to the exclusion of open-end home mortgage loans from the final rule loan count thresholds.

However, beyond the exclusion of open-end home mortgage loans, the agencies are not excluding other types of home mortgage or small business loans from the respective loan count thresholds, as some commenters suggested. The agencies believe that excluding certain types of loans—such as affordable housing loans, home mortgage refinance loans, indirect small business loans, or small business credit card loans—from the loan count thresholds would produce a less comprehensive picture of a large bank's lending in a particular geographic area. Finally, the agencies believe that aligning the closed-end home mortgage and small business loans considered in the loan count thresholds with reported loan data simplifies the loan count threshold calculation.

The agencies are also not adopting the suggestions by some commenters to require that loans originated by a large bank's affiliates or non-bank partners, other than a bank's operations subsidiaries or operating subsidiaries, count toward the loan count thresholds in final § ____.17(c). However, as discussed further in the section-by-section analysis of final § ____.21(b), the final rule does include the activities of a bank's operations subsidiaries or operating subsidiaries in a bank's evaluation, including with respect to loan counts for determining a large bank's retail lending assessment area delineations.

In addition, final § ____.21(b)(3)(iv) provides that if a large bank opts to have the agencies consider the closed-end home mortgage loans or small business loans that are originated or purchased by any of the bank's affiliates in any Retail Lending Test Area, the agencies will consider the closed-end home mortgage loans or small business loans originated by all of the bank's affiliates in the nationwide area toward the loan count thresholds in final § ____.17(c). The agencies believe that this approach affords an appropriate degree of flexibility for bank business models that involve affiliates other than operations subsidiaries or operating subsidiaries, as discussed in the section-by-section analysis of § ____.21(b).

Loan count threshold levels. Under the final rule, a large bank that is not exempt from the retail lending assessment area requirement must delineate a retail lending assessment area in an MSA or the nonmetropolitan area of a State in which it has originated at least 150 closed-end home mortgage loans that are reported loans or at least 400 small business loans that are reported loans in each year of the prior two calendar years. The loan count thresholds in the final rule represent an increase from the proposed loan count thresholds of 100 home mortgage loans and 250 small business loans.

As discussed above, in determining the loan count thresholds in the final rule, the agencies considered commenter feedback as well as different objectives. Specifically, the agencies considered how to balance the objective of increasing the share of retail lending outside of facility-based assessment areas that would be evaluated within retail lending assessment areas, with the objective of limiting the number of retail lending assessment areas and the number of affected large banks. The agencies also considered that retail lending assessment areas would help to adapt the CRA evaluation framework to changes in the banking landscape, and noted the potential challenges associated with monitoring where retail lending assessment areas are required, and monitoring performance within those areas.

The agencies also analyzed data from the 2018, 2019, and 2020 calendar years, summarized in Table 4, to assess how different loan count thresholds would have impacted (1) the number and percentage of affected large banks, (2) the number of retail lending assessment areas, (3) the percentage of lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas, and (4) the number of large banks that would have had to delineate at least 100 retail lending assessment areas over the three calendar years. For all threshold options included in Table 4, the analysis assumed that the final rule retail lending assessment area approach had been in effect during those calendar years, including the exemption for large banks that conduct more than 80 percent of their retail lending within their facility-based assessment areas, the inclusion of only closed-end home mortgage loans (and not open-end home mortgage loans), and the final rule approach to identifying major product lines in retail lending assessment areas.

Based on this analysis, the agencies believe that the increased loan count thresholds in the final rule appropriately tailor the retail lending assessment area requirement while also ensuring that the overall retail lending assessment area approach continues to cover a meaningful percentage of retail lending taking place outside of facility-based assessment areas. Relative to an alternative approach that retained the proposed loan count threshold levels but incorporated the final rule's other modifications to the retail lending assessment area proposal, the final rule loan count thresholds would have significantly decreased the number of affected large banks, from 81 to 63, and the total number of retail lending assessment areas, from 1,301 to 863. In addition, relative to the proposed loan count threshold levels, the historical analysis shows that the final rule loan count thresholds would have decreased the percentage of retail lending outside of facility-based assessment areas that is evaluated in retail lending assessment areas by about 4 percentage points for closed-end home mortgage lending, and by about 5 percentage points for small business lending. The agencies note that, under the final rule, a large bank's retail lending outside of its facility-based assessment areas and retail lending assessment areas is evaluated on an aggregate basis through the outside retail lending area evaluation, discussed in the section-by-section analysis of final § ____.18.

Table 4 also includes the loan count threshold option of 50 closed-end home mortgages and 100 small business loans, as suggested by some commenters. The agencies note that while these decreased thresholds would have increased the share of retail lending outside of facility-based assessment areas that is captured in retail lending assessment areas, they also would have significantly increased the number of affected banks relative to the proposed threshold levels, from 81 to 114, and the total number of retail lending assessment areas, from 1,301 to 2,421. Based on the results of this analysis, and in light of comments regarding the compliance burden associated with retail lending assessment areas, the agencies do not believe that these lower loan count thresholds would appropriately balance the agencies' objectives.

In addition, Table 4 includes two loan threshold options higher than the ones adopted in the final rule. For the potential loan count thresholds of 250 closed-end home mortgage loans or 500 small business loans, the agencies' historical analysis found that, compared to the final rule thresholds, these thresholds would have further decreased the number of affected large banks, from 63 to 50, and the total number of retail lending assessment areas, from 863 to 629. Furthermore, these thresholds would have resulted in a decrease in the percentage of closed-end home mortgage lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas, from 23.0 percent to 17.2 percent, relative to the proposed levels, and would have decreased to a lesser extent the percentage of small business lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas, from 39.3 percent to 37.3 percent, relative to the proposed levels. While on the one hand, these loan count thresholds would have further reduced the number of affected large banks and the total number of retail lending assessment areas, the agencies do not believe that these thresholds would evaluate a sufficient share of large banks' retail lending outside of facility-based assessment areas in specific geographic areas.

Finally, Table 4 also included loan thresholds of 500 closed-end home mortgage loans or 750 small business loans. The agencies' historical analysis indicates that these loan count thresholds would have resulted in only 10.7 percent of large banks' closed-end home mortgage lending outside of facility-based assessment areas being evaluated in retail lending assessment areas, and only 32.7 percent of small business lending. As with the higher potential loan count threshold discussed above, the agencies do not believe that these threshold levels, or any higher threshold levels, would achieve the objective of modernizing the assessment area framework to account for changes in banking.

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

Table 4 of § __.17: Impact of Different Retail Lending Assessment Area Loan Count Thresholds under Final Rule Approach (2018-2020)

Loan Count Thresholds (Closed-End Home Mortgage Loans / Small Business Loans)	Number of Affected Large Banks	Percentage of Large Banks that are Affected Large Banks	Number of Retail Lending Assessment Areas	Percentage of Outside Closed-End Home Mortgage Lending Evaluated in Retail Lending Assessment Areas	Percentage of Outside Small Business Lending Evaluated in Retail Lending Assessment Areas	Number of Large Banks with 100+ Retail Lending Assessment Areas
50/100	114	30.6	2,421	32.4	51.0	6
100/250	81	21.7	1,301	26.9	43.9	5
150/400	63	16.9	863	23.0	39.3	2
250/500	50	13.4	629	17.2	37.3	1
500/750	33	8.8	365	10.7	32.7	1

Note: Figures reflect hypothetical retail lending assessment area delineations for the 2018-2020 calendar years under the final rule approach using different potential loan count threshold options. The analysis used data from the CRA Analytics Data 1s. "Affected Large Banks" are those that would have been required to delineate at least one retail lending assessment area. "Outside" lending refers to closed-end home mortgage and small business lending by large banks outside of their facility-based assessment areas; these columns show the percentage, by loan count, of outside lending that would have been evaluated in retail lending assessment areas. A geographic area was counted as a retail lending assessment area for a large bank if the bank would have been required to delineate a retail lending assessment area in that geographic area in at least one calendar year from 2018-2020. The analysis applied the final rule approach of requiring retail lending assessment areas to be delineated based on originated loan count thresholds that are applied to the two calendar years prior to each calendar year. The analysis included open-end home mortgages in 2016 and 2017, but not 2018, 2019, and 2020, because HMDA data do not distinguish between open-end and closed-end home mortgage loans prior to 2018. The analysis included all CRA-reporting large banks, except for wholesale, strategic plan, and limited purpose banks, which are excluded. The analysis included a total of 373 large banks.

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Section ____.17(d) Use of Retail Lending Assessments Areas

The Agencies' Proposal

The agencies proposed in § ____.17(d) to use retail lending assessment areas delineated by a large bank in the evaluation of the bank's retail lending performance unless the agencies determine that the retail lending assessment areas do not comply with requirements of § ____.17. The agencies did not propose to evaluate other aspects of a bank's performance, including its community development activities, in retail lending assessment areas.

To create parity between the evaluation of a large bank's major product lines in facility-based assessment areas and retail lending assessment areas, the agencies proposed to use the same approach to identify major product lines in both geographic areas, as discussed in the section-by-section analysis of final § ____.22(d). The agencies intended for this approach to ensure that the retail loans that would be evaluated under the distribution analysis component of the Retail Lending Test in both facility-based assessment areas and retail lending assessment areas are those product lines in which the bank specialized locally.

However, the agencies sought feedback on alternative approaches to evaluating a large bank's retail lending performance in retail lending assessment areas. Specifically, the agencies suggested an alternative approach under which the retail lending performance of large banks would be evaluated in retail lending assessment areas with respect to home mortgage lending only if the bank met the proposed 100 home mortgage loans threshold, and with respect to small business lending only if the bank met the proposed 250 small business loans threshold. This alternative approach would differ from the proposed approach in that, under the proposed approach, *all* of a bank's major product lines would be evaluated under the distribution analysis component of the Retail Lending Test in a retail lending assessment area if the bank surpassed at least one of the proposed loan count thresholds.[668] The agencies explained that the alternative approach would more narrowly tailor the evaluation of a large bank's retail lending performance in retail lending assessment areas.

Comments Received

Product lines evaluated in retail lending assessment areas. Numerous commenters addressed the product lines that should be evaluated in retail lending assessment areas under the distribution analysis component of the Retail Lending Test.

A few commenters supported the proposal to evaluate the geographic and borrower distributions of all of a large bank's major product lines in retail lending assessment areas. In general, these commenters stated that a large bank that meets either of the proposed loan count thresholds would be a major lender in the particular market, and that evaluating all of the bank's major product lines would be necessary to fully assess the bank's retail lending impact. At least one commenter, noted that the proposed approach to weighting different major product lines would ensure that there is an appropriate emphasis on a bank's most relevant product lines in CRA evaluations.

However, most commenters on this topic recommended evaluating the geographic and borrower distributions a more limited set of product lines in retail lending assessment areas. Of these commenters, most recommended only evaluating home mortgage loans or small business loans in a retail lending assessment area, and only if the bank met the relevant loan count threshold, as contemplated as an alternative in the proposal.

Some commenters suggested other approaches for determining which of a large bank's product lines should be evaluated under the distribution analysis component of the Retail Lending Test in a retail lending assessment area. For example, one commenter suggested evaluating the geographic and borrower distributions of only the top two product lines in each retail lending assessment area. Many of the commenters that recommended using a market share or lending share approach for triggering the retail lending assessment area requirement also recommended applying the same standard for purposes of determining what product lines are evaluated in a retail lending assessment area.

Evaluation of activities beyond retail lending. A number of commenters recommended that CRA evaluations in retail lending assessment areas should go further than the proposal by including an assessment of not only retail lending activities evaluated under the proposed Retail Lending Test, but also other types of bank activities, particularly community development lending. Several of these commenters stated that evaluating a bank's community development activities in retail lending assessment areas would improve bank responsiveness to the needs of rural communities. At least one commenter stated that banks acquire knowledge of the markets and needs of their retail lending assessments by virtue of doing business there, and thus, it would be appropriate to evaluate a large bank's community development activities in these areas. At least one other commenter stated that banks should not be required to conduct community development activities in retail lending assessment areas, but should receive CRA credit if they do conduct activities in these areas.

Final Rule

The agencies are adopting with revisions, the proposed use of retail lending assessment areas in final § ____.17(d). As under the proposal, the final rule states that the agencies use the retail lending assessment areas delineated by a large bank, unless the agencies determine that a retail lending assessment area does not comply with the requirements of final § ____.17. However, the agencies are narrowing the scope of the evaluation of a large bank's retail lending performance in retail lending assessment areas, relative to the proposal. Specifically, under the final rule approach, only a large bank's closed-end home mortgage loans and small business loans could be evaluated under the distribution analysis component of the Retail Lending Test in a retail lending assessment area. Further, under the final rule approach, the agencies will evaluate these product lines in a retail lending assessment area only to the extent that the large bank meets the applicable loan count thresholds in the retail lending assessment area.

Product lines evaluated. The agencies proposed to evaluate the geographic and borrower distributions of all of a large bank's major product lines in retail lending assessment areas to comprehensively assess whether a bank is meeting the credit needs of the entirety of its retail lending assessment areas. As discussed above, the agencies are persuaded that the benefits of the retail lending assessment approach are outweighed by the complexity of, and compliance burden associated with, the approach as proposed. To simplify the retail lending assessment area framework and reduce the compliance burden associated with retail lending assessment areas, the final rule adopts the alternative approach contemplated in the proposal under which only a large bank's closed-end home mortgage lending and small business lending could be evaluated under the distribution analysis component of the Retail Lending Test in a retail lending assessment area, and only to the extent that the large bank meets the applicable loan count threshold for triggering the retail lending assessment area requirement. In other words, if a large bank meets the loan count thresholds for either or both closed-end home mortgage loans or small business loans and thus must delineate a retail lending assessment area, the product lines responsible for triggering the retail lending assessment area are automatically considered a major product line in the retail lending assessment area.

The agencies also considered alternative approaches suggested by commenters. In particular, the agencies considered only evaluating the geographic and borrower distributions of a large bank's top two product lines in a retail lending assessment area, but

[668] *See* proposed §§ ____.17(c) and ____.22(a)(4).

determined that this approach would add complexity and could undermine predictability, particularly if a large bank has several product lines of a similar size in a retail lending assessment area. The agencies also considered using a market share or lending share threshold to determine which of a large bank's product lines to evaluate under the distribution analysis component of the Retail Lending Test in a retail lending assessment area. However, as discussed above in connection with the use of loan count thresholds, the agencies determined these approaches would add complexity and may fail to capture product lines consisting of a significant number of loans in a retail lending assessment area.

In determining whether to apply the same major product line standard for facility-based assessment areas and outside retail lending areas to retail lending assessment areas as proposed, or whether to adopt the alternative approach of evaluating the geographic and borrower distributions of only the product line or product lines that triggered the retail lending assessment area requirement, the agencies analyzed data from the 2018, 2019, and 2020 calendar years, summarized in Table 5, to assess the percentage of large banks' retail lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas, and the average number of major product lines per retail lending assessment area, had either approach been in effect during those calendar years. In comparing the options, the agencies note that the final rule approach of evaluating only the product line or product lines that triggered the retail lending assessment area would have resulted in a small reduction in the percentage of closed-end home mortgage lending outside of facility-based assessment areas that would have been evaluated within retail lending assessment areas from 27.5 to 23.0 percent. The final rule approach would have resulted in the same percentage of small business lending outside of facility-based assessment areas that would have been evaluated in retail lending assessment areas (39.3 percent) but a decrease in the share of small farm lending that would have been evaluated, from 0.7 to 0 percent. Finally, the final rule approach would have resulted in a significant decrease in the average number of product lines that would have been evaluated in a retail lending assessment area, from 1.4 to 1.1. The agencies believe that lowering the number of product lines evaluated in retail lending assessment areas will decrease the potential complexity and burden of the retail lending assessment area approach, and that this decreased complexity and burden outweighs the potential loss of coverage for closed-end home mortgage, small business, and small farm lending evaluated within retail lending assessment areas.

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Table 5 of § __.17: Impact of Different Methods of Determining Major Product Lines in Retail Lending Assessment Areas

Method	Percentage of Outside Closed-End Home Mortgage Lending Evaluated in Retail Lending Assessment Areas	Percentage of Outside Small Business Lending Evaluated in Retail Lending Assessment Areas	Percentage of Outside Small Farm Lending Evaluated in Retail Lending Assessment Areas	Average Number of Product Lines Evaluated in a Retail Lending Assessment Area
15% by Loan Dollars (proposed approach)	27.6	32.1	0.6	1.4
15% by Average of Loan Count/Loan Dollars	27.5	39.3	0.7	1.4
Only Evaluate Product Lines that Meet Loan Count Thresholds (final rule approach)	23.0	39.3	0.0	1.1

Note: Figures reflect hypothetical retail lending assessment area delineations for the 2018-2020 calendar years using different approaches for determining major product lines in retail lending assessment areas. The analysis used data from the CRA Analytics Data Tables. "Outside" lending refers to closed-end home mortgage, small business, and small farm lending by large banks outside of their facility-based assessment areas; these columns show the percentage, by loan count, of outside lending that would have been evaluated in retail lending assessment areas. The analysis included open-end home mortgages in 2016 and 2017, but not in 2018, 2019, and 2020, because HMDA data do not distinguish between open-end and closed-end home mortgage loans prior to 2018. The analysis included all CRA-reporting large banks, except for wholesale, strategic plan, and limited purpose banks, which are excluded. The analysis included a total of 373 large banks.

BILLING CODE 4810–33–C; 6210–01–C; 6714–01–C

Performance tests applied in retail lending assessment areas. The agencies acknowledge comments that CRA evaluations in retail lending assessment areas should not be limited to the Retail Lending Test, and that evaluations in these areas should also consider large banks' community development activities. However, the agencies believe that retail lending assessment area evaluations should be specific to retail lending, and that the proposed Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test appropriately consider other large bank activities outside of facility-based assessment areas. Under the final rule, and as discussed in the section-by-section analysis of final § ____.19, a large bank will receive consideration for community development loans, community development investments, and community development services outside of the facility-based assessment areas when determining the bank's conclusion at the State, multistate MSA, and institution levels. In addition, and as discussed in the section-by-section analysis of final § _.23, a large bank may receive consideration for applicable retail banking services outside of its facility-based assessment areas as certain components of the Retail Services and Products Test are not restricted to a bank's facility-based assessment areas. Specifically, in the case of a large bank with assets greater than $10 billion in both of the prior two calendar years, a large bank with assets less than or equal to $10 billion in either of the prior two calendar years and that does not operate branches, or any other large bank at the bank's option, the agencies will evaluate the large bank's digital and other delivery systems at the institution level. In addition, at the institution level, a large bank may receive positive consideration for its credit products and programs, and a large bank with assets of $10 billion or more in both of the prior two calendar years, or any other large bank at the bank's option, may receive positive consideration for its responsive deposit products. The agencies believe that it is appropriate to consider these activities at the State, multistate MSA, and institution levels rather than within specific retail lending assessment areas because it provides greater flexibility for a large bank to identify areas with unmet community development and retail services needs that the bank has the capacity and expertise to address. In contrast, a large bank conducting retail lending in a retail lending assessment area has demonstrated capacity to lend in that geographic area, and therefore, the agencies believe that it is appropriate to evaluate the extent to which the bank is meeting the credit needs of the entirety of its retail lending assessment areas.

Section ____.18 Outside Retail Lending Areas

In proposed § ____.22(a)(2)(ii) and (a)(3), respectively, the agencies proposed to evaluate large banks and certain intermediate banks [669] under the Retail Lending Test in ''outside retail lending areas.'' Under the proposal, a bank's outside retail lending area would consist of the nationwide area outside of the bank's facility-based assessment areas and, as applicable, retail lending assessment areas. In proposing the outside retail lending area approach, the agencies intended to comprehensively assess large banks' and certain intermediate banks' lending to low- and moderate-income census tracts and borrowers, and small businesses and small farms, by ensuring that retail lending that is too geographically dispersed to be evaluated within a facility-based assessment area or retail lending assessment area would still be considered under the Retail Lending Test.

Numerous commenters provided feedback on the proposed outside retail lending area approach. Commenters expressed a variety of views regarding the outside retail lending area proposal, with some commenters supporting the proposed approach and others opposing the proposed approach. Commenters also provided feedback on specific aspects of the outside retail lending area proposal, especially views on which banks should be evaluated under the outside retail lending area approach.

For the reasons discussed below, the final rule adopts the proposed outside retail lending area approach with some modifications. Consistent with the proposal, the final rule provides that the agencies evaluate on a mandatory basis the retail lending performance of a large bank, and certain other banks, in the bank's outside retail lending area. The final rule also provides that the outside retail lending area generally consists of the nationwide area outside of the bank's facility-based assessment areas and retail lending assessment areas. However, in a change from the proposal, and as described below, the final rule: (1) adjusts the standard used to determine when an intermediate bank's outside retail lending area is evaluated on a mandatory basis, and applies the same standard to a small bank that opts to be evaluated under the Retail Lending Test; (2) permits an intermediate bank or small bank that does not meet this standard to opt to have its outside retail lending area evaluated; and (3) tailors the proposed geographic standard for outside retail lending areas to exclude those nonmetropolitan counties in which a bank did not originate or purchase any closed-end home mortgage loan, small business loan, small farm loan, or automobile loan (if automobile loans are a product line for the bank). In addition, the agencies are codifying the outside retail lending area approach is new § ____.18 for better clarity and organization.

Overall Outside Retail Lending Area Approach

The Agencies' Proposal

To complement the agencies' evaluation of a bank's retail lending in its facility-based assessment areas and retail lending assessment areas, as applicable, the agencies proposed in § ____.22(a) to evaluate the retail lending performance of large banks and certain intermediate banks in the bank's outside retail lending area. As defined in proposed § ____.12, the bank's outside retail lending area would be the nationwide area outside of the bank's facility-based assessment areas and retail lending assessment area.

Comments Received

Several commenters supported the agencies' proposal to evaluate the retail lending of certain banks in their outside retail lending areas as an appropriate complement to the proposed facility-based assessment area and retail lending assessment area frameworks. At least one of these commenters stated that evaluating a bank's retail lending in its outside retail lending area was necessary to develop a complete picture of the bank's retail lending performance. Another commenter favorably noted that the outside retail lending area approach would increase CRA coverage of rural lending activity outside of a bank's facility-based assessment areas.

Some commenters opposed or expressed significant concerns with the proposed outside retail lending area approach. These commenters opposed the outside retail lending area proposal for several reasons, including commenter views that: the outside retail lending area approach is not aligned with the CRA statute's purpose of encouraging reinvestment of deposits in local communities where banks are chartered to do business; evaluation of a bank's retail lending performance in its outside retail lending area could offset or distract from the bank's retail lending performance in its facility-based assessment areas; and the benefits of evaluating a bank's retail lending in its outside retail lending area would not outweigh the complexity and compliance burden associated with the outside retail lending area evaluation, particularly because the share of the bank's retail loans originated outside of facility-based assessment areas or retail lending assessment areas is small for most banks.

At least one commenter stated that the outside retail lending area evaluation should include not only a bank's retail loans made outside of its facility-based assessment areas and retail lending assessment areas, but also retail loans made within its facility-based assessment areas and retail lending assessment areas that are not evaluated as major product lines.

A few commenters recommended that the evaluation of a bank's retail lending performance in its outside retail lending area include consideration of qualitative factors and performance context, including the bank's ability and opportunities to serve the markets in this area.

[669] The proposal provided that an intermediate bank that originates and purchases more than 50 percent of its retail loans (by dollar amount) outside of its facility-based assessment areas over the relevant evaluation period would be evaluated in its outside retail lending area. *See* proposed § ____.22(a)(3).

Final Rule

For the reasons discussed below, the agencies are adopting the outside retail lending area approach in the final rule. However, in response to commenter feedback and in consideration of the agencies' policy objectives, the agencies are also adopting several modifications to the outside retail lending area proposal. Specifically, the final rule (1) adjusts the calculation of the 50 percent standard used to determine when an intermediate bank's outside retail lending area is evaluated on a mandatory basis, and applies the same standard to a small bank that opts to be evaluated under the Retail Lending Test; (2) permits an intermediate bank or small bank that does not meet this standard to opt to have its outside retail lending area evaluated; and (3) tailors the proposed geographic standard for outside retail lending areas to exclude those nonmetropolitan counties in which a bank did not originate or purchase any closed-end home mortgage loan, small business loan, small farm loan, or automobile loan (if automobile loans are a product line for the bank). In addition, the agencies are codifying the outside retail lending area approach is new § ____.18 for better clarity and organization.[670] These modifications to the proposal are discussed throughout this section-by-section analysis of § ____.18.

Legal authority. The agencies have considered all of the issues raised by commenters regarding their legal authority to evaluate the retail lending performance of certain banks in their outside retail lending areas. Consistent with the agencies' views stated in the proposal, and upon further deliberation and consideration, the agencies have concluded that the CRA authorizes the agencies to evaluate at least certain banks' retail lending performance in their outside retail lending areas. As discussed above in the section-by-section analysis of § ____.17, the CRA requires the agencies to assess a bank's record of meeting the credit needs of its *entire community,* without defining what constitutes a bank's ''entire community.''[671] Moreover, as described in the section-by-section analysis of § ____.17, although the CRA includes provisions that specifically relate to the preparation of written evaluations that support the conclusion that the geographic areas where a bank maintains deposit-taking facilities are considered part of the bank's entire community,[672] the statute does not indicate that a bank's entire community consists of *only* these geographic areas.

The CRA delegates authority to the agencies to prescribe regulations to carry out the purposes of the CRA.[673] To achieve its purposes, the CRA requires the agencies to assess whether a bank is meeting the credit needs of all parts of the communities it serves, without excluding the low- and moderate-income neighborhoods in those communities.[674] The agencies have determined, based on their supervisory experience and expertise, that for at least certain banks, the bank's ''entire community'' can reasonably be considered to include those geographic areas where the bank's retail loan borrowers are located. The agencies have concluded that evaluating the retail lending performance of such banks in their outside retail lending areas falls within the requirements imposed on the agencies by the CRA to assess a bank's record of meeting the credit needs of its entire community, and properly furthers the purpose of the statute to encourage banks to meet the credit needs of all parts of the communities they serve. In addition, the agencies believe that the combination of facility-based assessment areas, retail lending assessment areas, and outside retail lending areas will allow the agencies to achieve a more comprehensive evaluation of the bank's performance across its entire community.

Policy objectives of outside retail lending areas. In developing the overall outside retail lending area approach in the proposed and final rules, the agencies seek to achieve several different policy objectives. First, the outside retail lending area approach adapts to ongoing changes to the banking industry. The current CRA regulations generally define assessment areas in connection with a bank's main office, branches, and deposit-taking ATMs. However, the agencies recognize that changes in technology and in bank business models have resulted in banks' entire communities extending beyond the geographic footprint of the bank's main office, branches, and other deposit-taking facilities. To reflect these changes in banking, and to make the assessment area framework more durable over time, the agencies are complementing the existing facility-based assessment area framework in the final rule with a retail lending assessment area and outside retail lending area requirements tailored to certain banks.

Second, the outside retail lending area approach improves parity in the evaluation framework for banks with different business models. For example, under the current approach, a bank that maintains branches in multiple States and conducts retail lending in the geographic areas served by those branches would have its retail lending evaluated in multiple assessment areas based on the location of its branches; however, a bank that operates exclusively online would only have its retail lending performance evaluated in one assessment area based on the location of the bank's main office, which may not be representative of the bank's overall retail lending performance. Under the final rule approach, however, the online bank's retail lending performance in other areas may be evaluated as part of the retail lending assessment area evaluation or outside retail lending area evaluation, resulting in more comparable CRA evaluations for both banks despite their different business models.

Third, the outside retail lending area approach, in combination with the retail lending assessment area approach for large banks discussed in the section-by-section analysis of final § ____.17, increases the share of retail lending that is considered in CRA evaluations for certain banks. Under the current approach, retail lending conducted outside of a bank's assessment areas is not evaluated using the lending test criteria; this lending is only considered if the bank has adequately addressed the needs of borrowers within its assessment areas, and does not compensate for poor lending performance within the bank's assessment areas.[675] The outside retail lending area approach in the final rule applies a metrics-based evaluation approach to retail loans in certain banks' outside retail lending areas, and generally increases the share of retail lending by banks that is evaluated in this manner.

Finally, the agencies seek to achieve the policy objectives described above while also appropriately adjusting for the level of complexity and impact on banks that would be evaluated in new outside retail lending areas. The outside retail lending area approach in the final

[670] The agencies are renumbering proposed § ____.18 as final § ____.19.

[671] *See* 12 U.S.C. 2903(a)(1) (requiring that the agencies ''assess [an] institution's record of meeting the credit needs of its entire community'').

[672] *See, e.g.,* 12 U.S.C. 2906 (requiring the agencies to prepare a written evaluation of a bank's CRA performance for each metropolitan area and, in the case of an interstate bank, each State and/or multistate metropolitan area in which the bank maintains a branch).

[673] *See* 12 U.S.C. 2905.

[674] *See* 12 U.S.C. 2903(a).

[675] *See* Q&A § ____.22(b)(2) and (3)–4.

rule is intended to address compliance cost concerns, while simultaneously ensuring that the agencies' other objectives, described above, are achieved.

The agencies have considered comments that the outside retail lending area approach will add complexity and compliance burden to CRA evaluations, as well as commenter views that the outside retail lending area approach may result in banks redirecting resources from serving their facility-based assessment areas. The agencies recognize that banks that are evaluated in outside retail lending areas under the final rule approach may bear some potential compliance costs, such as the potential costs associated with monitoring their performance and meeting performance standards in outside retail lending areas. However, the agencies believe that the final rule outside retail lending area approach is appropriately calibrated to achieve the agencies' policy objectives described above. In addition, the agencies believe that the compliance costs associated with the final rule outside retail lending area approach are reasonable because the outside retail lending area evaluation consolidates all of a bank's retail lending outside of its facility-based assessment areas and retail lending assessment areas into one evaluation area, such that there is one set of metrics and benchmarks for the entire outside retail lending area. Further, because the outside retail lending area does not assign conclusions to specific areas, the agencies believe that this approach provides flexibility by allowing a bank to compensate for relatively lower performance in one component geographic area with stronger performance in another component geographic area, without receiving a conclusion that reflects poor performance in any specific area.

As discussed further in the section-by-section analysis of § ____.17, the agencies will develop and make freely available tools that would leverage reported loan data to calculate the retail lending distribution benchmarks that applied to a bank's outside retail lending area in recent years. The agencies believe that these data tools will help to address commenter concerns regarding the potential complexity and compliance burden associated with the outside retail lending area approach.

Retail loans included in the outside retail lending area. The agencies considered, but have determined not to adopt, the alternative suggested by at least one commenter of including additional retail loans in the outside retail lending area. Specifically, in addition to the retail lending conducted outside of facility-based assessment areas and retail lending assessment areas, the agencies considered including in the outside retail lending area those retail loans within facility-based assessment areas and retail lending assessment areas that are not evaluated as a major product line. Although the agencies have considered that such an approach would increase the total amount of retail lending that is evaluated under the Retail Lending Test, the agencies believe the increase in coverage is likely to be minimal in comparison to the final rule approach.[676] In addition, the agencies believe that such an approach would add complexity because it would result in distinct outside retail lending areas for each product line (*i.e.,* closed-end home mortgage loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank). Instead, the agencies believe that a single outside retail lending area for all product lines would be reduce complexity for both the agencies and affected banks and potential compliance burden for affected banks, while still achieving the agencies' policy objectives.

Codification in § ____.18. The agencies determined that it is appropriate to codify the outside retail lending area approach in new § ____.18 to increase clarity and improve organization of the final rule. Describing the details of the outside retail lending area approach in a separate section of regulatory text reflects that the outside retail lending area is one type of Retail Lending Test Area that is used in the Retail Lending Test evaluation, alongside facility-based assessment areas (as described in § ____.16) and retail lending assessment areas (as described in § ____.17).

Section ____.18(a) In General—Banks Evaluated in Outside Retail Lending Areas

The Agencies' Proposal

In proposed § ____.22(a)(2)(ii), the agencies proposed to evaluate the retail lending performance of all large banks in their outside retail lending areas. The agencies sought feedback on whether all large banks should have their retail lending in their outside retail lending areas evaluated, or whether the agencies should exempt large 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.

In proposed § ____.22(a)(3), the agencies proposed to evaluate the retail lending performance of certain intermediate banks in their outside retail lending areas. Specifically, the agencies proposed to evaluate an intermediate bank's retail lending performance in its outside retail lending area if the intermediate bank originated and purchased over 50 percent of its retail loans, by dollar amount, outside of its facility-based assessment areas over the relevant evaluation period.

Comments Received

Application to large banks. Some commenters addressed the applicability of the outside retail lending area approach to large banks. For example, at least one commenter suggested only evaluating a large bank on a mandatory basis in its outside retail lending area if the large bank has at least $10 billion in assets, but that a large bank with less than $10 billion in assets should have the option to have its outside retail lending area evaluated. Another commenter stated that the outside retail lending area evaluation should be optional for all banks.

Several commenters recommended exempting large banks that lend primarily or predominantly within their facility-based assessment areas, or within their facility-based assessment areas and retail lending assessment areas, from evaluation in their outside retail lending areas. These commenters offered a range of suggestions regarding the percentage at which such an exemption should apply (measured in terms of the percentage of the bank's retail loans that must be within facility-based assessment areas, or within their facility-based assessment areas and retail lending assessment areas), ranging from 50 to 98 percent. Some of these commenters emphasized that if the majority or substantial majority of a bank's retail lending is within its facility-based assessment areas, the evaluation of retail lending in outside retail lending areas would have little bearing on the bank's overall evaluation, and yet would require the bank to spread its CRA resources outside of its local footprint.

In contrast, several commenters opposed providing large banks that lend

[676] The agencies performed an analysis of retail lending data using the CRA Analytics Data Tables for 2018–2020 and determined that over 98 percent of both closed-end home mortgage and small business lending would have been evaluated under the proposed final rule major product line approach had the approach been in effect during those years. The figure for small farm lending would have been considerably lower, at around 40 percent, but the agencies note that the number of small farm loans and the weight assigned to the small farm loan product line is generally small overall.

primarily within their facility-based assessment areas, or within their facility-based assessment areas and retail lending assessment areas, an exemption from being evaluated on their retail lending in outside retail lending areas. Commenters opposed to exempting banks from the outside retail lending area evaluation asserted that the proposal would not be unduly burdensome because the agencies' proposed approach for weighting assessment area and outside retail lending area retail lending performance to determine institution-level performance would appropriately tailor the outside retail lending area evaluation to different business models. These commenters further noted that banks that make significant numbers of home mortgage or small business loans outside of their facility-based assessment areas and/or retail lending assessment areas should have an obligation to low- and moderate-income communities in those areas.

Application to intermediate banks. A commenter recommended that all intermediate banks should be evaluated in outside retail lending areas, rather than limiting the outside retail lending area evaluation to those intermediate banks that originate or purchase at least 50 percent of their retail loans outside of their facility-based assessment areas. Another commenter stated that the outside retail lending area evaluation should be optional for all banks.

Final Rule

Overview. With respect to large banks, the agencies are adopting the proposal to evaluate the retail lending performance of all large banks in their outside retail lending area. As such, final § ____.18(a)(1) provides that the agencies evaluate a large bank's record of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § ____.22. Final § ____.18(a)(1) clarifies that the agencies will not evaluate a large bank in its outside retail lending area if it did not originate or purchase loans in any products lines in the outside retail lending area during the evaluation period. The agencies believe that this limitation was implicit in the proposal, but believe that it is appropriate to make this limitation explicit in the final rule to promote clarity and transparency.

With respect to other banks, the agencies are adjusting the standard used to determine when an intermediate bank's outside retail lending area is evaluated on a mandatory basis, and are applying this same standard to a small bank that opts to be evaluated under the Retail Lending Test. In addition, the agencies are permitting an intermediate bank or small bank that does not meet this standard to opt to have its outside retail lending area evaluated. As such, final § ____.18(a)(2) provides that the agencies evaluate the record of an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § ____.22, for a particular calendar year, if either (1) the bank opts to have its major product lines evaluated in its outside retail lending area, or (2) in the prior two calendar years, the bank originated or purchased outside the bank's facility-based assessment areas more than 50 percent of the bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank, as described in paragraph II.a.2 of final appendix A.

Application to large banks. The agencies continue to believe that it is appropriate to evaluate the retail lending performance of all large banks in their outside retail lending areas. The agencies believe that evaluating large banks in their outside retail lending areas is important to achieving the agencies' policy objectives of adapting to ongoing changes to the banking industry, improving parity in the evaluation framework for banks with different business models, and increasing the share of retail lending that is considered in CRA evaluations, discussed above. Further, the agencies believe that the final rule outside retail lending area approach is appropriately calibrated to achieve the agencies' policy objectives while minimizing the additional complexity and compliance burden associated with outside retail lending areas. On balance, the agencies believe it is appropriate to tailor the outside retail lending area requirement to all large banks, but only certain other banks, recognizing that large banks generally have more resources and therefore greater capacity than small and intermediate banks to adapt to new regulatory provisions such as outside retail lending areas.

To complement the facility-based assessment area approach and retail lending assessment area approach, the outside retail lending area approach would evaluate a large bank's retail lending that is too dispersed to be evaluated within a specific geographic area (*i.e.,* in a facility-based assessment area or outside retail lending area). For example, if a large bank originated 50 closed-end home mortgages and 300 small business loans in an MSA in each year of the prior two years, the large bank would not be required to delineate a retail lending assessment area in the MSA pursuant to the loan count thresholds in final § ____.17(c), but the MSA would be included in the large bank's outside retail lending area. As a result, this lending would be considered as part of the large bank's Retail Lending Test evaluation. However, a conclusion would be assigned to the entirety of the bank's outside retail lending area, rather than for the specific MSA. The agencies believe that this approach is appropriate because, the sum of the large bank's retail lending outside of its facility-based assessment areas and retail lending assessment areas may constitute a significant percentage of a bank's overall lending, and that this retail lending should be considered under the Retail Lending Test to ensure a comprehensive evaluation of a large bank's retail lending performance. The agencies emphasize that the outside retail lending area approach is especially important for comprehensively evaluating the retail lending performance of predominantly branch-based large banks that qualify for the exemption from the retail lending assessment area requirement pursuant to final § ____.17(a)(2).

The agencies considered, but are not adopting, the alternative approach suggested by commenters to exempt large banks that conduct at least a certain percentage, such as 50 percent, of their retail lending within their facility-based assessment areas, or within their facility-based assessment areas and retail lending assessment areas, from the outside retail lending area evaluation. For the reasons stated above, the agencies believe it is appropriate to evaluate the retail lending performance of all large banks in their outside retail lending areas. The agencies note that the final rule approach accounts for cases where a bank has only a small amount of retail lending in its outside retail lending area, because the amount of retail lending in the bank's outside retail lending area is one component of the weighting that the outside retail lending area performance conclusion receives in determining the bank's overall Retail Lending Test conclusion, as discussed in the section-by-section analysis of § ____.22(h). Finally, the agencies note that a large bank with a relatively small share of lending in its outside retail lending area overall could still have a significant number of loans in one or more component geographic areas of its outside retail lending area; the agencies believe that it is important to evaluate the extent to which the bank has met the retail lending credit needs of those areas.

The agencies also considered, but are not adopting, the alternative approach suggested by commenters to make the evaluation of all or certain large banks in their outside retail lending areas optional. However, the agencies believe that an optional evaluation approach would not achieve the agencies' policy objectives since some or all large banks could opt out of outside retail lending areas entirely under this alternative. The agencies are concerned that over time, an optional outside retail lending area approach would make the assessment area framework less durable to ongoing changes in the banking industry, particularly with any expansion of digital banking. Specifically, if an increasing share of large bank retail lending occurs outside of facility-based assessment areas and retail lending assessment areas, and if the agencies could evaluate that lending in outside retail lending areas only at a bank's option, the policy objectives of increasing the share of retail lending that is considered in CRA evaluations and would be undermined.

Application to intermediate banks and small banks. The final rule retains the proposed approach evaluating intermediate banks in their outside retail lending areas on a mandatory basis if the intermediate bank conducts a majority of its retail lending outside of its facility-based assessment areas. This tailored approach recognizes that intermediate banks generally have fewer resources and therefore less capacity than large banks to adapt to new regulatory provisions such as a Retail Lending Test evaluation in outside retail lending areas. At the same time, the agencies believe that evaluating certain intermediate banks in their outside retail lending areas is important to achieving the agencies' policy objectives of adapting to ongoing changes to the banking industry, improving parity in the evaluation framework for banks with different business models, and increasing the share of retail lending that is considered in CRA evaluations, discussed above.

The final rule's 50 percent threshold, the calculation of which is discussed below, reflects the agencies' belief that an intermediate bank's CRA evaluation should capture at least a majority of the bank's retail lending. The agencies believe that evaluating less than a majority of an intermediate bank's retail lending could result in Retail Lending Test conclusions that are not representative of the intermediate bank's overall retail lending performance. The agencies also considered that a threshold level higher than 50 percent would result in more comprehensive evaluations for more intermediate banks; however, a higher exemption threshold level would also increase the number of affected intermediate banks, including intermediate banks that already have a majority of their retail lending evaluated within facility-based assessment areas. In addition, the agencies considered that for these intermediate banks, the outside retail lending area evaluation would generally carry less weight in determining the intermediate bank's overall Retail Lending Test conclusion.

While the proposed rule did not provide that a small bank would be evaluated in its outside retail lending area, the agencies determined that it is appropriate to treat small banks that opt into the Retail Lending Test consistently with intermediate banks under the final rule. In reaching this determination, the agencies considered that it is important that the Retail Lending Test evaluation capture at least a majority of a bank's lending. If a small bank that opts into the Retail Lending Test conducts a majority of its retail lending outside of its facility-based assessment areas, the agencies believe that the outside retail lending area evaluation should apply to the small bank to ensure that the Retail Lending Test conclusion for the institution is representative of the bank's overall retail lending performance. The agencies do not believe that this approach should significantly increase the compliance burden of the final rule on small banks because the Retail Lending Test evaluation remains optional for these banks.

Finally, the agencies determined that intermediate banks, and small banks that opt into the Retail Lending Test, should have the option to be evaluated in their outside retail lending areas even if they do not conduct a majority of their retail lending outside their facility-based assessment areas. The agencies believe this option provides flexibility for an intermediate bank or small bank to consider the potential complexity and compliance burden associated with the outside retail lending area evaluation, and the impact on the bank's retail lending performance. The agencies also considered that without providing this option, an intermediate bank, or a small bank that opts into the Retail Lending Test, that does not conduct a majority of its retail lending outside of its facility-based assessment areas that prefers to have its outside retail lending area evaluated could need to seek approval of a strategic plan, which could increase the complexity of the final rule approach. In addition, the agencies considered that making the outside retail lending area evaluation optional for these banks would be consistent with current evaluation practices, whereby banks may receive consideration for retail lending outside of their assessment areas.[677]

Calculation of 50 percent standard. The final rule adopts a modified version of the proposed 50 percent standard used to determine when an intermediate bank (or a small bank that opts into the Retail Lending Test) is evaluated on a mandatory basis in its outside retail lending area. As specified in paragraph II.a.2 of final appendix A, the 50 percent threshold is calculated over the prior two calendar years, and is based on a combination of loan dollars and loan count, as defined in final § ____.12. The agencies are adopting these changes to conform the calculation of the 50 percent outside retail lending area standard to the calculation approach used for the 80 percent threshold to identify those predominantly branch-based large banks that are exempt from the retail lending assessment area requirement. In addition, the agencies note that the calculation of the 50 percent standard, like the calculation of the 80 percent standard for retail lending assessment areas, includes originated or purchased home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank. The agencies' rationale for this calculation is further described in the section-by-section analysis of final § ____.17(a).

Section ____.18(b) Geographic Requirements of Outside Retail Lending Areas

The Agencies' Proposal

In proposed § ____.12, the agencies defined the outside retail lending area as the nationwide area outside of a bank's facility-based assessment areas and, as applicable, retail lending assessment areas. To evaluate a bank's retail lending performance in its outside retail lending area, and as discussed further in the section-by-section analysis of § ____.22(e), the agencies proposed in § ____.22(b)(2)(ii) and paragraphs III.2.c and d and IV.2.c and d of proposed appendix A, to calculate tailored retail lending distribution benchmarks for a bank's outside retail lending area, by taking a weighted average of the benchmarks calculated for each MSA and the nonmetropolitan

[677] *See* Q&A § ____.22(b)(2) and (3)–4

area of each State included in the bank's outside retail lending area.

Comments Received

The agencies did not receive comments that specifically discussed the geographic requirements for outside retail lending areas. However, as discussed above, the agencies received a number of comments on the overall outside retail lending area approach. In addition, the agencies received comments on the proposed approach to calculating tailored distribution benchmarks for a bank's outside retail lending area; these comments are discussed further in the section-by-section analysis of final § ____.22(e).

Final Rule

For the reasons discussed below, the agencies are adopting a tailored version of the proposed geographic requirements for outside retail lending areas. Specifically, relative to the proposal, a bank's outside retail lending area no longer includes nonmetropolitan counties in which the bank did not conduct any retail lending. As such, final § ____.18(b)(1) provides that a bank's outside retail lending area consists of the nationwide area, excluding (1) the bank's facility-based assessment areas and retail lending assessment areas; and (2) any county in a nonmetropolitan area in which the bank did not originate or purchase any closed-end home mortgage loans, small business loans, small farm loans, or automobile loans (if automobile loans are a product line for the bank). In addition, the agencies are specifying in final § ____.18(b)(2) that the outside retail lending area is comprised of component geographic areas, and that a component geographic area is any MSA or the nonmetropolitan area of any State, or portion thereof, included within the outside retail lending area.

Exclusion of certain nonmetropolitan counties. Upon consideration of commenter feedback, the agencies believe it is appropriate to exclude nonmetropolitan counties in which a bank did not originate or purchase any retail loans from the bank's outside retail lending area. As a result, outside retail lending areas are more targeted, relative to the proposal, to where a bank conducts retail lending business in nonmetropolitan areas. The agencies note that the final rule adopts a similar exclusion of these counties from retail lending assessment areas located in the nonmetropolitan area of a State, and that the agencies' rationale for the retail lending assessment area exclusion, described further in the section-by-section analysis of final § ____.17(b), generally also applies to outside retail lending areas.

Component geographic areas. The agencies determine that specifying the component geographic areas of the outside retail lending area in regulatory text in final § ____.18(b)(2) provides clarity. The agencies note that sections III and IV of final appendix A consistently use the term ''component geographic areas'' in describing the calculation of the retail lending distribution benchmarks for a bank's outside retail lending area. This calculation is discussed further in the section-by-section analysis of final § ____.22(e).

Section ____.19 Areas for Eligible Community Development Loans, Community Development Investments, and Community Development Services

Current Approach

Under the current rule, in addition to considering a bank's community development loans, investments, and services conducted within the bank's assessment areas, the agencies may provide consideration for loans, investments, and services conducted in a broader statewide or regional area that includes one or more assessment areas.[678] Whether an activity receives consideration and the geographic level to which the activity is allocated depends on whether the organization or activity has a purpose, mandate, or function of serving one or more assessment areas. Specifically, an activity that has a purpose, mandate, or function that includes serving one or more assessment areas is considered as part of the evaluation of: (1) one assessment area, when it benefits and is targeted to a single assessment area; (2) the State or multistate MSA, when the activity benefits or is targeted to two or more assessment areas, or the State or multistate MSA; and (3) the institution level, when the activity benefits or is targeted to a regional area of two or more States not in a multistate MSA or a regional area that includes but is larger than one multistate MSA. An activity that does not have a purpose, mandate, or function that includes serving an assessment area may enhance performance at the State, multistate MSA, or institution level if: (1) the bank has been responsive to community development needs and opportunities in its assessment areas; and (2) the activity benefits census tracts or individuals located in a State, multistate MSA, or broader regional area that includes one or more of a bank's assessment areas (even though the activity does not benefit, and is not targeted to, one or more assessment areas).[679]

The Agencies' Proposal

Under proposed § ____.18, a bank would receive consideration for community development loans, community development investments, and community development services (which the proposal referred to collectively as ''community development activities'') conducted in its facility-based assessment areas. In addition, proposed § ____.18 provided that a bank would 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 proposed §§ ____.21, ____.24 through ____.26, and ____.28 and proposed appendices C and D. The cross-references in proposed § ____.18 did not include proposed § ____.29; as a result, the consideration of community development activities outside of facility-based assessment areas would not have applied to small banks or intermediate banks that did not opt into the Community Development Financing Test. Under the proposal, community development loans, community development investments, and community development services conducted outside of a bank's facility-based assessment areas would be considered to inform conclusions for the State, multistate MSA, and institution.

Recognizing that the current approach to considering community development loans, investments, and services in broader statewide and regional areas has afforded banks flexibility but sometimes contributed to uncertainty about whether such loans, investments, or services will qualify, the agencies aimed with the proposal to retain and enhance this flexibility while also providing greater certainty. To this end, the agencies included a clear statement in proposed § ____.18 that a bank will also receive consideration for community development loans, investments, and services conducted outside of a bank's facility-based assessment areas—not only within the States and multistate MSAs in which the bank has a facility-

[678] *See* 12 CFR ____.12(h); *see also* Q&A § ____.12(h)–6.

[679] *See* Q&A § ____.21(a)–3.

based assessment area, but also in the nationwide area.[680]

The agencies sought feedback on the proposed approach, and on alternative approaches that would encourage banks that choose to conduct community development activities outside of their facility-based assessment areas, such as requiring banks to delineate specific geographic areas where they would focus their community development outside of facility-based assessment areas. The agencies also asked whether all banks, including all intermediate banks, small banks, and banks that elect to be evaluated under an approved strategic plan, should have the option to have community development activities outside of facility-based assessment areas considered.

Comments Received

General feedback. The agencies received numerous comments on the proposal regarding the areas eligible for community development loans, investments, or services outside of facility-based assessment areas, under proposed § ____.18. Many commenters supported the proposal. In general, these commenters expressed that broadening the geographic eligibility of community development activities will allow banks to target community development loans, investments, and services to areas with the greatest community development needs, regardless of whether they are in proximity to a bank branch. For example, a number of commenters stated that the proposal would increase community development activities in underserved areas such as economically distressed areas, rural areas, and Native lands where there are few banks. Similarly, some commenters supported the proposal because they noted that bank branches do not always align with the neighborhoods in need of investment and that the flexibility of the proposal can help bring community development capital to these neighborhoods. Another commenter suggested that consideration of community development activities anywhere in the United States would allow banks to conduct community development activities that best align with the bank's mission, and to seek out the most advantageous financial investments.

Other commenters supported the proposal because it provided flexibility for banks that have limited control over the availability of community development projects in their facility-based assessment areas. For example, commenters noted that in some areas, opportunities to conduct community development loans, investments, and services are subject to intense competition between lenders and investors.

Commenters also described other benefits of the proposed approach. Some commenters noted that credit for community development activities outside of facility-based assessment areas would be particularly helpful for the growing number of banks with a limited number of branches. One of these commenters also noted that smaller State and regional development organizations would also benefit from this aspect of the proposal. Other commenters indicated that the proposal provides much-needed certainty to banks because it allows banks to get credit for community development activities outside of their facility-based assessment areas without first having to demonstrate that they have been responsive to the needs of their assessment areas.

Other commenters suggested additional analysis or other modifications to the approach. A commenter requested that the agencies track banks' community development activities conducted outside of its assessment area to see if banks take advantage of the proposed changes. Another commenter indicated that community development activities outside of assessment areas should be optional for positive consideration.

Other commenters expressed concerns regarding the proposal, with some suggesting alternatives that would limit or give less emphasis to community development activities outside of facility-based assessment areas relative to activities within facility-based assessment areas. These commenters generally stated that it would be important to maintain a focus on banks meeting local community needs. Commenters provided a range of specific recommendations including that: (1) community development activities should receive CRA credit only in facility-based assessment areas and anywhere the bank has a CRA obligation to serve a local community under an applicable performance test; (2) the agencies should provide only partial credit for community development activities conducted outside of a bank's assessment areas; (3) credit for outside facility-based assessment area community development activities should be weighted or emphasized less than what is provided inside facility-based assessment areas; and (4) consideration should be given only for community development activities outside of a bank's assessment areas if the bank received a certain rating, such as ''Satisfactory'' or ''Low Satisfactory,'' on its previous CRA exam. Some commenters expressed the sentiment that to receive any credit for community development activities outside of a bank's assessment areas, banks should be required to first meet the credit needs of their assessment areas. For example, a commenter suggested that banks provide evidence to the agencies that they had unsuccessfully bid on multiple community development financing activities within their facility-based assessment areas before receiving consideration for their community development activities outside of its facility-based assessment areas.

Consideration of specific types of community development loans, community development investments, or community development services. A few commenters stated that allowing banks to receive CRA consideration for investments outside of facility-based assessment areas would support and expand affordable housing investments in underserved CRA markets. Some commenters pointed out that expanding consideration for community development financing outside of facility-based assessment areas would help smooth existing LIHTC pricing discrepancies between CRA hotspots and CRA deserts. A commenter further recommended that credit for LIHTC investments outside of assessment areas should be limited to the greater statewide or regional area in which the bank has an assessment area.

Other commenters requested that the agencies support CRA credit for investments or loans with multistate CDFIs, with CDFI loan funds, or generally with CDFIs or MDIs outside of a bank's assessment areas. However, another commenter voiced concern that full consideration of investments with CDFIs regardless of geographic location could drain capital away from local CDFIs to large national CDFIs. Other activities that commenters suggested should receive CRA community development credit include lending outside of assessment areas conducted through a fintech partnership, activities relating to digital inclusion that target or benefit underserved urban and rural communities, and bank employee volunteer activities unrelated to the provision of financial services if the services are provided in any low- or moderate-income area.

[680] *See* proposed § ____.18. *See also* proposed §§ ____.21, ____.24 through ____.26, and ____.28 and proposed appendices C and D (cross-referenced in proposed § ____.18).

Geographic areas in which community development loans, investments, and services are considered. Some commenters recommended specific geographic areas in which a bank's community development activities should be considered. Some commenters suggested limiting consideration of community development activities that are beyond facility-based assessment areas to low- and moderate-income communities where a bank conducts business, or to four categories of geographic areas where commenters stated that community development needs are greater: Native lands, the Mississippi Delta, Central Appalachia, and the Texas-Mexico border.

Several commenters also stated that consideration of a bank's community development activities should be restricted to specific geographic areas identified under the proposed community development impact and responsiveness review factors.[681] One of these commenters further suggested that the agencies should apply this restriction specifically to branch-based banks when they seek to invest outside of a State where they have branches. Conversely, another commenter noted that the community development impact and responsiveness factors would incentivize banks to focus on underserved and other high-priority communities, so any geographic restriction on making community development loans, investments, and services outside of facility-based assessment areas would be unnecessary and counterproductive.

Delineation of specific geographic areas outside of facility-based assessment areas for community development loans, investments, and services. Some commenters addressed the agencies' request for views on whether banks should be required to delineate specific geographic areas where they will focus their outside facility-based assessment area community development loans, investments, and services. A few commenters stated that banks should not be required to delineate specific geographic areas because it would reduce flexibility for banks and it may not be feasible for banks to anticipate where there will be community development opportunities. In addition, some commenters raised concerns that requiring banks to designate areas for community development loans, investments, and services outside of facility-based assessment areas could give banks too much latitude to designate easy-to-invest areas.

However, some commenters supported the idea of requiring banks to delineate specific geographic areas for community development activities. For example, a commenter supported the delineation of geographic areas for community development activities as an alternative to providing full consideration for activities in the entire statewide area for States in which a bank has one or more branches. This commenter further recommended that community development areas, if adopted, should be composed primarily of distressed, underserved, or low- or moderate-income census tracts. Another commenter stated generally that the approval of such community development geographic areas should be public, consistent, and transparent across banks, and that an impact review process should be developed that identifies a specific community need and requires banks to explain how they plan to meet those needs. Yet another commenter suggested that the agencies develop a way to define ''credit deserts'' where banks can receive extra credit even if the bank does not maintain a branch office in that community.

Credit for outside assessment area community development loans, investments, and services—small banks, intermediate banks, and strategic plan banks. Commenters also responded to the agencies' request for comment on whether all banks should have the option to have community development loans, investments, and services outside of facility-based assessment areas considered, including intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan. All commenters addressing this question supported giving banks the option to have CRA consideration outside of facility-based assessment areas regardless of a bank's size or whether the bank elects to be evaluated under a strategic plan. Many of these commenters stated that the final rule should encourage as much community development activity as possible, indicating that there is little or no reason to limit consideration of community development activities outside of assessment areas only to large, wholesale, and limited purpose banks.

A few commenters emphasized that consideration of community development activities outside of a bank's assessment areas would be beneficial to small banks. A commenter indicated that small lenders are often in the best position to engage in loans, investments, or services in underserved areas. Another commenter stated that smaller banks may struggle to find community development opportunities, particularly when they have smaller assessment areas.

Final Rule

The agencies are adopting proposed § ____.18, renumbered as final § ____.19, with certain revisions discussed below. Final § ____.19 states that the agencies may consider a bank's community development loans, community development investments, and community development services provided outside of its facility-based assessment areas, as provided in the agencies' CRA regulations. Relative to the proposal, the final rule expands application of this provision to include small and intermediate banks that do not opt into the Community Development Financing Test. With this expanded eligibility, the final rule in § ____.19 eliminates the proposed cross references to proposed §§ ____.21, ____.24 through ____.26, and ____.28 and proposed appendices C and D in proposed § ____.18. This change, which is also discussed in the section-by-section analysis of § ____.29 (regarding small bank performance evaluation) and the section-by-section analysis of § ____.30 (regarding intermediate bank performance evaluation), allows any bank the ability to receive consideration for qualifying community development activities outside of its facility-based assessment areas without regard to asset size or business model.

In adopting the final rule approach, the agencies considered several potential benefits of broadening the geographic scope of community development loans, investments, and services relative to the current approach. As noted by some commenters, the agencies are aware that community development opportunities in certain areas may be limited or subject to competition among banks. Principally, the agencies believe that the final rule approach will: (1) allow appropriate flexibility for banks to conduct community development loans, investments, and services in a variety of geographic areas; (2) help banks receive consideration for community development activities in areas with significant unmet credit needs, including areas where few banks maintain deposit-taking facilities; and (3) allow banks to identify community development opportunities that align with their business model and expertise, including opportunities outside of a bank's facility-based assessment areas.

The final rule approach builds on and provides greater certainty than the

[681] *See* proposed § ____.15(b).

current approach, which, as noted, considers a bank's community development activities outside of facility-based assessment areas only for activities with a purpose, mandate, or function that includes serving geographic areas or individuals in the bank's assessment areas; or if activities benefit a broader statewide or regional area and the bank has been responsive to community development needs and opportunities in its assessment areas.[682] Under the final rule approach, banks evaluated under the Community Development Financing Test in § ____.24 or Community Development Financing Test for Limited Purpose Banks in § ____.26 will receive consideration for eligible community development activities, regardless of the geographic scope of the activities. These performance tests emphasize meeting the community development needs of facility-based assessment areas while also considering activities outside of these areas. Thus, the agencies do not believe that a condition of having met the needs of facility-based assessment areas is necessary because a bank's performance within facility-based assessment areas will always be separately taken into account under the Community Development Financing Test and Community Development Financing Test for Limited Purpose Banks.[683] In contrast, for small banks, the final rule retains conditions on the consideration of community development activities outside of facility-based assessment areas that are similar to the current approach, as discussed further below. Under the final rule, community development activities for intermediate banks will also be considered regardless of the geographic scope of the activities. However, the extent of that consideration will depend on how well the intermediate bank has met the needs of their facility-based assessment areas.

The agencies also considered the benefits of the final rule approach of considering community development activities outside of facility-based assessment areas for banks with a variety of business models. For example, the agencies believe that expanded geographic eligibility of community development activities will support banks that operate primarily or entirely without branches since these banks may have fewer community development opportunities within their facility-based assessment areas.

The final rule approach revises the proposed language from stating that a bank ''will'' receive consideration for activities outside of its facility-based assessment areas in proposed § ____.18 to instead stating that a bank ''may'' receive consideration for these activities in final § ____.19. This change reflects the consideration of community development activities for small banks. For these banks, consideration of community development loans, investments, and services outside of facility-based assessment areas is dependent on other factors. Under § ____.29(b), the agencies may adjust the rating of a small bank evaluated under the Small Bank Lending Test from ''Satisfactory'' to ''Outstanding'' at the institution level based on making community development investments and providing community development services without regard to whether the activity is in one or more of the bank's facility-based assessment areas. Thus, in effect, the small bank would have to perform well in serving community credit needs in its facility-based assessment areas before receiving additional credit for community development activities irrespective of geographic location. Accordingly, for a small bank with an institution rating of ''Needs to Improve,'' community development investments and services would not be considered, including those outside of the bank's facility-based assessment areas. Moreover, as detailed in § ____.30(a)(2)(ii) of the final rule for intermediate banks evaluated under the Intermediate Bank Community Development Test, the extent of the consideration of community development activities outside of the bank's facility-based assessment area(s) will depend on the adequacy of the bank's responsiveness to the needs and opportunities for community development activities within the bank's facility-based assessment areas and applicable performance context information.

Final § ____.19 does not limit the geographic areas outside of facility-based assessment areas in which community development loans, investments, and services can receive consideration, as suggested by some commenters noted above. For example, final § ____.19 does not restrict consideration for community development to only specific geographic areas identified under the proposed community development impact and responsiveness review factors, or to only Native lands, the Mississippi Delta, Central Appalachia, and the Texas-Mexico border, as some commenters suggested. The agencies believe that this suggested approach would limit community development opportunities, particularly for banks without access or relationships with community development providers in these areas. More generally, the agencies believe that limiting consideration of community development loans, investments, and services outside of facility-based assessment areas to any geographic areas could restrict the flow of community development financing to any area that has not been designated as eligible to receive consideration for community development.

Relatedly, under final § ____.19 banks will not be required to delineate specific geographic areas outside facility-based assessment areas in which to make community development loans, investments, and services, as suggested by some commenters. The agencies believe that prescriptive delineated areas would inappropriately constrain bank flexibility to pursue community development activities where the need is greatest. In determining not to adopt this suggestion, the agencies also weighed the comments that banks may not be able to fully anticipate in advance where community development needs and opportunities may be available.

Under final § ____.19, the agencies are also not establishing restrictions on the consideration of community development loans, investments, or services conducted outside of facility-based assessment areas for certain types of activities, as suggested by some commenters. For example, the final rule does not limit credit for LIHTC investments outside of facility-based assessment areas to the greater statewide or regional area in which the bank has a presence, and does not limit consideration of activities outside of facility-based assessment areas to those that expand affordable housing investments in underserved CRA markets. The agencies believe that the final rule approach allows banks to identify community development opportunities where its business model, strategy, and expertise are well aligned with a community need.

The agencies considered, but are not adopting, commenter suggestions to allow consideration of activities outside of facility-based assessment areas only if the bank provides evidence to the agencies that the bank had unsuccessfully bid on multiple community development financing activities within their facility-based assessment areas. The agencies considered that this approach may help

[682] *See* Q&A § ____.12(h)–6.

[683] For further detail on these tests, see the section-by-section analyses of final §§ ____.24 and ____.26. *See also* final § ____.25 (Community Development Services Test) and the accompanying section-by-section analysis.

to encourage banks to prioritize seeking out opportunities within their facility-based assessment areas. However, the agencies determined that the approach might be difficult to enforce and increase burden as a result of additional documentation requirements, and may result in banks expending resources pursuing community development opportunities that are already being met by other banks in the area.

The agencies also considered suggestions to limit consideration of community development activities outside of facility-based assessment areas to instances in which a bank received a certain overall rating, or Community Development Financing Test conclusion on its previous CRA examination, such as ''Satisfactory'' or ''Low Satisfactory.'' As noted above and in the section-by-section analyses of §§ ____.29 and ____.30, the final rule includes similar provisions for evaluating community development performance under the small and intermediate bank performance evaluations, but applied to the bank's current, rather than prior, evaluation period. Specifically, for a small bank, community development investments and services inside or outside of a bank's facility-based assessment area are considered only for potentially enhancing the bank's overall rating from a ''Satisfactory'' to an ''Outstanding.'' For intermediate banks evaluated under the Intermediate Bank Community Development Test, community development activities outside of facility-based assessment areas are considered without regard to whether the activity is made in one or more of the bank's facility-based assessment areas; any additional consideration to adjust a bank's rating will depend on the adequacy of the bank's responsiveness to community development needs and opportunities within its facility-based assessment areas and applicable performance context information. The agencies believe that it is preferable to apply these conditions to the current evaluation period, rather than the prior evaluation period, to ensure that a bank's community development activities are evaluated in relation to the needs and opportunities that existed when the bank conducted these activities.

The final rule approach does not adopt alternative suggestions to assign only partial credit for community development activities conducted outside of a bank's facility-based assessment areas, or to weight such activities less than activities inside facility-based assessment areas. However, the final rule includes specific weighting of facility-based assessment area conclusions on the Community Development Financing Test, the Community Development Financing Test for Limited Purpose Banks, and the Community Development Services Test, as described further in the section-by-section analysis of final § ____.28.

Section ____.21 Evaluation of CRA Performance in General

Under the current CRA regulations, the examination process is tailored to a bank's asset size and business model.[684] Large banks are evaluated under three performance tests:[685] a lending test, which assesses retail and community development loans;[686] an investment test,[687] which assesses community development investments; and a service test, which assesses retail services and community development services.[688] Intermediate small banks are evaluated under a lending test and a community development test, which assesses community development loans, community development investments, and community development services.[689] Small banks are evaluated under a single lending test.[690] Both intermediate small banks and small banks may elect to be evaluated under the large bank performance tests if they collect and report the CRA data required of large banks.[691] Wholesale and limited purpose banks are evaluated under a single community development test, which assesses community development loans, community development investments, and community development services.[692] In addition, any bank may seek agency approval to be evaluated under a strategic plan.[693]

In recognition of the importance that bank size, business model, and local conditions play when evaluating a bank's CRA performance, the agencies proposed tailoring the CRA evaluation framework based on three updated bank size categories for large banks, intermediate banks, and small banks. The agencies also proposed a tailored approach to evaluations for wholesale banks, limited purpose banks, and banks operating under an approved strategic plan. Overall, proposed § ____.21 described the following: performance standards for each bank category; treatment of bank subsidiaries, affiliates, consortia, and third parties; performance context information that would be considered in CRA evaluations; categories for bank conclusions and ratings; and the requirement that bank CRA activities be conducted in a safe and sound manner.

The agencies are finalizing § ____.21 with non-substantive changes. Specifically, the agencies are: revising the section heading and, as necessary, paragraph headings; streamlining the regulation text, including removing proposed § ____.21(a) from the final rule as duplicative; removing duplicative information from final § ____21(e); adding section headings and cross-references for clarity and ease of reference; and making other clarifying and conforming changes.

Section ____.21(a) Application of Performance Tests and Strategic Plans

Current Approach

Similar to the current CRA regulations, the agencies set out an evaluation framework in proposed § ____.21(a) and (b) that is tailored to a bank's asset size and business model.[694] As explained below, the agencies are finalizing the broader evaluation framework as proposed, with modifications to the individual performance tests and standards.

Section ____.21(a)(1) Large Banks

The Agencies' Proposal

In § ____.21(b)(1), the agencies proposed to apply four performance tests to large banks: the Retail Lending Test in proposed § ____.22; the Retail Services and Products Test in proposed § ____.23; the Community Development Financing Test in proposed § ____.24; and the Community Development Services Test in proposed § ____.25. The agencies intended that each of these performance tests would measure a different aspect of how responsive a bank's retail and community development activities are to the credit needs of the bank's communities.

As discussed in more detail in the section-by-section analysis of the Retail Lending Test in § ____.22, the agencies proposed that the Retail Lending Test rely on a set of metrics and community and market benchmarks grounded in local data to measure how well a bank's retail lending meets the credit needs of

[684] *See generally* current 12 CFR ____.12 and ____.21 through ____.27.

[685] *See* current 12 CFR ____.21(a)(1).

[686] *See* current 12 CFR ____.22.

[687] *See* current 12 CFR ____.23.

[688] *See* current 12 CFR ____.24.

[689] *See* current 12 CFR ____.21(a)(1) and ____.26(a)(2).

[690] *See* current 12 CFR ____.21(a)(1) and ____.26(a)(1).

[691] *See* current 12 CFR ____.21(a)(3).

[692] *See* current 12 CFR ____.21(a)(2) and ____.25.

[693] *See* current 12 CFR ____.21(a)(4) and ____.27.

[694] *See* proposed § ____.21(a) and (b); *see also* proposed §§ ____.12 and ____.22 through ____.29.

low- and moderate-income individuals, small businesses and small farms, and low- and moderate-income geographies through an analysis of lending volume and geographic and borrower lending distributions.[695] More specifically, the agencies proposed that the bank's retail lending distribution metrics, calculated using the bank's number of loans, be compared to community and market benchmarks.[696] The agencies also proposed that additional factors be considered when evaluating a bank's retail lending performance.[697] The agencies proposed that conclusions for the Retail Lending Test 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.[698]

The agencies proposed that the Community Development Financing Test assess how well a bank meets community development financing needs, using dollar-based metrics and benchmarks to standardize the review of community development loans and community development investments, while also incorporating a qualitative impact review of community development financing activities to complement the metrics and benchmarks.[699] Conclusions would reflect the agencies' qualitative assessments of a bank's community development financing metric relative to the benchmarks and the impact review. The proposed conclusions for the Community Development Financing 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.[700]

The agencies' proposed Retail Services and Products Test and Community Development Services Test would evaluate how well a bank's products and services, respectively, meet community credit and community development needs.[701] The agencies proposed revised standards for these performance tests to reflect changes in banking over time and to introduce standardized metrics,[702] as well as benchmarks for the Retail Services and Products Test,[703] to allow a more consistent evaluation approach. For both performance tests, the proposed 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.[704]

To reflect the increased resources and capacity of large banks that had assets greater than $10 billion, the agencies proposed additional tailoring of the Retail Services and Products Test, the Community Development Services Test, and the data collection and reporting requirements.[705] For large banks that had assets greater than $10 billion, the agencies proposed requiring a full evaluation under the Retail Services and Products Test, including the bank's digital and other delivery systems[706] and deposit products responsive to the needs of low- and moderate-income individuals.[707] Similarly, for the Community Development Services Test, the agencies proposed that only large banks that had assets of more than $10 billion would be required to be evaluated under a community development service hours metric.[708]

In addition to requiring large banks that had assets greater than $10 billion to collect and maintain data for digital and other delivery systems and responsive deposit products,[709] the agencies also proposed that these banks collect, maintain, and report deposits,[710] community development services,[711] and automobile lending data.[712]

Comments Received

The agencies received numerous comments on the application of the four proposed tests to large banks. Many commenters offered general support for the proposed four-test framework, with reasons for support including increased test rigor, additional quantitative standards for assessing performance, and permitting a more comprehensive evaluation of CRA activities.

Many commenters also stated that the proposed four-performance test framework for large banks offered significant improvements in performance test rigor, but that the improvements are not consistent. In particular, some commenters were concerned that the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test may replicate the high pass rates and ratings that banks currently receive, leading to ''grade inflation,'' and may not necessarily reveal significant distinctions in performance. These commenters suggested that the agencies extend the rigor of the Retail Lending Test to the other three performance tests. To guard against ratings inflation and ensure test rigor, several commenters recommended that the agencies develop guidelines for examiners on how to use the performance measures for some of the large bank performance tests such as the Community Development Financing Test and the Community Development Services Test.

Some commenters made recommendations to the agencies to revise the proposed large bank framework of performance tests by adding to, eliminating, or reconfiguring one or more of the four performance tests. A commenter expressed support for the current large bank three-performance-test evaluation regime with distinct lending, investment, and service tests, stating that this three-performance-test regime is a more equitable method to measure CRA performance; prevents bank lending, investment, and services from competing against each other for supremacy; and ensures that banks continue to have a focused incentive to meet the needs of low- and moderate-income communities.

Some commenters suggested that the agencies eliminate the Community Development Services Test after combining it with the Retail Lending Test, the Community Development Financing Test, the Retail Services and Products Test, or a combination of the performance tests. These commenters explained that: the proposed Community Development Services Test was not sufficiently weighted by itself to incentivize bank performance; the proposed eligible service activities are limited and had minimal impacts; and the activities that would be evaluated under the performance test would be better allocated to either the Community Development Financing Test or the Retail Services and Products Test. For large banks, a commenter suggested that the agencies should consider combining the Community Development Financing Test and the Community Development Services Test, and separately combining the Retail Lending Test and the Retail Services and Products Test, with each

[695] *See* proposed § ____.22(d) and proposed appendix A.

[696] *See id.*

[697] *See* proposed § ____.22(e).

[698] *See* proposed § ____.22(f)(1).

[699] *See generally* proposed § ____.24 and proposed appendix B.

[700] *See* proposed § ____.24(d)(1).

[701] *See generally* proposed § ____.23, proposed appendix A, proposed § ____.25, and proposed appendix B.

[702] *See generally* proposed §§ ____.23 and ____.25.

[703] *See* proposed § ____.23(b)(1)(i)(B).

[704] *See* proposed §§ ____.23(d)(1) and ____.25(e)(1).

[705] *See generally* proposed §§ ____.23, ____.25, and ____.42.

[706] *See* proposed § ____.23(b)(3).

[707] *See* proposed § ____.23(c)(2).

[708] *See* proposed § ____.25(b)(2).

[709] *See* proposed § ____.42(a)(4)(ii) and (iii).

[710] *See* proposed § ____.42(a)(7) and (b)(5).

[711] *See* proposed § ____.42(a)(6) and (b)(4).

[712] *See* proposed § ____.42(a)(2) and (b)(2).

combined performance test having a 50 percent weight.

Another commenter suggested that the agencies make the Community Development Services Test more of a ''tie-breaker'' by providing minimal credit for community development services. Another commenter suggested that the agencies eliminate the Community Development Services Test in full and instead evaluate these services as an impact review factor.

A few commenters suggested that the agencies maintain separate evaluations for community development lending and community development investments. The commenters stated that, by combining community development lending and community development investment into a single performance test, banks may retreat from investments because they can be more complex and provide a lower rate of return than community development lending. For similar reasons, a commenter recommended that the agencies create a lending subtest and an equity investment subtest within the Community Development Financing Test with equal weighting for both subtests.

Many commenters offered suggestions on additional tailoring for the large bank performance test framework. For example, a few commenters suggested that large banks that had less than $10 billion in assets should have the ability to choose an evaluation under the proposal or under the current examination framework.

Many commenters objected to the fact that, under the proposal, large banks that had assets between $2 billion and $10 billion would have different and lesser obligations compared to banks that had over $10 billion in assets. These differences existed within: (1) the Retail Services and Products Test with respect to the evaluation of digital and other delivery systems and the evaluation of deposit products responsive to the needs of low- and moderate-income individuals; (2) the Community Development Services Test with respect to the metric for community development services hours; and (3) the related data requirements for retail services and products, community development services, and deposits. These commenters stated that financial institutions classified as a large bank should have all the CRA responsibilities of a large bank with no differential treatment.

Final Rule

After considering these comments, the agencies are finalizing the overall evaluation framework for large banks as proposed with the four performance tests described above. Under § ____.21(a)(1) of the final rule, large banks are subject to: the Retail Lending Test in final § ____.22; the Retail Services and Products Test in final § ____.23; the Community Development Financing Test in final § ____.24; and the Community Development Services Test in final § ____.25. However, as discussed in the section-by-section analysis to final § ____.28, ''Assigned Conclusions and Ratings,'' the agencies are revising the weight of each of the four performance tests so that the two retail performance tests and the two community development performance tests collectively each have a respective weight of 50 percent.

The agencies note that, rather than three performance tests under the current rule, they proposed the four performance tests for large banks to more easily tailor examinations by bank asset size and business model. This tailoring allows the agencies to use specific data for each performance test, including data which are already available. Further, the agencies believe that each individual performance test measures a unique aspect of how responsive a bank's retail and community development activities are to the credit needs of their communities, and that collapsing one or more of the performance tests to evaluate lending, investment, and services would result in a less robust large bank evaluation framework. Retaining the Community Development Services Test and the Retail Services and Products Test as separate performance tests for large banks appropriately emphasizes large bank service performance under each respective performance test. Maintaining the Community Development Financing Test and Community Development Services Test as separate performance tests underscores the importance of community development services for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development, including in rural areas. Further, the Community Development Financing Test and the Community Development Services Test each evaluate different aspects of the responsiveness of a bank's community development activities to the credit needs of its local communities. Maintaining two separate community development performance tests in the final rule emphasizes the benefits and importance of community development financing activities and community development services and acknowledges that, in comparison to smaller banks, large banks have additional capacity to conduct both types of activities.

The agencies are not adopting the suggestions to make the Community Development Services Test more of a ''tie-breaker'' or to instead evaluate community development services as an impact review factor because these suggestions are inconsistent with the agencies' intent to emphasize the significance of community development service activities, as noted above.

The agencies are keeping the evaluation of both community development lending and community development investments activities under the Community Development Financing Test. The agencies acknowledge the importance of investments, such as the LIHTC, to help support the creation of affordable rental housing. For that reason, as discussed in the section-by-section analysis of § ____.24, the final rule establishes a separate community development investment metric in § ____.24(e)(2)(iii) and (iv) to identify and consider these types of investment activities within the broader performance test. With this addition, the agencies believe that these activities can be evaluated in a single performance test without a diminution of either lending or investments. In addition, if the agencies observe any developments in which banks favor community lending or community investments to a point where there is an appreciable decline in one type of activity in favor of the other, the agencies will reevaluate whether any additional measures are needed, such as separate tests or distinct evaluations of each activity under the same test. However, agency experience does not indicate that the de-emphasis of community development lending or community investment under a single test is likely to be a significant concern as evidenced by the current intermediate small bank community development test which evaluates both loans and investments.

Further, the agencies believe that the proposed four performance test framework for large banks, which uses objective and quantitative measures to inform bank performance conclusions and ratings and reduces potential opportunities for subjective judgment, is appropriately calibrated to evaluate the performance of large banks. Specifically, the framework uses metrics and benchmarks to evaluate community development loans and investments under the Community Development Financing Test and bank delivery systems under the Retail Services and Products Test. The Retail Lending Test uses distribution metrics and benchmarks to make evaluations more transparent, including by specifying quantitative standards for lending consistent with achieving, for example, a ''Low Satisfactory'' or ''Outstanding'' conclusion in a Retail Lending Test Area. Although the Community Development Services Test adopted in the final rule does not include any metrics or benchmarks, the agencies' supervisory experience will permit the use of the information and data evaluated under the performance test to make meaningful distinctions in bank performance. Further explanation of this change is discussed in the section-by-section analysis of § ____.25.

The agencies agree with commenters' perspective with respect to developing guidelines for examiners on how to use the performance measures for some of the large bank performance tests. As the agencies implement the final rule, they will consider what internal guidance will be helpful for agency staff to accurately evaluate bank performance.

In connection with each applicable performance test, the agencies considered the possibility of fully eliminating the proposed distinctions between large banks that had assets greater than $10 billion and large banks that had assets between $2 billion and $10 billion in the final rule, as requested by some commenters. While all of these proposed distinctions are not finalized,[713] the agencies are adopting some of the proposed distinctions in the final rule because the agencies find that, although it is appropriate to apply all four performance tests to large banks that had assets less than $10 billion in assets, large banks that had assets between $2 billion and $10 billion have a more limited capacity to comply with some requirements and data provisions in comparison to their counterparts that had assets greater than $10 billion. These provisions include the consideration of digital delivery systems, other delivery systems, and deposit products responsive to the needs of low and moderate-income individuals under the Retail Services and Products Test[714] as well as the data requirements with respect to digital delivery systems, other delivery systems, and deposits.[715] Further, the agencies believe that large banks that had assets greater than $10 billion is an appropriate threshold at which to apply the additional requirements described above. All three of the agencies have considerable experience in using $10 billion in bank assets as a demarcating boundary for heightened supervisory expectations or additional requirements.[716] Furthermore, the agencies note that Federal legislation also uses $10 billion in bank assets on a frequent basis as a threshold for making certain requirements applicable to financial institutions.[717] Finally, the agencies note that, under the final rule, large banks that had assets between $2 billion and $10 billion may opt into any of the proposed requirements applicable to large banks that had assets greater than $10 billion. For example, a large bank with assets between $2 billion and $10 billion may opt to collect and maintain deposits data that is required for large banks that had assets greater than $10 billion.

The agencies also considered the suggestion that large banks that had assets less than $10 billion should have the ability to choose an evaluation under the proposal or under the current examination framework. However, implementing this suggestion could remove a significant number of large 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 final rule's large bank evaluation approach. The agencies estimate that there are approximately 372 banks that had assets between $2 billion and $10 billion, representing approximately 8.0 percent of all banks with CRA obligations and 7.3 percent of deposits.[718] In addition, the agencies continue to believe that, with appropriate tailoring incorporated in the final rule for large banks that had assets between $2 billion and $10 billion, these banks otherwise have the requisite capacity to engage in the range of activities that will be evaluated under the proposed four performance test framework.

Section ____.21(a)(2) Intermediate Banks

The Agencies' Proposal

In § ____.21(b)(2), the agencies proposed that intermediate banks be evaluated under the following tests: (1) the Retail Lending Test applicable to all intermediate banks; and (2) either the current intermediate small bank community development test in proposed § ____.29(b)(2) as a default or, at the bank's option, the Community Development Financing Test. The agencies explained in the proposal that intermediate banks would be evaluated under the Retail Lending Test to improve clarity, consistency, and transparency in the evaluation of retail lending, and provided options for community development evaluation in recognition of the fact that, in comparison to large banks, intermediate banks have a relatively more limited capacity to conduct community development activities.

Under proposed § ____.21(b)(2)(ii)(A), if an intermediate bank chose to be evaluated under the Community Development Financing Test, the agencies would continue to evaluate the bank under the performance test until the bank opted out. Proposed § ____.21(b)(2)(ii)(B) provided that the agencies may adjust an intermediate bank's institution rating from ''Satisfactory'' to ''Outstanding'' if the bank: (1) chose to be evaluated under the Community Development Financing Test; (2) requested additional consideration for activities that qualify under the Retail Services and Products Test or the Community Development Services Test; and (3) the bank would have received a ''Satisfactory'' before the additional consideration.

Similar to the current CRA requirements, the proposal would not have required intermediate banks to collect or report any additional data.[719]

[713] Provisions include the Bank Assessment Area Community Development Service Hours Metric for the Community Development Services Test that the agencies did not adopt from the proposal, along with the associated data collection, maintenance, and reporting requirements. The agencies also did not adopt the proposed distinction with respect to the requirement to collect, maintain, and report automobile lending data and replaced it instead with a requirement to collect the data if automobile loans are a product line for the bank.

[714] *See* final § ____.23(b)(1)(iii), (b)(4), (c)(1)(ii), and (c)(3).

[715] *See* final § ____.42(a)(4)(ii) and (iii), (a)(7), and (b)(3).

[716] *See, e.g.,* Board, ''Community & Regional Financial Institutions'' (Sept. 15, 2021), *https://www.federalreserve.gov/supervisionreg/community-and-regional-financial-institutions.htm* (indicating that the Board ''defines community banking organizations as those with less than $10 billion in assets'' for general supervisory purposes); OCC, ''Community Bank Supervision'' (Sept. 30, 2019), *https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/community-bank-supervision/pub-ch-community-bank-supervision.pdf* (providing that ''banks with assets of $10 billion or less are'' typically ''characterized as community banks'' as a general supervision category); 12 CFR 327.8(f) and 327.16(b) (FDIC regulations generally defining a large institution as a ''depository institution with assets of $10 billion or more'' and using a separate methodology to calculate risk-based deposit insurance assessments for the Deposit Insurance Fund).

[717] *See, e.g.,* 12 U.S.C. 1851(h)(1)(B) (making the Volcker Rule requirements applicable to banks with more $10 billion in total consolidated assets) and 12 U.S.C. 5515 (providing the CFPB with authority to examine banks with more than $10 billion to assess compliance with Federal consumer finance laws); 15 U.S.C. 1693o–2(a)(6) (exempting banks with less than $10 billion in assets from regulations on interchange transaction fees with respect to an electronic debit transaction).

[718] These numbers are based on 2021 and 2022 Call Report data.

[719] *See* proposed § ____.42.

However, when an intermediate bank chose to be evaluated under the Community Development Financing Test, it would be required to collect and maintain the same data required of large banks for community development loans and community development investments, but in the format used by the bank in the normal course of business, until the completion of the bank's next CRA examination.[720]

Comments Received

The agencies received numerous comments on the application of the tests to intermediate banks. Some commenters supported the agencies' proposal for intermediate banks because it provided important flexibilities, specifically stating that the ability to opt into the Community Development Financing Test appropriately balances regulatory burden.

Other commenters suggested additional changes for the intermediate bank performance evaluation framework. A few commenters requested that the final rule give intermediate banks the ability to also opt into the Retail Lending Test. Some commenters recommended that intermediate banks should have the option to continue to be evaluated under all of the current standards applicable to intermediate small banks, including the current small bank lending test.

With respect to the evaluation of intermediate bank community development loans, investments, and services, commenters offered a variety of perspectives. A few commenters stated that community development services should be a mandatory part of the intermediate bank community development evaluation. Some commenters stated that the same community development obligations that apply to large banks should apply to all banks, an approach that would include all intermediate banks under the Community Development Financing Test and Community Development Services Test. A commenter suggested that intermediate banks should be required to be evaluated under a Community Development Financing Test and a Community Development Services Test that are customized for intermediate banks.

A commenter stated that all banks, including intermediate banks, should have essential retail service activities reviewed, including but not limited to the accessibility of their products, services, and branch network for low- and moderate-income individuals and communities.

Another commenter recommended that the agencies provide more guidance on how community development services could optionally be incorporated into the evaluations of intermediate banks.

Final Rule

After considering the comments, the agencies are adopting the evaluation framework for intermediate banks as proposed. Specifically, § ____.21(a)(2)(i) of the final rule provides that the agencies will evaluate intermediate banks under the Retail Lending Test in § ____.22 and the Intermediate Bank Community Development Test in § ____.30(a)(2) (renamed from the ''intermediate bank community development evaluation'' in the proposal), unless an intermediate bank chooses to have its community development loans and investments evaluated under the Community Development Financing Test in § ____.24. Final § ____.21(a)(2)(ii) provides that, if an intermediate bank opts to be evaluated under the Community Development Financing Test, the agencies will continue to evaluate the bank under the performance test until the bank opts out; if the intermediate bank opts out of the Community Development Financing Test, the agency reverts to evaluating the bank pursuant to the Intermediate Bank Community Development Test, starting with the evaluation period preceding the bank's next CRA examination. Furthermore, final § ____.21(a)(2)(iii) provides that, pursuant to final § ____.30(b), intermediate banks may request additional consideration for the services and products that qualify under the Retail Services and Products Test or the Community Development Services Test. In contrast to proposed § ____.21(b)(2)(ii)(B), which provided additional consideration only to intermediate banks choosing an evaluation under the Community Development Financing Test, final § ____.21(a)(2)(iii) permits additional consideration for any intermediate bank and references the substantive provisions concerning the evaluation of intermediate banks.

As proposed, intermediate banks generally do not have any required data collection, maintenance, or reporting requirements under the final rule.[721]

The agencies believe that applying the Retail Lending Test to intermediate banks will improve the clarity, consistency, and transparency of retail lending evaluations. Further, the agencies believe it is appropriate to apply the Retail Lending Test to intermediate banks because they generally have fewer capacity constraints than small banks, putting them in a better position to comply with Retail Lending Test requirements.

The agencies also note that various aspects of the Retail Lending Test are tailored in the final rule to accommodate intermediate banks. For example, relative to large banks, the final rule minimizes the data intermediate banks must collect and maintain for evaluation under the Retail Lending Test;[722] limits the geographic scope in which the performance test applies;[723] and provides additional accommodations for intermediate banks on various components of the test, such as the Retail Lending Volume Screen.[724]

Commenters noted that the proposed the Retail Lending Test would apply to some intermediate small banks that are currently evaluated under the small bank lending test. However, the agencies are finalizing the proposal to apply the Retail Lending to all intermediate banks to confer greater clarity, consistency, and transparency to evaluations of retail lending. The agencies believe this approach is appropriate considering that some aspects of the Retail Lending Test are tailored to intermediate banks. In making this decision, the agencies considered whether banks with assets of more than $600 million in assets but less than $1.503 billion could reasonably be expected to transition from the *status quo* small bank lending test to the Retail Lending Test and have determined that, based on supervisory experience, these banks have the capacity and resources to comply with all applicable aspects of the test.

[720] *See* proposed § ____.42(a)(5)(i)(B).

[721] The only exception is the requirement that if an intermediate bank chooses to be evaluated under the Community Development Financing Test, it must collect and maintain community development loans and community development investments data. *See* final § ____.42(a)(5)(i)(B).

[722] *See generally* final § ____.42(a) and (b) (primarily exempting intermediate banks from the requirements to collect, maintain, or report data used to assess Retail Lending Test performance).

[723] *See* final §§ ____.17 (making retail lending assessment applicable to large banks only) and ____.18 (exempting intermediate banks and small banks that opt into the Retail Lending Test from the outside retail lending area evaluation requirements if more than 50 percent of the relevant loans were purchased or originated inside the bank's facility-based assessment areas over the previous two calendar years).

[724] *See* final § ____.22(c)(3)(iii)(B) (intermediate banks lacking an acceptable basis for not meeting the Retail Lending Volume Screen in the facility-based assessment area receive a Retail Lending Test recommended conclusion).

The agencies considered whether they should require intermediate banks to be evaluated under the Community Development Financing Test as suggested by commenters. Although the agencies concluded that requiring intermediate banks to participate in the Community Development Financing Test provided the added benefit of metrics and benchmarks for community development activities, the agencies also believe that the additional burden from requiring the transition to the Community Development Financing Test could not be justified for all intermediate banks, some of which have more limited capacity.

The agencies also considered whether, similar to the approach taken for the Retail Lending Test, they could tailor the Community Development Financing Test for intermediate banks so that the performance test could be applied to all intermediate banks. Although the agencies saw potential in this approach, they were unable to make modifications to the point that could simultaneously accommodate the capacity constraints of some intermediate banks and maintain a set of metrics and benchmarks that permitted a meaningful comparison amongst all banks under the test. The agencies believe that the more prudent approach in the final rule is to retain the Intermediate Bank Community Development Test as the default evaluation method for intermediate banks.

The agencies also considered whether the Community Development Services Test should apply to intermediate banks as a required part of their CRA performance evaluation. The agencies decided that the application was not necessary. For intermediate banks subject to the default Intermediate Bank Community Development Test, ''community development services'' is already one of the four criteria described in final § ____.30(a)(2), making simultaneous evaluation under the Community Development Services Test redundant. The agencies also explained in the proposal that, for the default evaluation, they would retain the expectation that intermediate banks may not ignore one or more of the categories of community development activities covered by the criteria, such as community development services, and that 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.[725] This expectation also applies under the final rule.

For intermediate banks choosing an evaluation under the Community Development Financing Test, although community development services are not evaluated under the performance test, the final rule permits these banks to submit activities that qualify under the Community Development Services Test for additional consideration if the bank has an overall institution rating of ''Satisfactory.'' Although this does not make the evaluation of community development services mandatory, the agencies have decided that this tailoring is appropriate to avoid the application of an additional new performance test for intermediate banks with more pronounced capacity constraints than their large bank counterparts. The agencies agree that additional guidance on how community development services could optionally be incorporated into the evaluations of intermediate banks may be appropriate, and will consider issuing such guidance in the future.

Although the agencies do not believe that the Retail Services and Products Test should be applied to all intermediate banks because of capacity constraints, the agencies have created an evaluation framework that allows the agencies to consider any retail services an intermediate bank may conduct when certain conditions are met. An intermediate bank evaluated under either the Intermediate Bank Community Development Test or the Community Development Financing Test may request additional consideration for retail banking services and retail products and programs that qualify under the Retail Services and Products Test, provided the bank achieves an overall institution rating of at least ''Satisfactory.''[726]

Section ____.21(a)(3) Small Banks

The Agencies' Proposal

In § ____.21(b)(3)(i), the agencies proposed to evaluate small banks under the current lending test for small banks as the default evaluation method; however, small banks could opt instead to be evaluated under the Retail Lending Test. The agencies explained in the preamble to the proposed rule that this approach not only recognized that small banks have capacity constraints and a more targeted focus on retail lending than larger banks, but it also made a metrics-based approach available to small banks as an option to increase the clarity, consistency, and transparency of how their retail lending is evaluated.

If a small bank chose to be evaluated under the Retail Lending Test, the agencies proposed in § ____.21(b)(3)(ii)(A) to evaluate the small bank under all Retail Lending Test provisions applicable to an intermediate bank, with the exception that no small bank would be evaluated on its retail lending outside of its facility-based assessment areas. This exception was intended by the agencies to tailor the Retail Lending Test to small banks' more limited capacities. Proposed § ____.21(b)(3)(ii)(B) provided that the agencies would continue to evaluate a small bank that chose to be evaluated under the Retail Lending Test under that performance test until the bank opted out. If a small bank opted out of the Retail Lending Test, the agency would revert to evaluating the bank under the small bank performance standards as provided in proposed § ____.29(a), starting with the entire evaluation period preceding the bank's next CRA examination.[727]

In addition, proposed § ____.21(b)(3)(ii)(C) provided that a small bank that chose to be evaluated under the Retail Lending Test 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 the activities, the agencies may adjust the bank's rating from ''Satisfactory'' to ''Outstanding'' at the institution level.[728] Guidance for the current regulations contains a similar provision with respect to community development activities or retail services activities.[729]

Similar to current CRA requirements, the agencies proposed that small banks would have no prescribed data collection or reporting requirements.[730]

Comments Received

The agencies received many comments on the application of the proposed test to small banks. Although some commenters supported the proposed evaluation framework for small banks, other commenters suggested alternative or additional performance tests. A commenter suggested that the agencies apply the Retail Lending Test to all small banks and, if necessary, provide accommodations, such as a longer transition period. Another commenter

[725] *See* Q&A § ____.26(c)–1.

[726] *See* final §§ ____.21(a)(2)(iii) and ____.30(b)(2).

[727] *See* proposed § ____.21(b)(3)(ii)(B).

[728] *See also* proposed § ____.29(a)(2).

[729] *See* Q&A § ____.26(d)–1.

[730] *See* proposed § ____.42.

suggested that the final rule require the evaluation of small bank retail service activities. A commenter requested that the final rule apply the same community development obligations to small banks as to large banks. Another commenter stated that the agencies should scale community development activities appropriately for small banks, which should not be totally exempt from having these activities evaluated. A commenter recommended that the agencies provide more guidance on how community development services could optionally be incorporated into the evaluations of small banks. A commenter suggested that all banks, including small banks, should have incentives to engage in community development financing. Another commenter suggested that, at a minimum, intermediate small banks under the current CRA regulations that become small banks under the proposal should continue to have their community development activities evaluated.

Final Rule

After considering the comments, the agencies are adopting the performance test framework for small banks with some modifications to accommodate other changes in the final rule. Specifically, § ____.21(a)(3)(i) of the final rule provides that the agencies apply the Small Bank Lending Test (renamed from the ''small bank performance standards'' in the proposal) in final § ____.29(a)(2), unless the bank opts to be evaluated under the Retail Lending Test in final § ____.22. If a small bank opts to be evaluated under the Retail Lending Test, final § ____.21(a)(3)(ii)(A) specifies that the agencies use the same provisions used to evaluate intermediate banks pursuant to the Retail Lending Test. As discussed further in the section-by-section analysis of § ____.18 and, in comparison to the proposal, this provision modifies the treatment of small banks evaluated under the Retail Lending Test by extending uniform treatment to small banks and intermediate banks with respect to the bank's outside retail lending area.[731] This modification ensures that small banks with significant concentrations of home mortgage loans, multifamily loans, small business loans, small farm loans, or automobile loans outside of their facility-based assessment areas are subject to evaluation of any product lines which meet the major product line standards, described further in the section-by-section analysis of § ____.22.

Final § ____.21(a)(3)(ii)(B) indicates that small banks that opt to be evaluated under the Retail Lending Test will be evaluated under this test for the evaluation period preceding the bank's next CRA examination and will continue to be evaluated under that performance test until the bank opts out; if the small bank opts out, the bank will be evaluated under the Small Bank Lending Test, starting with the evaluation period preceding the bank's next CRA examination.

In addition, final § ____.21(a)(3)(iii) provides that, pursuant to final § ____.29(b), a small bank may request additional consideration for loans, investments, services, products, and other activities described in that paragraph. In contrast to proposed § ____.21(b)(3)(ii)(C), which would have provided additional consideration only to small banks choosing an evaluation under the Retail Lending Test, final § ____.21(a)(3)(iii) permits additional consideration for any small bank and references the substantive provisions concerning the evaluation of small banks.

As proposed, and similar to the current CRA requirements, small banks have no required data collection, maintenance, or reporting requirements under the final rule.[732]

The agencies decline to apply the Retail Lending Test to all small banks because the agencies believe that providing small banks the option to have their retail lending evaluated under either the Retail Lending Test or the Small Bank Lending Test better recognizes the capacity constraints of small banks. If a particular small bank prefers to be evaluated under the Retail Lending Test's metrics-based approach, the final rule provides the flexibility for that bank to be evaluated under that performance test in a manner which accommodates the bank's asset size.

The agencies also decline to apply the Community Development Financing Test and the Community Development Services Test to small banks because these performance tests are specifically tailored to evaluate the community development loans, investments, and services of larger banks. The Community Development Financing Test in the final rule includes metrics and benchmarks primarily focused on the performance of large banks; and both the Community Development Financing Test and the Community Development Services Test require banks to collect, maintain, or report data to assess bank performance. The agencies do not believe that the benefit of imposing new community development investment or community development service requirements on small banks outweighs the potential burden that this change would impose on those banks. However, in recognition of their limited capacities, the agencies continue to believe that any considerations of small bank community development loans, investments, or services should be optional and that the better approach is to allow small banks the ability to request additional consideration for any community development loans, investments, or services they conduct. As described in final § ____.29, the optional consideration of these community development loans, community development investments, and community development services will result in positive consideration only, so that small banks that do not engage in (or do not receive additional consideration for) these activities will not experience an adverse assessment of their CRA performance.

The agencies note that they will consider providing guidance with respect to how community development services could optionally be incorporated into the evaluations of small banks, as recommended by a commenter.

For similar reasons, the final rule does not require the evaluation of a small bank's retail banking services or retail banking products. Instead, small banks may request that the agencies consider retail banking services or retail banking products that they provide. However, given the limited capacity of small banks the agencies believe that it would not be appropriate to impose a mandatory evaluation with respect to small bank retail banking services or retail banking products performance.

Section ____.21(a)(4) Limited Purpose Banks

The Agencies' Proposal

The agencies proposed in § ____.21(b)(4)(i) to evaluate wholesale and limited purpose banks under a Community Development Financing Test for Wholesale and Limited Purpose Banks.[733] The agencies proposed in § ____.21(b)(4)(ii) to give wholesale and limited purpose banks the option to have activities that qualify under the Community Development Services Test considered for a possible adjustment from ''Satisfactory'' to ''Outstanding'' for the bank's overall institution rating.

[731] *See* final § ____.18(a)(2); *see also* final appendix A, paragraph II.a.2.

[732] *See* final § ____.42.

[733] *See also* proposed § ____.26.

Comments Received

The agencies received many comments on the application of the proposed test to wholesale and limited purpose banks. Commenters expressed a variety of views on whether the wholesale and limited purpose bank designations should continue with an independent test. Several commenters expressed support for continued designations and evaluations under a Community Development Financing Test for Wholesale and Limited Purpose Banks because some banks have business models that do not align with the proposal's otherwise generally applicable performance tests based on asset size. These commenters also explained that they supported continuation of the wholesale and limited purpose bank category because these types of banks frequently have retail products that represent minimal amounts in comparison to the bank's loans or assets. Other commenters expressed concern that the proposed wholesale and limited purpose bank designation and proposed performance test could permit some banks to avoid evaluation of retail products, such as credit cards.

Final Rule

After considering the comments, the agencies are adopting as proposed the limited purpose bank provision in § ____.21(a)(4)(i) of the final rule, with technical edits. As noted in the section-by-section analysis to § ____.12, the agencies have combined the ''wholesale bank'' definition with the ''limited purpose bank'' definition and eliminated the former definition. Final § ____.21(a)(4)(i) provides that limited purpose banks are evaluated pursuant to the Community Development Financing Test for Limited Purpose Banks in § ____.26. In § ____.21(a)(4)(ii), the final rule provides that, pursuant to § ____.26(b)(2), a limited purpose bank may request additional consideration for low-cost education loans and services described in that paragraph. In contrast to proposed § ____.21(b)(4)(ii), which provided additional consideration for wholesale or limited purpose bank activities qualifying under the community development services test, final § ____.21(a)(4)(ii) references the substantive provisions concerning the evaluation of limited purpose banks.

The agencies believe the limited purpose bank category and test appropriately accommodates banks with unique business models and the particular products they offer under those models by accurately measuring a bank's volume of community development loans and investments relative to its capacity. Because limited purpose banks do not typically offer the loans evaluated under the Retail Lending Test, the evaluation of the bank focused primarily on community development loans and community development investments represents an effective means to assess the bank's record of serving the credit needs of its communities.

The agencies are sensitive to commenter concerns that the Community Development Financing Test for Limited Purpose Banks should not become a means for banks to avoid an evaluation of their retail lending products that would otherwise be subject to an evaluation under the Retail Lending Test. For that reason, the agencies have revised the definition of ''Limited purpose bank'' in § ____.12 to only include banks that do not offer the types of loans evaluated under the Retail Lending Test or otherwise provide the loans solely on an incidental and accommodation basis.

Section ____.21(a)(5) Military Banks

The Agencies' Proposal

In addition to proposing a definition for the term ''military bank'' in § ____.12, the agencies proposed in § ____.16(d) that they would continue the practice of allowing a bank to delineate its entire customer deposit base as its assessment area, provided that the bank's business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area. While this aspect of the proposal preserved a flexibility available to these banks that exists in the current CRA regulations [734] and is required by CRA statute,[735] the agencies did not comprehensively explain how this option would be operationalized with respect to the applicable performance tests and standards. The agencies also did not describe how they would approach the evaluation of a military bank with a single assessment area.

Comments Received

On the issue of military banks as they relate to the overall evaluation framework, a commenter stated that while military banks should not necessarily be given a distinct bank classification, such as was done in the proposal for wholesale and limited purpose banks, the agencies should clarify that, in comparison to other banks, the military banks' business models may be significantly more narrow in scope. The commenter also indicated that the agencies should accommodate the unique business models of military banks that are often tailored to the specific needs of military and veteran communities.

Final Rule

In response to this comment, and to provide additional clarity regarding the treatment of military banks in the final rule, the agencies are adopting a new paragraph (a)(5) in § ____.21 of the final rule.[736] First, to clarify that military banks are not a distinct bank category with their own unique set of performance tests, final § ____.21(a)(5)(i) provides that the agencies evaluate a military bank pursuant to the applicable performance tests described in § ____.21(a); military banks are evaluated as a large bank, intermediate bank, small bank, or limited purpose bank, as appropriate. The agencies also note that, as with other banks, a military bank may be evaluated pursuant to an approved strategic plan. Second, if a military bank delineates the entire United States and its territories as its sole facility-based assessment area pursuant to final § ____.16(d), final § ____.21(a)(5)(ii) provides that the agencies evaluate the bank exclusively at the institution level based on its performance in its sole facility-based assessment area. This provision is intended by the agencies to minimize potential ambiguity regarding how the performance evaluation is conducted.

The agencies considered commenter suggestions to accommodate military bank business models. The agencies believe that by permitting military banks to continue to designate a single facility-based assessment area when their customer base is dispersed accommodates the unique business model of these banks that is primarily focused on meeting the credit needs of servicemembers, veterans, or their dependents. In addition, the agencies believe that the performance tests applicable to military banks permit a comprehensive evaluation of the military bank's record of serving its communities. The agencies' approach in the final rule also accommodates the ability of military banks to designate a single facility-based assessment area.

Section ____.21(a)(6) Banks Operating Under a Strategic Plan

The Agencies' Proposal

Proposed § ____.21(b)(5) retained the current rule's strategic plan option by

[734] *See* current 12 CFR ____.41(f).

[735] *See* 12 U.S.C. 2902(4).

[736] *See also* the section-by-section analysis of final § ____.12 (discussing definition of ''military bank'').

providing that the agencies would evaluate the CRA performance of a bank that chooses to be evaluated under a CRA strategic plan approved under § ____.27 in accordance with the goals set forth in such plan.[737] The agencies explained that retaining this alternative evaluation method would give banks flexibility to meet their CRA obligations in a manner that is tailored to community needs and opportunities as well as to their own capacities, business strategies, and expertise. To ensure that banks evaluated under a strategic plan meet their CRA obligations, the agencies proposed that the plans: (1) in most circumstances, incorporate the metrics-based analysis of all of the performance tests that would otherwise apply without a plan; [738] (2) include the same geographic areas that would be included in the absence of a plan; [739] and (3) require banks to report the same data required in § ____.42 as would be required in the absence of a plan.[740]

Comments Received

Many commenters provided feedback on the proposed framework for strategic plans. Almost all of these commenters expressed support for the strategic plan option and recommended that the option remain available to banks in a final rule. These commenters believed that the strategic plan could be useful for many banks, especially banks with unique business models or particular business strategies.

Another commenter, however, suggested that the agencies fully eliminate the strategic plan option because it adds complexity to the evaluation framework. This commenter questioned whether the option should be kept if banks must keep the same assessment areas and performance test requirements that would otherwise apply without a strategic plan. Another commenter suggested that the strategic plan option should only be made available to banks that persuade their regulator that they would fail the traditional examination process through no fault of their own.

Final Rule

After considering comments on the proposed strategic plan framework, the agencies are retaining the option for banks to be evaluated under an approved strategic plan in § ____.21(a)(6) of the final rule. The agencies believe this approach provides banks additional flexibility to meet their CRA obligations in a manner that is tailored to community credit needs and opportunities and the bank's own capacity, business strategy, and expertise. The agencies believe that retaining this flexibility outweighs any concern regarding potential complexity associated with an additional performance standard. The agencies note that they have revised the strategic plan provision in the final rule based on comments received, as discussed in the section-by-section analysis to § ____.27, Strategic Plans.

The agencies have made clarifying and technical changes to final § ____.21(a)(6) to conform with the strategic plan provisions in final § ____.27. Specifically, the agencies are indicating that they evaluate the performance of a bank that has an approved strategic plan as provided in § ____.27. The agencies have also removed references to strategic plan goals that were previously included because, under final § ____.27, although a bank may include goals in its plan, goals are not required in plans.

Additional Comments on the Evaluation Framework

A few commenters suggested that the final rule evaluation framework should be further tailored to account for other types of financial institutions.

A commenter recommended that the agencies consider the business model of CDFI banks in the CRA framework, stating that it would be appropriate to tailor evaluation aspects for CDFI banks given the complementary goals of CRA and the CDFI program. Although the agencies agree that the CRA and CDFI program have complementary goals, they also believe that the applicable performance tests and strategic plan in the final rule are drafted to apply appropriately to CDFI banks that provide financial services in low- and moderate-income communities and to persons with limited access to financing. Consequently, the agencies anticipate minimal benefits from introducing additional complexity in the form of provisions specific to CDFI banks.

Another commenter suggested that specific CRA consideration should be given for banks organized under mutual holding companies because their depositors are ultimately the members or owners of the bank, and these institutions provide unique services for their customers and communities. As with CDFI banks, the agencies do not believe that tailored evaluations are required for these banks. Instead, the final rule performance tests and standards are appropriate for evaluating whether these institutions meet the credit needs of their communities.

Section ____.21(b) Loans, Investments, Services, and Products of [Operations Subsidiaries or Operating Subsidiaries] and Other Affiliates

Current Approach

Under the current CRA regulations, the agencies define an ''affiliate'' as a company that controls, is controlled by, or is under common control with another company.[741] In subsequent guidance, the agencies have clarified that bank subsidiaries are a type of affiliate.[742]

The current evaluation framework provides large banks the option to include affiliate lending,[743] community development investments,[744] and community development services,[745] as applicable, in the bank's evaluation. Similar options to include affiliate loans, investments, and services are also available for wholesale and limited purpose banks,[746] banks evaluated under an approved strategic plan,[747] and small and intermediate small banks.[748] If a bank elects to include affiliate lending, investments, or services in its evaluation, the bank must collect, maintain, and report the affiliate data if the bank is subject to the data collection and reporting requirements,[749] or maintain sufficient information for examiners to evaluate the activity if it is not subject to those requirements.[750]

The Agencies' Proposal

The agencies proposed in § ____.21(c) to require the inclusion of relevant activities of a State member bank's ''operations subsidiaries'' and the ''operating subsidiaries'' of a national bank, Federal savings association, State non-member bank, or State savings association in the evaluation of the relevant bank's CRA performance, unless the bank subsidiary is independently subject to its own CRA

[737] *See* proposed §§ ____.21(b)(5) and ____.27.

[738] *See* proposed § ____.27(f)(1).

[739] *See* proposed § ____.27(f)(2).

[740] *See* proposed § ____.27(b).

[741] Current 12 CFR ____.12(a).

[742] *See* Q&A § ____.12(a)–1.

[743] *See* current 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.

[744] *See* current 12 CFR ____.23(c).

[745] *See* current 12 CFR ____.24(c).

[746] *See* current 12 CFR ____.25(d).

[747] *See* current 12 CFR ____.27(c)(3).

[748] *See* Q&A § ____.26–1.

[749] *See* current 12 CFR ____.42(d).

[750] *See* Q&A § ____.26–1.

requirements or another bank claims, for purposes of CRA, the same qualifying activity.[751] The agencies explained that because 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.

The agencies also proposed to maintain the current flexibility for banks to choose to include the relevant activities of other bank affiliates that are not operations subsidiaries or other subsidiaries unless the affiliate is independently subject to its own CRA requirements or another bank claims, for purposes of CRA, the same qualifying activity.[752] The agencies also proposed that, with respect to the activities of other bank affiliates, if a bank elected 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 its outside retail lending area, 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 in its outside retail lending area.[753]

The proposal also required banks to collect, maintain, and report data on the activities of operations subsidiaries and operating subsidiaries and pursuant to proposed § ____.42.[754] Pursuant to proposed § ____.42, if the bank chose to include other affiliate activity in its evaluation, the proposal required banks to collect, maintain, and report data on the activities of the other affiliate.[755]

The agencies sought feedback on what other factors, if any, the agencies should consider with respect to requiring the inclusion of activities of a bank's operations subsidiaries and operating subsidiaries as part of its CRA evaluation. The agencies also requested feedback regarding whether, 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, the agencies should consider: (1) 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 (2) 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.

Comments Received

The agencies received numerous comments addressing the proposed treatment of operations subsidiaries, operating subsidiaries, and other affiliates.

Operations Subsidiaries and Operating Subsidiaries. Some commenters supported the proposal's automatic inclusion of the activities of bank operations subsidiaries and operating subsidiaries in CRA examinations. A commenter stated that when the degree of separation between banks and their subsidiaries is nonexistent, the activities of the subsidiary should be considered activities of the bank. Another commenter suggested that the agencies should allow the subsidiaries sufficient time to obtain a level of operating efficiency with respect to new products and services before including them in a bank's performance evaluation. The commenter indicated that it takes a bank about two years to achieve efficient, mature operations for new products and markets. A commenter recommended that loans made or purchased via subsidiaries should automatically count towards the major product line calculations and towards the delineation of retail lending assessment areas. Another commenter recommended that, when multiple options are available, banks should retain the flexibility to elect which performance test applies to the activities of an evaluated subsidiary.

A few commenters did not support the mandatory inclusion of activities conducted by a bank's applicable subsidiaries because, from their perspective, it reduces flexibility in comparison to the current regulations. Another commenter argued that the agencies should exempt functionally regulated subsidiaries from the mandatory inclusion of operating or operations subsidiary activities in a bank's performance evaluation and data collection and reporting requirements because the mandatory inclusion of these subsidiaries within CRA examinations would exceed the agencies' statutory authority under 12 U.S.C. 1831v(a). A commenter suggested that the final rule should not expand data collection and reporting requirements to operations subsidiaries or operating subsidiaries that are required by other regulations. Another commenter stated that it was not clear in the proposal how community development financing would be considered in the context of subsidiaries.

Other Affiliates. A few commenters expressed support for the agencies' proposal to continue the current practice of providing banks with the option to have the CRA activities of other affiliates (that are not operations subsidiaries or operating subsidiaries) considered because it provides banks with flexibility and accommodates different bank business models. However, other commenters stated that the agencies should require all bank affiliates to be subject to CRA evaluations, with no optionality, because the affiliates are engaging in particular types of activities on behalf of the bank and banks should not be able to choose which affiliate activities they include or exclude from an evaluation.

A few commenters stated that, when a bank chooses to have the agencies consider qualifying retail loans by one or more of a bank's affiliates, loans purchased by the affiliate should not be able to compensate for the absence of bank loan origination activity. The commenters suggested that these loans purchased by an affiliate should have less relevance in evaluating a bank's CRA performance than loans that were actually made by its affiliates. A commenter suggested that a bank's affiliate's loans should be given a lower qualitative weight in the CRA evaluation. Some commenters noted that because the agencies did not propose evaluating limited purpose credit card banks on the distribution or impact of their credit card loans, these banks should not be allowed to exclude those activities by affiliate lenders. Another commenter stated that it is not clear in the proposal how community development financing would be considered in the context of affiliates and recommended that any community development financing activity engaged in by an affiliate should be included at the bank's request.

Some commenters supported the alternative suggested by the agencies that would consider all of the retail loans within a particular retail loan category made by all bank affiliates within all of the bank's assessment areas, if a bank elects to have an affiliate's retail lending considered. Commenters stated that this alternative would include a more comprehensive evaluation of retail lending activity and would limit opportunities for banks to conceal poor performance. Another commenter stated that it preferred the agencies' proposal to consider all of an

[751] *See* proposed § ____.21(c) introductory text and (c)(1).

[752] *See* proposed § ____.21(c) introductory text and (c)(2). The terms ''operating subsidiary'' and ''operations subsidiary'' were defined in the Board's, the FDIC's, and the OCC's respective versions of proposed § ____.12.

[753] *See* proposed § ____.21(c)(2)(iii).

[754] *See* proposed § ____.21(c)(1); *see also* proposed § ____.42(c).

[755] *See* proposed § ____.21(c)(2)(ii); *see also* proposed § ____.42(d).

affiliate's retail loans within a particular retail loan category made in specific assessment areas. Another commenter recommended that loans made or purchased via subsidiaries and affiliates should automatically count towards the major product line calculations and towards the delineation of retail lending assessment areas.

Some commenters addressed third-party activities with respect to affiliates. A commenter suggested that the agencies clarify that their proposal does not prohibit consideration for a loan that an affiliate originates and a third party purchases, or *vice versa,* consistent with the treatment of activities conducted directly by the bank. A number of commenters stated that the agencies should extend CRA requirements to third-party partnerships, such as those between banks and non-bank entities to make loans and offer other services. Other commenters similarly stated that CRA requirements should extend to any retail lending that uses the bank's underwriting or benefits from use of the bank's charter. Other commenters stated that considering third-party bank lending relationships could help to address ''rent-a-bank'' schemes or situations where a lender collaborates with a bank to offer products or services in order to avoid State interest rate limits.

Final Rule

Operations Subsidiaries and Operating Subsidiaries. The agencies are adopting the proposal's approach to operations subsidiaries and operating subsidiaries in paragraphs (b)(1) and (2) of § ____.21 of the final rule with technical and conforming changes.[756] For example, the agencies are referring to the loans, investments, services, and products of subsidiaries to conform to paragraphs (c) and (d) of final § ____.42 and more precisely describe the ''qualifying activities'' the agencies indicated that they would consider under the proposal. The agencies are also adding an ''as applicable'' indicator after the first reference to operations subsidiaries, operating subsidiaries, and other affiliates in final § ____.21(b)(1) to indicate that the substantive provisions apply to either subsidiaries or other affiliates that are not subsidiaries. Furthermore, the agencies are integrating the definition of ''depository institution'' in final § ____.21(b)(1) so that a bank does not receive consideration for loans, investments, services, or products if they are already claimed by another depository institution. Additional discussion of ''depository institution'' is included in the section-by-section analysis of § ____.12.

In final § ____.21(b)(2), the agencies provide that they will consider the loans, investments, services, and products of a bank's operations subsidiaries or operating subsidiaries unless the bank's subsidiary is independently subject to the CRA.[757] To prevent the simultaneous allocation of a particular loan, investment, service, or product across multiple bank charters, the agencies specify in final § ____.21(b)(1) that this consideration does not apply if a different bank, operations subsidiary, operating subsidiary, or other affiliate already claims the loan, investment, service, or product in a CRA performance evaluation. In final § ____.21(b)(2), the bank must collect, maintain, and report data on the loans, investments, services, and products of its operations subsidiaries or operating subsidiaries, as provided in final § ____.42(c) so that relevant loans, investments, services, and products of the subsidiaries are included in the CRA evaluation.

In a technical edit to final § ____.21(b)(2), the agencies are correcting the second reference to operations subsidiaries and operating subsidiaries to read as ''[operations subsidiary or operating subsidiary].'' The proposed regulation text in § ____.21(c)(1) errantly referred to ''operations subsidiary'' twice.

The agencies believe that their final rule approach appropriately captures the activities of bank operations subsidiaries and operating subsidiaries over which the bank exerts a significant degree of ownership, control, and management. The agencies acknowledge that evaluating the loans, investments, services, and products of an operations subsidiary or an operating subsidiary in a bank's performance evaluation reduces some flexibilities available to banks relative to the current CRA regulations, which permit banks to optionally include the activities under the affiliate activities provisions. However, the agencies believe that this concern is outweighed by the benefits of including these subsidiaries as part of a more comprehensive review of a bank's record of serving the credit needs of its communities through both activities conducted by the bank and activities that are appropriately ascribed to the bank.

The agencies disagree with commenter suggestions to provide subsidiaries more time to become operationally familiar with new products and services before including them in a bank's CRA evaluation. The agencies believe that this would be inconsistent with the final rule's approach to evaluating loans, investments, services, and products conducted during an evaluation period and would delay a more holistic consideration of a bank's activities. The agencies also believe that, as appropriate, they may consider through performance context the concerns identified by the commenter, such as information that a subsidiary has recently entered a market or is offering a new product or service.

The agencies agree with commenter recommendations that, for banks subject to the Retail Lending Test, loans made or purchased by an operations subsidiary or operating subsidiary should count towards the thresholds for delineation of retail lending assessment areas and identifying major product lines. Subject to the requirements of the regulation text in paragraphs (b)(1) and (2) in final § ____.21, as well as § ____.17 and appendix A, the closed-end home mortgage loans and small business loans of a bank's operations subsidiary or operating subsidiary are considered in the delineation of Retail Lending Assessment Areas. And subject to the requirements of paragraphs (b)(1) and (2) in final § ____.21, as well as the § ____.12 definition of ''product line'', § ____.22, and appendix A, the closed-end home mortgage loans, small business loans, small farm loans, and automobile loans of a bank's operations subsidiary or operating subsidiary are considered in determining a bank's major product lines in a Retail Lending Test Area.

Regarding commenter input that the agencies lack statutory authority under 12 U.S.C. 1831v(a) to include the CRA activities of functionally regulated subsidiaries in a bank's evaluation, the agencies note that as written, 12 U.S.C. 1831v(a) makes the provisions of 12 U.S.C. 1844(c) applicable to the Board, the FDIC, and the OCC with respect to functionally regulated subsidiaries.[758]

[756] See *supra* note 145.

[757] If an operations subsidiary or operating subsidiary is independently subject to the CRA because it is a financial institution, the agencies are required by CRA statute to assess the subsidiaries' record of meeting the credit needs of its entire community. *See* 12 U.S.C. 2903(a).

[758] *See* 12 U.S.C. 1831v(a) (providing that the provisions of 12 U.S.C. 1844(c) that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators shall also limit whatever authority

Continued

While 12 U.S.C. 1844(c) limits the authority of the Board ''to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions,'' section 1844(c) itself does not prohibit the Board from examining functionally regulated subsidiaries. Instead, the statute requires the Board to, whenever possible, minimize the duplication of efforts with other relevant State and Federal regulators by using existing reports and other supervisory information.[759] Section 1844(c) also provides that the Board must coordinate with the appropriate State and Federal regulators by providing notice to, and consulting with, them before beginning an examination of an entity that is a functionally regulated subsidiary.[760] Because the requirements applicable to the Board in section 1844(c) also apply to the FDIC and the OCC due to the requirements of section 1831v(a), all three agencies will comply with these statutory requirements when considering the loans, investments, services, and products provided by operations subsidiaries and operating subsidiaries that are functionally regulated subsidiaries.

The agencies note that final § ____.21(b) does not expand the data collection, maintenance, or reporting requirements for operations subsidiaries or operating subsidiaries by imposing requirements that are required by other regulations. The final rule only imposes parallel data requirements in § ____.42(c) that align with the data requirements applicable to banks under § ____.42(a) and (b).

With respect to commenter uncertainty regarding how community development financing will be considered in the context of operations subsidiaries or operating subsidiaries, the agencies' position is that because all of their relevant activities are attributed to the bank itself, they will be considered in the bank's performance evaluation, pursuant to final § ____.21(b)(2). Specifically, community development loans and community development investments made by a bank's operations subsidiary or operating subsidiary would be combined and collectively evaluated with the bank's loans and investments pursuant to the community development performance test applicable to the bank.

With respect to commenter concerns regarding the need for flexibility in the application of performances tests to a bank's operations subsidiary or operating subsidiary, the agencies believe that the final rule approach that applies the same performance tests which apply to the bank is the better approach. The significant degree of ownership, control, and management a bank exerts over an operations subsidiary or operating subsidiary makes the inclusion of the subsidiary's loans, investments, services or products under the bank's applicable performance tests a reasonable requirement. For that reason, the agencies do not believe the usage of alternative performance tests is warranted to evaluate the loans, investments, services, or products conducted in the subsidiary.

Other Affiliates. The agencies are finalizing the proposed provisions regarding the optional evaluation of a bank's other affiliates that are not operations subsidiaries or operating subsidiaries in the bank's evaluation, with some technical and conforming changes noted below. As with paragraphs (b)(1) and (2) of final § ____.21, the agencies are referring to the loans, investments, services, and products of affiliates in final § ____.21(b)(3) to conform with final § ____.42(d) and more precisely describe the ''qualifying activities'' the agencies indicated that they would consider under the proposal.

Pursuant to final § ____.21(b)(3), the agencies will consider the loans investments, services, and products of affiliates of a bank that are not operations subsidiaries or operating subsidiaries, at the bank's option. This optional consideration is subject to three primary requirements applicable to the loans, investments, services, and products. First, as required by final § ____.21(b)(1), a different depository institution may not claim the loan, investment, service, or product in a CRA evaluation. This requirement prevents the simultaneous allocation of a particular loan, investment, service, or product across multiple bank charters. Second, as required by final § ____.21(b)(3)(i), the affiliate may not be independently subject to the CRA.[761] Third, as required by final § ____.21(b)(3)(ii), the bank must collect, maintain, and report data on the loans, investments, services, and products of its affiliate, as provided in § ____.42(d).

For banks that opt to have affiliate loans that are closed-end home mortgage loans, small business loans, small farm loans, or automobile loans considered under the Retail Lending Test, the agencies are adopting final § ____.21(b)(3)(iii) with conforming changes to maintain consistency with the Retail Lending Test. Final § ____.21(b)(3)(iii) provides that, under the Retail Lending Test, a bank may opt to have an agency consider closed-end home mortgage loans, small business loans, small farm loans, or automobile loans that the bank's affiliate originated or purchased.[762] When a bank opts for this consideration, the particular loans are included in all aspects of the Retail Lending Test.[763]

More specifically, final § ____.21(b)(3)(iii) provides that the agencies consider the loans in the bank's particular Retail Lending Test Area, as defined in final § ____.12, that potentially includes a bank's facility-based assessment areas, and, as applicable, retail lending assessment areas and outside retail lending area.[764] Furthermore, as proposed, final § ____.21(b)(3)(iii) specifies that for a given bank product line (closed-end home mortgage loans, small business loans, small farm loans, or automobile loans) in a particular Retail Lending Test Area, the agencies will consider all of the loans made by all of the bank's

that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same standards and requirements as are applicable to the Board under those provisions.); *see also* 12 U.S.C. 1813(z) (defining ''Federal banking agency'' to mean ''the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation'').

[759] *See* 12 U.S.C. 1844(c)(1) and (c)(2).

[760] 12 U.S.C. 1844(c)(2)(C).

[761] This requirement is informed by the consideration that if a bank's affiliate is independently subject to the CRA because it is a financial institution, the agencies are required by CRA statute to assess the affiliates' record of meeting the credit needs of its entire community. *See* 12 U.S.C. 2903(a).

[762] To conform with the Retail Lending Test, the agencies revised ''retail loans within a retail lending category'' in proposed § ____.21(c)(2)(iii) to specify the particular types of loans evaluated under the Retail Lending Test in final § ____.21(b)(3)(iii): closed-end home mortgage loans, small business loans, small farm loans, or automobile loans. The agencies also revised proposed § ____.21(c)(2)(iii) to indicate that the loans can be ''originated or purchased'' as opposed to ''made or purchased,'' another change intended to conform to the applicable test.

[763] This approach is the same as in proposed § ____.21(c)(2)(iii).

[764] The agencies revised the two references to ''facility-based assessment area, retail lending assessment area, outside retail lending area, state, or multistate MSA, or nationwide'' in proposed § ____.21(c)(2)(iii) to refer instead to ''Retail Lending Test Area'' in final § ____.21(b)(3)(iii). This change covers the same geographic areas that contribute to the bank's ratings at the state, multistate MSA, and for the institution.

affiliates in that product line and in that particular Retail Lending Test Area.[765]

Based on commenter input, the agencies are making an additional substantive and clarifying change by adding final § ____.21(b)(3)(iv). The agencies are specifying that, if a large bank opts to have an affiliate's closed-end home mortgage loans or small business loans considered in any Retail Lending Test Area, the agencies will consider all of the closed-end home mortgage loans or small business loans originated by all of the bank's affiliates in the nationwide area when delineating retail lending assessment areas pursuant to final § ____.17(c). This change ensures that, if a bank opts to have an affiliate's closed-end home mortgage loans or small business loans considered, then the closed-end home mortgage loans or small business loans of all of its affiliates are also attributed to the bank and are used to determine the bank's obligations to delineate retail lending assessment areas.

The agencies also considered the commenter suggestion that affiliate loans considered by the agencies should be used to determine the bank's major product lines in the geographic area evaluated. The agencies note that because major product line determinations are part of the Retail Lending Test, § ____.21(b)(3)(iii) of the final rule incorporates affiliate loans in those determinations.

Further, in response to commenter input requesting additional clarity regarding consideration of affiliate community development financing activity, the agencies are adding § ____.21(b)(3)(v) to the final rule, which specifies that, at the bank's option, the agencies will consider community development loans or investments that are originated, purchased, refinanced, or renewed by one or more of the bank's affiliates in the bank's evaluation pursuant to the community development performance test or strategic plan applicable to the bank. This provision also indicates that the consideration only applies if the affiliate is not independently subject to the CRA and the bank collects, maintains, and reports the data as provided in § ____.42(d).

The agencies believe the final rule approach regarding affiliates preserves important flexibility for banks that is available under the current CRA rule. The agencies do not believe a mandatory approach to considering affiliate loans, investments, services, and products is appropriate because, relative to operations subsidiaries and operating subsidiaries, a bank may have a lesser degree of ownership, control, and management over a non-subsidiary affiliate. Requiring mandatory evaluation of every affiliate loan, investment, service, or product could also potentially include activities that cannot reasonably be attributed to the bank in every circumstance. The agencies believe that, as under the current CRA regulations, banks should continue to have the ability to determine whether affiliate loans, investments, services, and products are evaluated, in order to accommodate diverse bank corporate structures and business models.

The agencies considered, but are not adopting, the more stringent alternative described in the proposal that would consider all affiliate retail loans for a select product line within all of the bank's Retail Lending Test Areas if a bank elects to have an affiliate's retail lending considered. The agencies believe the proposed approach to include all affiliate loans for a select product line within a selected facility-based assessment area, retail lending assessment area, or outside retail lending area provides banks with appropriate flexibility while safeguarding against a bank ''cherry-picking'' affiliate loans for consideration.[766]

The agencies also decline to alter the weight attributed to loans evaluated under the Retail Lending Test on the basis of whether they were originated or purchased by a bank or an affiliate. The agencies believe that such an approach would introduce unnecessary complexity into the evaluation process. Further, the agencies do not agree with altering the weight of an otherwise identical loan, investment, service, or product solely on the basis that it was conducted by the bank itself or by an affiliate; the agencies do not believe alteration of the weights is warranted in the situation described because the loan, investment, service, or product has an equivalent impact, regardless which entity originated or purchased the loan or investment or performed the service. Likewise, the agencies do not agree with commenter input that loans purchased by an affiliate are less relevant to evaluating a bank's CRA performance than loans that were originated by that or another bank affiliate. An affiliate's purchased loans, like any institution's purchased loans, can provide liquidity to banks and other lenders and increase their ability to originate additional retail loans. In addition, the agencies believe that they have established adequate safeguards in the final rule to discourage ''loan churning'' and similar practices that could manipulate Retail Lending Test conclusions. The final rule allows for consideration of retail loans purchased by a bank affiliate.

Further, while the agencies understand commenter suggestions that it would be preferable to evaluate all or most of the loans, investments, services, and products in a bank's affiliates to the fullest extent possible (such as the consideration of affiliate credit card loans in the context of a limited purpose bank), the final rule does not except affiliates' relevant loans, investments, services, or products from consideration under any applicable performance tests or otherwise treat the activity differently than it would be considered if the bank had performed the same activity. The agencies believe that a simplified approach where all relevant affiliate loans, investment, services, or products may be considered at a bank's option is preferable to a more complex approach where some affiliate activities receive differential treatment based on a particular bank type, applicable performance test or standard, or affiliate activity.

In response to commenter input, the agencies are confirming that the final rule does not prohibit consideration for a loan that an affiliate originates and a third party purchases, or *vice versa,* provided that no other bank claims that loan for CRA consideration. Additionally, with respect to comment sentiment regarding third-party relationships, the agencies note that although third-party risk management is outside the scope of this rulemaking, they do expect banks to have an appropriate third-party risk management compliance framework and controls.

Section ____.21(c) Community Development Lending and Community Development Investment by a Consortium or a Third Party

Current Approach

Under the current CRA regulations, community development loans originated or purchased 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

[765] This requirement substantively adopts the same requirement contained in proposed § ____.21(c)(2)(iii). The requirement also reflects agency practice in the current CRA regulations requiring agency consideration of all affiliate loans from all affiliates with respect to a particular lending category in a particular assessment area. *See* current 12 CFR ____.22(c)(2)(ii); *see also* Q&A § ____.22(c)(2)(ii)–1.

[766] *See* Q&A § ____.22(c)(2)(ii)–1.

option.[767] If the bank requests consideration for these activities, the bank must report the data pertaining to these loans.[768]

The Agencies' Proposal

The agencies proposed to retain the current flexibility regarding 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, the agencies proposed that a bank's community development loans or community development investments as part of a consortium or by a third party in which the bank invests may be considered, at a bank's option,[769] subject to the following requirements: (1) the activity may not be claimed by another participant or investor;[770] (2) the bank may claim only its percentage share of the total activity made by the consortium or third party;[771] and (3) the bank must collect, maintain, and report the lending and investments data.[772]

Comments Received

The agencies received several comments on the treatment of community development loans and community development investments by a consortium or a third party. A number of commenters supported the agencies' proposed approach to community development financing by a consortium or a third party. A commenter specifically stated that it supported the aspect of the proposal that provides banks the option to choose to take *pro rata* credit for the investments or loans of a fund into underlying portfolio companies or projects. Another commenter stated that it supported retaining CRA consideration on a *pro rata* basis according to a bank's percentage share of community development loans and investments made by third-party entities.

Some commenters suggested that the agencies clarify certain issues surrounding community development financing by a consortium or a third party. A few commenters recommended that the agencies permit the bank or recipient to identify a reasonable geographic allocation for the loan or investment such as location of the recipient, where the recipient has historically worked, or where the recipient intends to work. Some commenters recommended that, for community development financing by a consortium or third party, the agencies preserve the practice of allowing banks to rely on the use of side letters from the CDFI, consortium, or fund sponsor to provide additional detail on the geographic distribution of activities allocated to the bank.

A commenter suggested that, when banks provide working capital to CDFIs through a consortium or third party, the working capital provided to the CDFI should count at the point in time when the commitment of funds to the recipient is made, irrespective of when the funds are deployed. The commenter explained that their suggested approach would give banks certainty that they will receive CRA consideration and provide CDFIs with flexibility to use funds consistent with business needs and avoid pressure to draw on specific lines by specific dates.

Another commenter suggested that the agencies clarify that, in relation to consortia and third parties, the agencies are not restricting two financial institutions from receiving CRA consideration for the same loan or investment if the loan or investment is sold from one institution to the other.

Final Rule

The agencies are finalizing as proposed the provisions on the consideration of community development loans and investments by a consortium in which the bank participates or by a third party in which the bank has invested, with technical and conforming changes. In final § ____.21(c), the agencies are adding ''invests in'' to the regulation text in recognition that a bank may invest in a consortium that engages in community development loans or community development investments. Similarly, the agencies are revising ''makes'' in § ____.21(c) to ''originates, purchases, refinances, or renews'' to conform with the applicable community development financing performance tests and more precisely indicate that a consortium or a third party that a bank invests in or participates in may originate, purchase, refinance, or renew community development loans or community development investments.

Accordingly, final § ____.21(c) provides that if a bank invests in or participates in a consortium that originates, purchases, refinances, or renews community development loans or community development investments, or if a bank invests in a third party that originates, purchases, refinances, or renews such loans or investments, either those loans or investments may be considered, at the bank's option. The consideration is subject to certain limitations: (1) the bank must collect, maintain, and report the data pertaining to these community development loans and community development investments pursuant to § ____.42(e), as applicable;[773] (2) if the participants or investors choose to allocate the community development loans or community development investments among themselves for consideration under this section, no participant or investor may claim a loan origination, loan purchase, or investment for community development consideration if another participant or investor claims the same loan origination, loan purchase, or investment; and (3) the bank may not claim community development loans or community development investments accounting for more than its percentage share, based on the level of its participation or investment, of the total loans or investments made by the consortium or third party.[774] Under final § ____.21(c), the agencies do not intend to provide CRA consideration for particular community development loans or community development investments in a manner that would consider the same loan or investment more than once or provide consideration in excess of the bank's share or level of participation in the consortium or third party.

The agencies believe that this approach, as with the current regulations, provides banks with flexibility to make community development loans and community

[767] *See* current 12 CFR ____.22(d) and ____.25(d)(2); *see also* Q&A § ____.26(b)–3 (indicating that small and intermediate small banks may also receive consideration of community development loans originated or purchased by a consortium or third party).

[768] *See* current 12 CFR ____.42(e); *see also* Q&A § ____.26(b)—3 (indicating that, to receive consideration, small and intermediate small banks must maintain sufficient information for examiners to evaluate community development loans originated or purchased by a consortium or third party).

[769] *See* proposed § ____.21(d).

[770] *See* proposed § ____.21(d)(ii).

[771] *See* proposed § ____.21(d)(iii).

[772] *See* proposed §§ ____.21(d)(i) and ____.42(e).

[773] In final § ____.21(c)(1), the agencies are making a conforming edit to state that a bank must ''collect, maintain, and report'' data as required in final § ____.42(e). Furthermore, in recognition that final § ____.42(e) only requires the bank to collect, maintain, and report data on community development financing by a consortium or a third party if the data must be collected, maintained or reported pursuant to paragraph (a)(5) or (b)(2) of final § ____.42, the agencies are adding an ''as applicable'' indicator.

[774] In paragraphs (c)(2) and (3) of final § ____.21, the agencies are removing the word ''qualifying'' from the proposed regulation text that preceded ''loans or investments.'' The agencies are making this change because community development loans and community development investments are defined terms that have a fixed meaning under the final rule.

development investments while maintaining the safeguards against more than one institution claiming CRA consideration for the same loan or investment at the same time.

The agencies are not adding specific provisions regarding the allocation of community development financing activities in § ____.21(c) of the final rule, as requested by a commenter, because the allocation of these loans and investments is already addressed in appendix B of the final rule. Further, the agencies do not believe that it is appropriate to make alternative provisions that depart from the uniform rules of allocation for community development loans or investments. The agencies believe that the methodology described in appendix B provides a reasonable methodology for the geographic allocation of community development loans or investments by a consortium or a third party.

With respect to commenter input regarding side letters, the agencies are maintaining their current practice with respect to side letters, which are not required but remain a permissible means through which to facilitate receiving CRA consideration for a loan or investment. The agencies also note that allocations made via side letters must conform with the allocation requirements for community development loans or investments described in appendix B of this final rule.

Regarding input on timing considerations around commitment of funds to a recipient, the agencies agree with commenter sentiment that working capital provided to a CDFI by a bank through a consortium or third party should count at the point in time when the commitment of funds to the recipient is made, irrespective of when the funds are deployed. This is why final appendix B includes a reference to legally binding commitments to extend credit or to invest.[775] The definitions of ''community development investment'' and ''community development loan'' in the final rule also leverage the concept of a legally binding commitment to determine whether a particular loan or investment qualifies for CRA consideration.

Regarding commenter concerns about the agencies restricting two or more financial institutions from receiving CRA consideration for the same community development loan or community development investment if the loan or investment is sold from one institution to the other, the agencies' intent in the proposal was to prevent banks from simultaneously claiming and receiving credit for the same loan or investment. The agencies did not intend to eliminate CRA credit for sequential transactions in such a way that one bank could not receive any CRA credit for a loan or investment if the loan or investment was purchased from another bank. Final § ____.21(c)(2) provides that, if participants or investors choose to allocate loans or investments among themselves for consideration, no participant or investor may claim a loan origination, loan purchase, or investment for community development consideration if another participant or investor claims the same loan or investment. However, if one participant or investor transfers the loan or investment to another participant or investor and relinquishes any ongoing claim to the loan or investment for CRA purposes, the participant to which the loan or investment is transferred may then receive agency consideration of the loan or investment. As with other types of loans or investments, the agencies may consider whether loans and investments are purchased or sold a number of times for purposes of artificially inflating CRA performance.[776]

Section ____.21(d) Performance Context Information Considered

Current Approach

Under the current CRA regulations, the agencies consider specific performance context factors in the application of relevant performance tests and standards and in the decision to approve a bank's strategic plan.[777] The factors encompass a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which a bank's record of performance should be evaluated.[778]

The Agencies' Proposal

In proposed § ____.21(e), the agencies identified the performance context information that they would consider in applying performance tests and standards, as well as in determining whether to approve a strategic plan.[779] Consistent with performance context information considered under the current CRA framework, the agencies proposed that consideration may be given to: (1) a bank's institutional capacity and constraints; (2) a bank's past performance; (3) demographic data pertaining to the geographic areas in which the bank is evaluated; (4) retail banking and community development needs in the geographic area in which the bank is evaluated; (5) the bank's business strategy and product offerings; (6) information in the bank's public file, including oral and written comments submitted to the bank or the agency; and (7) any other information deemed relevant by the agency.[780] Given that the proposed performance tests, including relevant metrics and benchmarks, were designed to incorporate certain key performance context considerations, the agencies expressly proposed to consider performance context information to the extent that it is not otherwise considered as part of a proposed performance test.[781] For example, the proposed community benchmarks for the Retail Lending Test metrics, as described in section IX of the preamble to the proposed rule, would reflect information about an assessment area, such as the percentage of owner-occupied housing units, the percentage of low-income families, and the percentage of small businesses or small farms. Similarly, the proposed market benchmarks for the Retail Lending Test would reflect the aggregate lending to targeted geographic areas or targeted borrowers by all lenders operating in the same assessment area.

The agencies requested feedback on the performance context factors in proposed § ____.21(e), including ways to bring greater clarity to the use of performance context factors as applied to different performance tests.

Comments Received

The agencies received many comments with respect to the agencies' proposal to consider performance context information. Many of these commenters expressed general support for the agencies' proposal to apply performance context information in performance tests, standards, and strategic plan approval determinations.

A commenter stated that the agencies should not direct examiners to consider performance context information only to the extent that it is not otherwise considered as part of a proposed performance test. The commenter indicated that this approach appears to deemphasize performance context by implying that a broad range of information and circumstances are already covered by the applicable performance tests and standards; to address this issue, the commenter

[775] *See* final paragraph of appendix B, paragraph I.a.1.i.A.

[776] *See* final § ____.21(d)(7).

[777] *See* current 12 CFR ____.21(b).

[778] *See* Q&A § ____.21(b)–1.

[779] *See* proposed § ____.21(e).

[780] *See* proposed § ____.21(e)(1) through (7).

[781] *See* proposed § ____.21(e).

recommended removing this language from the proposal and clarifying that performance context factors are considered in addition to the proposed performance tests and standards, consistent with the current regulations. Other commenters made related suggestions, stating that the proposal's emphasis on quantitative factors such as metrics and thresholds deemphasized performance context in potentially undesirable ways.

A commenter suggested that the agencies should fully integrate performance context into all bank conclusions and ratings.

Some commenters offered suggestions on additional performance context factors that the agencies could potentially add to proposed § ____.21(d). For example, a commenter requested that the agencies allow examiners to consider innovative and responsive credit products and programs as beneficial performance context across any of the performance tests to which they are relevant. Another commenter requested that the agencies incorporate a measure of the availability and affordability of childcare facilities as performance context. A commenter stated that a final rule should explicitly document that CDFI certification must be considered as a fundamental and essential element of CRA performance context for a CDFI bank and the factor should be considered before and after the application of performance tests. Another commenter suggested that the agencies use performance context to determine whether an activity qualifies for CRA purposes, especially for newer, less common, more complex, or innovative activities. The commenter also suggested that examiner judgment and performance context could be helpful when a bank engages in an activity that is not already on the agencies' proposed illustrative list of activities eligible for CRA consideration.

A commenter recommended that the agencies apply the following performance context factors: whether a substantial majority or a significant portion of the bank's retail activities are loan products and services not defined as major product lines for purposes of the Retail Lending Test and, therefore, not included in the quantitative metrics and benchmarks; the bank's business strategy; geographic dispersion of retail loan products and services; data anomalies; and institutional capacity and constraints.

Some commenters requested that the agencies leverage performance context data that succinctly summarizes conditions in localities and suggested these could include measures such as: housing vacancy rates; housing cost burden ratios; unemployment levels; poverty rates; levels of segregation; and measures of health and environmental quality standards. Similarly, to clarify the use of performance context factors, a commenter suggested that the agencies implement models that measure a community's capacity and demand for investment, financial services, and financial products and publish the results in banks' performance evaluations.

A number of commenters suggested that performance context should be used by the agencies as an additional means to encourage stakeholder participation in CRA examinations and that the agencies could solicit comment from local stakeholders, including historically underserved groups, on local community needs and whether banks are meeting those needs. The commenters noted that responses to those questions could then be considered by the agencies as additional performance context information that enables examiners to conduct additional analysis if significant concerns are raised that impact a bank's ratings.

A commenter stated that performance context should be defined and updated in real time in conjunction with banks, with a particular emphasis on research-based understanding of the credit and community development needs and opportunities. The commenter stated this could help banks evaluate their own performance and tailor their services.

Some commenters noted that the agencies will need dedicated staff with specific training to correctly apply performance context. A few commenters stated that trained experienced staff would be able to consider performance context and evaluate CRA performance relative to a bank's size, business strategy, and other relevant information. Another of these commenters asked the agencies to centralize performance context with a comprehensive community needs assessment; the commenter also suggested that the agencies could have dedicated staff to analyze public input, local data, and local studies.

A commenter requested that the agencies limit examiner discretion to adjust scores downward based on performance context factors, such as by requiring the agencies to provide a bank with prior notice and the opportunity to respond if such downward adjustments would adversely affect the bank's institution rating.

A commenter expressed concern that the proposed performance context factors do not offer assurances that banks with unique business models will be able to pass their CRA examinations under the proposed framework.

A commenter indicated that it supported the creation of a data-driven performance context dashboard.

Final Rule

After considering the comments, the agencies are adopting the proposed performance context factors in the final rule, with technical and conforming changes. In final § ____.21(d), the agencies are clarifying that performance context may be considered when applying the performance tests or strategic plans pursuant to final § ____.21(a) and when determining whether to approve a strategic plan pursuant to final § ____.27(h). In final § ____.21(d)(1), the agencies are also clarifying that the "retail banking or community development activities" described in the proposal include "retail lending, retail banking services and retail banking products, community development loans, community development investments, or community development services."

In final § ____.21(d)(1), the agencies are removing the reference to "facility-based assessment areas" that was included in the proposal. Similarly, in paragraphs (d)(3) and (4) of final § ____.21, the agencies are removing the references to "the geographic areas in which the bank is evaluated." By removing all three of these references to specific geographic areas, the agencies' intention is to permit the consideration of all of the performance factors in any relevant geographic area. Similar to the current CRA regulations, this approach allows the consideration of performance context factors where a bank's actual performance is evaluated. The agencies believe that this approach preserves important flexibility for the agencies to consider relevant performance context as needed.

In final § ____.21(d)(6), with respect to performance context related to the bank's public file, the agencies are removing the reference to "oral" comments that was included in the proposal. After further consideration, the agencies have decided that, consistent with the current CRA regulations, it is preferable to only accept written comments submitted to the bank or the agency for the bank's public file. The agencies believe that use of written comments in relation to the public file better ensures the accuracy of the comments and eliminates additional processing steps associated with oral comments. The agencies note that this change from the proposal does not affect the use of community contacts and other oral sources of public feedback used in CRA examinations.

With these changes, final § ____.21(d) provides that, when applying performance tests and strategic plans pursuant to final § ____.21(a), and when determining whether to approve a strategic plan pursuant to final § ____.27(h), the agencies may consider the following performance context information to the extent that it is not considered as part of the tests and standards: (1) a bank's institutional capacity and 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 provide retail lending, retail banking services and retail banking products, community development loans, community development investments, or community development services; (2) 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; (4) any information about retail banking and community development needs and opportunities 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) the bank's business strategy and product offerings; (6) the bank's public file, including any written comments about the bank's CRA performance submitted to the bank or appropriate agency and the bank's responses to those comments; and (7) any other information deemed relevant by the agency.

The agencies have considered commenter suggestions to remove proposed language stating that the agencies will consider performance context factors to the extent they are not already considered as part of performance tests or standards. The agencies are retaining this language in the final rule because certain performance context information is now incorporated in the tests and standards, and the agencies believe that this practice places an appropriate emphasis on performance context information. For example, the Retail Lending Test metrics and benchmarks incorporate data on income levels and income distribution, as is also noted in § ____.21(d)(3). The agencies emphasize, however, that performance context will continue to be considered by the agencies in evaluating all banks, as the agencies recognize that diverse banks operate in a wide variety of circumstances that quantitative measures alone might not capture. Similarly, while data about an economic downturn or economic conditions precipitating a decline in lending would fall within the scope of § ____.21(d)(3), the agencies anticipate that this information would usually not be used to adjust a Retail Lending Test conclusion because it generally would already be reflected in the relevant Retail Lending Test market benchmarks; however, the agencies also believe there might be some unique circumstances in which data about economic conditions are not fully reflected in the relevant Retail Lending Test market benchmarks.

The agencies acknowledge that the current CRA regulations consider performance context in addition to the applicable performance tests and standards. However, to accommodate new aspects of the final rule framework, such as the quantitative approach implemented through standardized metrics and benchmarks, the agencies believe that performance context should fully yield to an applicable performance test when a performance context factor considers the same information that is incorporated in the performance test or standard. This approach ensures that performance context and the applicable tests function in a complementary and consistent manner. The agencies believe that this approach better maintains the integrity of the performance tests and standards and prevents similar or even redundant information from obfuscating analysis included in the performance tests or standards.

Regarding commenter sentiment that performance context should be fully integrated into conclusions and ratings, the agencies agree with this suggestion and have integrated the consideration of final § ____.21(d) performance context factors in each applicable performance test. To accomplish this, the agencies have expressly described the role that the final § ____.21(d) performance context factors play in the ''conclusions and ratings'' paragraph of each respective performance test adopted under the final rule framework.

Regarding commenter suggestions that innovative and responsive credit products should be considered under performance context considerations, the agencies note that the final rule incorporates assessments of responsiveness in the Retail Services and Products Test, the Community Development Financing Test, the Community Development Financing Test for Limited Purpose Banks and the Community Development Services Test. Specifically, the final Retail Services and Products Test considers the responsiveness of a bank's credit products and programs. For this reason, the final Retail Lending Test does not also consider the responsiveness of a bank's credit products. Similarly, an impact and responsiveness review pursuant to final § ____.15 is captured in the evaluations of the Community Development Financing Test in final § ____.24, the Community Development Services Test in final § ____.25, and the Community Development Financing Test for Limited Purpose Banks in final § ____.26. As discussed elsewhere in this **SUPPLEMENTARY INFORMATION**, the final rule does not adopt the term ''innovative'' or otherwise use the term.

The agencies have considered commenter feedback with respect to including the availability and affordability of childcare facilities as performance context, and the agencies have determined not to adopt this suggestion because bank activities that support childcare or childcare facilities qualify as community development activities, as described in the section-by-section analysis of § ____.13. Similarly, the agencies believe that it is not necessary to make CDFI certification a performance context factor because final § ____.21(d)(5) considers the business strategy and product offerings of a bank.

The agencies also decline to adopt commenter suggestions to use performance context to determine whether an activity qualifies for CRA purposes, especially for newer, less common, more complex, or innovative activities that may not be already on the agencies' proposed illustrative list of activities eligible for CRA consideration. The agencies note that other final rule provisions specify the particular retail and community development activities that qualify for CRA consideration. The agencies believe that the use of performance context to create exceptions to these requirements for qualifying activities would compromise the clarity and transparency of the framework, introduce additional complexity, and potentially minimize the incentive for banks to meet the requirements of the regulations.

However, the agencies agree with commenter sentiment that if a significant portion of a bank's retail lending activities are loan products that are potentially evaluated under the Retail Lending Test but that do not qualify as major product lines, the loan products could be considered as part of performance context information under § ____.21(d)(5) of the final rule.

With respect to commenter suggestions that the agencies consider a bank's business strategy and a bank's institutional capacity and constraints as performance context, the agencies note that these considerations are included as performance context factors under paragraphs (d)(1) and (5) of final § ____.21.

The agencies considered whether they should add performance context factors for the geographic dispersion of retail loan products and data anomalies. The agencies are not adding a performance context factor for the geographic dispersion of retail loans and products because the Retail Lending Test and Small Bank Lending Test already evaluate the distribution of the loan products under each respective test. With respect to data anomalies, the Retail Lending Test already considers missing or faulty data as an additional factor under § ____.22(g)(4). With respect to other applicable tests, data anomalies may be considered as other potentially relevant information under § ____.21(d)(7) of the final rule.

In response to commenter suggestions that the agencies should consider localized data focused on particular community needs, the agencies note that under final § ____.21(d)(4), State, local, and tribal governments, and economic development agencies may submit any information regarding retail banking and community development needs and opportunities. Under this approach, the agencies would consider this variety of information to the extent that it is not already considered in relevant performance tests.

After considering comments on the importance of stakeholder feedback, the agencies have decided to preserve feedback from stakeholders as part of a bank's relevant performance context as proposed. To achieve this, paragraphs (d)(4) and (6) of final § ____.21 permit the agencies to consider relevant stakeholder feedback submitted: directly to the agencies on retail banking and community development needs and opportunities; directly to the agencies via written comments on the bank's CRA performance; indirectly via comments included in the bank's public file; or indirectly via bank response to a written comment.

With respect to commenter suggestions that the performance context should be updated with the most recent information possible, the agencies note that they intend to apply the most recent performance context information that is available at the time of the examination.

In relation to suggestions that the agencies should have dedicated staff with specific training on applying performance context, the agencies plan to provide dedicated training to supervisory staff on all aspects of the final rule, including performance context. As the final rule is implemented, the agencies will make determinations as to which particular staff are best situated to consider and apply performance context information and what specific, additional training would be helpful to achieve agency objectives.

The agencies also expect that their quantitative approach to assessing bank performance will provide additional transparency and consistency in the examination process. To provide further predictability and transparency, the agencies will consider the possibility of additional interagency guidance with respect to their discretion to adjust a bank's conclusions or ratings through performance context consistent with § ____.21(d). However, at this time, the agencies do not find it appropriate to limit examiner discretion in the final rule to adjust scores downward. In relation to a comment that the proposed performance context factors do not offer assurances that banks with unique business models will be able to pass their CRA examinations under the proposed framework, the agencies note that the proposed performance context factors were not intended to provide assurances of how a bank will perform in a CRA examination. In addition, the final rule also provides banks with the option to seek approval to be evaluated under a strategic plan, and the option to seek limited purpose bank designations, both of which are a means of accommodating banks with unique business models that might otherwise experience challenges with being evaluated under otherwise applicable performance tests or standards.

The agencies will work together to provide greater performance context information to the public, including to banks. This will include tools to provide information on factors that may impact community credit needs. As noted in the **SUPPLEMENTARY INFORMATION** of the agencies' proposal, the agencies believe that this information will help provide greater consistency and transparency, while also enhancing public participation. In addition, as noted elsewhere, the agencies will provide online tools that will leverage reported data and provide information related to metrics and benchmarks.

Section ____.21(e) Conclusions and Ratings

Current Approach

Pursuant to the CRA statute,[782] the current CRA regulations provide that a bank is assigned a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' at the institution level.[783] The assigned rating reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods.

The Agencies' Proposal

In proposed § ____.21(f), the agencies proposed to assign banks conclusions, ratings, and performance scores. Specifically, pursuant to § ____.21(f)(1), the agencies would assign conclusions to banks for the bank's performance on applicable performance tests and standards. For large banks, intermediate banks, and wholesale and limited purpose banks, these conclusions would be ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' For small banks, these conclusions would be ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

Pursuant to proposed § ____.21(f)(2), the agencies would assign a bank a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' regarding its overall CRA performance, as applicable, in each State, in each multistate MSA, and for the institution that reflected 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. This paragraph retained existing language from the current CRA rule.

Proposed § ____.21(f)(3) provided that the agencies would develop performance scores in connection with assigning conclusions and ratings for a bank, other than a small bank evaluated under the small bank performance standards, a wholesale or limited purpose bank evaluated under the Community Development Financing Test for Wholesale or Limited Purpose Banks, or a bank evaluated based on an approved strategic plan. As described further in appendices C and D of the proposal, the agencies proposed a scoring system based on the following 10-point scale: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points). The agencies intended for the performance scores to provide greater transparency regarding a bank's overall performance.

[782] *See* 12 U.S.C. 2906(b)(2).

[783] *See* current 12 CFR ____.21(c).

Comments Received

The agencies received many comments on the agencies' proposal with respect to conclusions, ratings, and performance scores. Some commenters supported the conclusions, ratings, and performance score approach in the proposed rule. A few commenters stated that they appreciated the additional transparency and precision that the agencies proposed regarding ratings by assigning both a conclusion and a score for each performance test at the assessment area level, with one of these commenters noting that the change will provide additional clarity as to how well banks are performing. A commenter supported the proposal's increased rigor in the form of assigning points to the ratings in the CRA's subtests, as detailed in the proposed appendices C and D. Another commenter stated that it would welcome clearer expectations for each of the four proposed ratings.

Some commenters expressed support for the proposed 10-point performance scoring system but also suggested changes to point values corresponding to various ratings. For example, a few commenters suggested that, to provide more distinction between the conclusions, the agencies could adopt an alternative scale where an ''Outstanding'' receives 10 points, a ''High Satisfactory'' receives 8 points, a ''Low Satisfactory'' receives 5 points, and a ''Needs to Improve'' receives 2 points. Similarly, some commenters encouraged the agencies to otherwise make a greater distinction between the ''Low Satisfactory'' and ''High Satisfactory'' conclusions to incentivize better bank performance and to ensure poor bank performance does not result in a rating above ''Needs to Improve.'' Some commenters requested that the agencies adopt a point system that better reveals distinctions in performance and minimizes the potential for CRA grade inflation. For example, a commenter suggested an approach where the agencies would assign a numeric score between 1 and 100 and assign ratings relative to the scale.

Another commenter recommended that the agencies separate banks into one of the following three equally weighted categories for CRA scores: ''below average,'' ''average,'' and ''above average.'' From there, the commenter suggested that the agencies could identify a subset of banks from the below average category for ''Needs to Improve'' results and a subset of banks from the above average category for ''Outstanding'' results. A few commenters recommended a scoring system that makes receiving an ''Outstanding'' rating more easily achievable under the applicable performance tests.

Final Rule

After reviewing and considering the comments, the agencies are adopting the proposed approach to conclusions and ratings. As described in further detail in the section-by-section analysis of § ____.28 (''Assigned conclusions and ratings'') the agencies believe that the final rule approach creates a consistent and quantifiable framework for assigning conclusions for bank performance and State, multistate MSA, and institution ratings. The agencies believe that their adopted approach will increase transparency and provide clarity regarding a bank's CRA performance.

To streamline the regulation text of the final rule, the agencies are making a series of technical edits to § ____.21(e). With respect to conclusions in final § ____.21(e)(1), the agencies are specifying that, for all banks, conclusions are assigned pursuant to final § ____.28. The agencies are also indicating in final § ____.21(e)(1) that: for large banks and limited purpose banks, conclusions are assigned pursuant to final appendix C; for intermediate banks and small banks, conclusions are assigned pursuant to final appendices C and E; and for banks with a strategic plan, conclusions are assigned pursuant to paragraph g of final appendix C. Furthermore, because the information is also covered in final § ____.28(a)(1), the agencies are not including references to specific conclusions such as ''Outstanding'' and ''Needs to Improve.''

In final § ____.21(e)(2), the agencies are indicating that, as provided in final § ____.28 and final appendices D and E, they assign an overall CRA institution performance rating to a bank. As applicable, overall CRA performance ratings are also assigned for each State and each multistate MSA. Because the information is already included in final § ____.28, the agencies have removed the reference to the specific ratings that may be assigned to a bank, as well as the statement that the ratings reflect the bank's record of helping to meet the credit needs of the bank's entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

The agencies are not adopting proposed § ____.21(f)(3) in final § ____.21 pertaining to performance scores. The agencies believe that the performance scores are appropriately described in paragraphs (a) and (b) of final § ____.28 and additional discussion in final § ____.21 would be duplicative.

The agencies have considered the performance scoring system alternatives suggested by commenters involving more granular scoring systems or systems that would lend themselves to more distinct gradations. However, the agencies are adopting the proposed 10-point scale in the final rule because the agencies believe it provides appropriate transparency and facilitates a greater understanding of bank performance in comparison to other alternatives. With specific reference to commenter input suggesting the need for a more detailed performance scoring approach, such as a 100-point scale, the agencies believe that doing so would provide at best a limited benefit because both the proposal and final rule approach involve translating performance scores into an ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' conclusion or rating. In addition, the agencies believe that the potential for CRA grade inflation with respect to performance scores is minimized with established performance thresholds in the Retail Lending Test and by the direct roll-up of assessment area performance scores to conclusions at the State level, multistate MSA level, and for the institution in all large bank performance tests. To the extent examiner judgment is involved in assigning a performance score, the agencies also believe that examiner training and guidance will minimize potential ''grade inflation'' risks.

The agencies have also considered alternatives suggested by commenters to assign different point values within the 10-point performance scoring system to correspond with a particular conclusion or rating. However, the agencies believe that finalizing the point value as proposed is preferable because it produces a more accurate overall score when there are variations in subcomponent performance. Additionally, these point values result in appropriate aggregation of geographic area conclusions into State, multistate MSA, and institution conclusions and ratings. Regarding comments to develop a scale with a greater difference in the number of points assigned to ''Low Satisfactory'' and ''High Satisfactory,'' the agencies believe that the proposed approach is appropriate. Specifically, the agencies consider ''Low Satisfactory'' and ''High Satisfactory'' performance to be less distinct from one another than other neighboring categories, such as ''Needs to Improve'' and ''Low Satisfactory.'' Further, the agencies do not agree with commenter input that the 10-point system inhibits strong performance by banks. Instead, the agencies believe that the 10-point scoring methodology appropriately identifies distinctions in bank performance and assists the agencies in assigning corresponding conclusions and ratings.

Section ____.21(f) Safe and Sound Operations

Current Approach

Pursuant to the CRA statute and the current CRA regulations, a bank is not required to make loans or investments or to provide services that are inconsistent with the safe and sound operation of the bank.[784] Instead, current CRA regulations specify that banks are expected by the agencies to provide safe and sound loans, investments, and services on which they expect to make a profit.[785] Furthermore, banks may only develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals if the standards are consistent with safe and sound operations.[786]

The Agencies' Proposal

In proposed § ____.21(g), the agencies retained the current regulatory provision that provides that neither the CRA statute nor the CRA regulations require a bank to make loans or investments or to provide services that are inconsistent with safe and sound banking practices, with the proposed clarification that this includes the bank's underwriting standards.[787] Similarly, the agencies also proposed to retain the language in that provision indicating 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.[788] The agencies proposed certain revisions to the language in this section for clarity, including an express statement that banks may employ flexible underwriting standards for not only loans that benefit low- or moderate-income individuals and low- or moderate-income census tracts, but also for loans that benefit small businesses or small farms, if consistent with safe and sound operations.[789] The agencies proposed to eliminate the statement that they anticipate that banks will provide safe and sound loans, investments, and services on which they expect to make a profit because they deemed this to be redundant to include.

Comments Received

The agencies received a few comments that offered general support for the agencies' proposed safety and soundness requirements. A commenter stated that because operating in a safe and sound manner is a prudent business practice and a regulatory requirement, a final CRA rule should not lose sight of, or compromise, the ability of banks to operate in such a manner. Another commenter stated that the agencies should not abandon safe and sound safeguards against systemic risk.

Final Rule

The agencies are adopting the safe and sound operations requirement in § ____.21(f) of the final rule with a single technical change. The agencies are revising ''make'' in the first sentence to ''originate or purchase'' in order to more precisely indicate that banks originate or purchase loans or investments. The requirements in final § ____.21(f) reinforces the statutory requirement that banks meet the credit needs of their communities in a manner that is consistent with the safe and sound operation of the bank. This requirement has general applicability to the entire CRA framework.

Section ____.22 Retail Lending Test

Section ____.22 Overview of the Retail Lending Test Approach

Current Approach

Under the current CRA regulations, the large bank lending test includes both quantitative and qualitative criteria. The agencies consider originations and purchases of loans in the following categories of retail lending: home mortgage loans; small business loans; and small farm loans.[790] These categories of retail lending are generally evaluated if the bank has originated or purchased loans in the category. In addition, consumer loans, which include motor vehicle loans, credit card loans, other secured consumer loans, or other unsecured consumer loans, are considered at the bank's option, or if these loans constitute a substantial majority of the bank's business.[791]

The agencies evaluate large banks' retail lending based on three primary criteria: lending activity; geographic distribution; and borrower characteristics. The lending activity criterion considers the volume of retail lending, in terms of the number and dollar amount of home mortgage loans, small business loans, small farm loans, and consumer loans, as applicable, within a bank's assessment areas.[792] The agencies identify the number and dollar amount of loans in assessment areas and evaluate the bank's lending volume considering the bank's resources, business strategy, and other performance context information.[793]

In addition, to consider whether the bank is helping to meet the credit needs of low- and moderate-income census tracts, and of low- and moderate-income individuals, small businesses, and small farms, the agencies review the geographic distribution and borrower distribution of those loans.[794]

For the geographic distribution criterion, the agencies evaluate the proportion of the bank's lending in the bank's assessment areas, the dispersion of lending in the bank's assessment areas, and the number and amount of a bank's retail loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment areas.[795] The agencies 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 geographic income category, the agencies 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 geographic income category, as applicable. The agencies supplement these distribution analyses by also reviewing the dispersion of a bank's loans throughout geographies of different income levels in its assessment areas to determine if there are

[784] *See* 12 U.S.C. 2901(b) and 2903(a); *see also* current 12 CFR ____.11(b) and ____.21(d).

[785] *See* current 12 CFR ____.21(d).

[786] *See id.*

[787] *See* proposed § ____.21(g).

[788] *See* current 12 CFR ____.21(d) and proposed § ____.21(g).

[789] *See* proposed § ____.21(g).

[790] *See* current 12 CFR ____.22(a)(1) and (2). For this purpose, home mortgage loans include home purchase loans, home improvement loans, home refinance loans, multifamily loans, and loans for the purchase of manufactured homes. *See* Q&A § ____.12(l)–1.

[791] *See* current 12 CFR ____.22(a)(1); current 12 CFR ____.12(j) (definition of ''consumer loan''). The 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.

[792] *See* current 12 CFR ____.22(b)(1).

[793] *See* Interagency Large Institution CRA Examination Procedures (April 2014) at 6.

[794] *See* current 12 CFR ____.22(b)(2) and (3).

[795] *See* current 12 CFR ____.22(b)(2).

unexplained conspicuous lending gaps.[796]

For the borrower distribution criterion, the agencies evaluate the distribution of a bank's retail loans across borrower incomes or gross annual revenues of small businesses and small farms.[797] The agencies use the following demographic comparators to inform the borrower distribution analysis: for home mortgage lending, families by income level; for small business lending, businesses with gross annual revenues of $1 million or less; for small farm lending, farms with gross annual revenues of $1 million or less; and for consumer lending, households by income level.

The agencies evaluate small banks and intermediate small banks using similar, but simplified, standards that do not rely on required data collection or reporting.[798] Specifically, a small bank or an intermediate small bank is evaluated on: the bank's loan-to-deposit ratio (based on the balance sheet dollar values at the institution level); the percentage of its loans and lending-related activities within the bank's assessment areas; the bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of the bank's loans; and the bank's record of taking action in response to written complaints about its performance in helping to meet credit needs in its assessment areas.[799] The geographic and borrower distribution evaluation for small banks and intermediate small banks is similar to that of large banks, but may use bank data collected in the ordinary course of business or information obtained through loan samples.[800] For small banks, the agencies evaluate the same categories of retail lending as for other banks, except that only those consumer loan categories that are considered primary products are evaluated.

The purpose of evaluating lending activity for small banks, intermediate small banks, and large banks is the same—to determine whether a bank has a sufficient volume and distribution of lending in its assessment areas in light of a bank's performance context, including its capacity and the lending opportunities in its assessment areas.[801] The current approach, however, does not specify what level, or percentage, of lending is sufficient to achieve ''Outstanding'' or ''Satisfactory'' performance, for example, and relies on examiner discretion to draw a conclusion about a bank's level of lending using the descriptions of performance under each of the criteria and ratings categories.[802]

Retail lending conducted outside of assessment areas is not evaluated using the lending test criteria. However, the Interagency Questions and Answers allow for consideration of loans to low- and moderate-income individuals, small business loans, and small farm loans outside of a bank's assessment areas.[803]

The Agencies' Proposal—Overview

The agencies proposed a Retail Lending Test in § ____.22 to measure how well a bank's retail lending meets the credit needs of its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable, through an analysis of the bank's retail lending volume and retail lending distribution.[804] The proposed Retail Lending Test used a metrics-based approach that incorporated specific quantitative standards in order to increase consistency in evaluations and provide improved transparency and predictability regarding the retail lending performance needed to achieve a particular conclusion, ranging from ''Outstanding'' to ''Substantial Noncompliance.''

Under the proposed Retail Lending Test, the agencies would apply two sets of metrics. First, in facility-based assessment areas, the agencies proposed to apply a retail lending volume screen to assess a bank's retail lending volume, calculated as a bank volume metric, relative to peer banks in the facility-based assessment area, calculated as a market volume benchmark. Specifically, the agencies proposed a bank volume metric calculated as the ratio of a bank's total dollars of closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans compared to the bank's dollars of deposits in the facility-based assessment area. The proposed market volume benchmark was the aggregate ratio of retail lending compared to deposits among all large banks that operated a branch in the facility-based assessment area.

Under the proposal, a bank with a bank volume metric that met or surpassed the Retail Lending Volume Threshold—30 percent of the market volume benchmark—would be assigned a recommended conclusion for the facility-based assessment area based on the proposed distribution analysis described below. For a bank with a bank volume metric that did not meet or surpass the threshold, the agencies proposed to consider a set of factors to determine whether the bank had an acceptable basis for not meeting or surpassing the threshold. Under the proposed approach, a large bank that lacked an acceptable basis for not meeting or surpassing the threshold would be limited to receiving a Retail Lending Test conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' for that facility-based assessment area.

Second, the agencies proposed to evaluate the geographic and borrower distributions of a bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable. Under the proposal, a bank's originated and purchased closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans would qualify as a major product line in a particular area if the loans in the product line comprised 15 percent or more, by dollar amount, of the bank's retail lending in the area. In addition, a bank's originated and purchased automobile loans would qualify as a major product line in a particular area if the bank's automobile loans comprised 15 percent or more of the bank's retail lending in the area, based on a combination of the dollar amount and number of loans.

For a large bank, the agencies proposed to evaluate the geographic and borrower distributions of the bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area. For an intermediate bank, or a small bank that opted to be evaluated under the Retail Lending Test, the agencies proposed to evaluate the geographic and borrower distributions of the intermediate bank's or small bank's major product lines in its facility-based assessment areas. In addition, if an intermediate bank conducted a majority of its retail lending, by dollar amount, outside of its facility-based assessment areas, the agencies would evaluate the intermediate bank's

[796] *See* Interagency Large Institution CRA Examination Procedures (April 2014) at 7.

[797] *See* current 12 CFR ____.22(b)(3).

[798] *See* current 12 CFR ____.26.

[799] *See* current 12 CFR ____.26(b).

[800] *See* Interagency Small Institution CRA Examination Procedures (July 2007) at 5; Interagency Intermediate Small Institution CRA Examination Procedures (July 2007) at 6.

[801] *See* current 12 CFR ____.21(b), ____.22(a)(1), and____.26(a).

[802] *See, e.g.,* current appendix A to part ____(Ratings).

[803] *See* Q&A § ____.22(b)(2) and Q&A § ____.22(b)(3)–4.

[804] *See generally* proposed § ____.22.

geographic and borrower distributions in its outside retail lending area.

To evaluate the geographic and borrower distributions of a bank's major product lines, the agencies proposed a series of bank metrics and benchmarks covering a total of four categories of lending for each major product line: low-income census tracts; moderate-income census tracts; low-income borrowers (or small businesses or small farms with gross annual revenues of less than $250,000); and moderate-income borrowers (or small businesses or small farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million).[805] For the geographic distribution analysis, the proposed bank metrics would measure the level of the bank's lending in low- and moderate-income census tracts in the facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable. For the borrower distribution analysis, the proposed bank metrics would measure the level of the bank's lending to low- and moderate-income borrowers, respectively, and to lower-revenue small businesses and small farms, respectively, in the area. The proposed geographic and borrower bank metrics would be compared to:

• Market benchmarks that reflect the aggregate lending to low- and moderate-income census tracts or low- and moderate-income borrowers and lower-revenue small businesses and small farms in the area by reporting lenders; and

• Community benchmarks that reflect local demographic data.

Under the proposal, a bank's geographic and borrower distribution analyses (evaluating the four categories of lending described above for each major product line) would be translated into a performance conclusion using multipliers and performance ranges. Specifically, for each distribution with respect to each major product line evaluated in a facility-based assessment area, retail lending assessment area, or outside retail lending area, the agencies proposed to assign the performance conclusion that corresponds to:

• The relevant market benchmark, multiplied by a specified multiplier; or

• The relevant community benchmark, multiplied by a specified multiplier, whichever is lower.

For example, under the proposal, if the geographic bank metric for closed-end home mortgage loans in low-income census tracts in a particular facility-based assessment area just exceeded (1) 110 percent of the corresponding geographic market benchmark or (2) 90 percent of the corresponding geographic community benchmark, whichever is lower, then the agencies would assign a ''High Satisfactory'' conclusion to the bank's performance on the particular geographic distribution in the facility-based assessment area.

The agencies proposed a transparent approach for combining the four performance conclusions assigned to each of a bank's major product lines in an area pursuant to the geographic and borrower distribution analyses. Under the proposed approach, for a particular major product line, the two geographic distribution performance conclusions would be combined using a weighted average calculation to determine a geographic performance score and the two borrower distribution performance conclusions would be combined using a weighted average calculation to determine a borrower performance score. Then, these geographic and borrower performance scores would be averaged to develop a product line average for each major product line.

Next, the agencies would develop a recommended conclusion for the Retail Lending Test for each facility-based assessment area, retail lending assessment area, and outside retail lending area. This recommended conclusion would be developed by combining the product line averages for all of a bank's major product lines in the facility-based assessment area, retail lending assessment area, or outside retail lending area. For purposes of combining the product line averages, the agencies proposed to weight each of a bank's major product lines by the dollar volume of lending the bank engaged in for the product line in the area. The resulting recommended conclusion would serve as the basis for the performance conclusion on the Retail Lending Test in the particular facility-based assessment area, retail lending assessment area, or outside retail lending area under the proposed approach.

Recognizing that the proposed distribution metrics and benchmarks may not capture all factors that should be considered when evaluating a bank's retail lending performance, the agencies proposed a set of additional factors that examiners may consider with respect to a bank's retail lending performance in a particular area. Based on the Retail Lending Test recommended conclusion, the additional factors, and the bank's performance on the retail lending volume screen (in the case of a facility-based assessment area), examiners would assign a Retail Lending Test conclusion to each of a bank's facility-based assessment areas, retail lending assessment areas, and its outside retail lending area, as applicable, under the proposed approach. The agencies would also consider applicable performance context factors not included in the metrics-based framework.

Finally, the agencies proposed a transparent and standardized approach for combining Retail Lending Test conclusions assigned to a bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, as applicable, to calculate Retail Lending Test conclusions for the bank at the State, multistate MSA, and institution levels. For example, to calculate a large bank's Retail Lending Test conclusion for a particular State, the agencies proposed to combine the Retail Lending Test conclusions for each of the large bank's facility-based assessment areas and retail lending assessment areas in the State, weighting each assessment area conclusion based on a combination of the percentage of the large bank's retail loans made in the particular facility-based assessment area or retail lending assessment area and the percentage of the bank's deposits sourced from the particular facility-based assessment area or retail lending assessment area.

Summary of Final Rule Retail Lending Test

Overview. The agencies are finalizing the proposed Retail Lending Test, with substantive modifications, clarifications, and technical revisions, as described throughout the section-by-section analysis of final § ____.22. The final rule retains the overall structure and key features of the proposed Retail Lending Test, including:

• A Retail Lending Volume Screen applied to facility-based assessment areas, pursuant to final § ____.22(c);

• A major product line standard to identify a bank's most significant retail product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area—individually and collectively referred to as ''Retail Lending Test Areas'' in the final rule—pursuant to final § ____.22(d);

• Metrics and benchmarks, drawn from the current approach, used to evaluate the following four categories of lending for each of a bank's major product lines in each Retail Lending Test Area, pursuant to final § ____.22(e):

○ Loans in low-income census tracts;

○ Loans in moderate-income census tracts;

[805] *See* the section-by-section analysis of final § ____.22(f) for additional detail.

○ Loans to low-income borrowers (or to businesses or farms with gross annual revenues of $250,000 or less);[806] and

○ Loans to moderate-income borrowers (or to businesses or farms with gross annual revenues greater than $250,000 but less than or equal to $1 million).[807]

• Multipliers and performance ranges, based on the benchmarks described above, that determine a bank's supporting conclusion for each of the four categories of lending for certain major product lines, pursuant to final § ____.22(f);

• Product line scores for a bank's performance on each major product line—by averaging together the supporting conclusions for each of the four categories of lending for a major product line—in a Retail Lending Test Area;

• A recommended conclusion for each Retail Lending Test Area based on the bank's product line scores on all major product lines in that area, pursuant to final § ____.22(f);

• Additional factors that the agencies consider to supplement the geographic and borrower distribution analyses, pursuant to final § ____.22(g); and

• Conclusions assigned to each Retail Lending Test Area, and a weighted average approach to determine Retail Lending Test conclusions at the State, multistate MSA, and institution levels, pursuant to final § ____.22(h).

The final rule also includes key modifications from the proposed Retail Lending Test, discussed in further detail below, including:

• A reduction in the number of major product lines by removing multifamily loans and open-end home mortgage loans from the distribution analysis and by narrowing the standard for when automobile loans are evaluated;

• Changes to the methodology for determining a bank's major product lines in its facility-based assessment areas and outside retail lending area, namely by considering a combination of loan dollars and loan count, as defined in final § ____.12;

• Changes to the methodology for determining a large bank's major product lines in retail lending assessment areas, based on whether the large bank made a sufficient number of closed-end home mortgage loans or small business loans to trigger the retail lending assessment area delineation requirement, as described further in the section-by-section analysis of final § ____.17;

• For automobile lending, limiting the evaluation to majority automobile lenders, as described below, and to banks that opt to have their automobile lending evaluated, and eliminating the proposed data reporting requirements, market benchmarks, and performance ranges;

• A reduction in several of the multiplier values used to calculate performance ranges, to ensure that the performance ranges are generally attainable and appropriately aligned with the conclusion categories;[808]

• Changes to the methodology for combining performance in each major product line to determine the recommended conclusion in each Retail Lending Test Area, namely by considering a combination of loan dollars and loan count;

• Additions and revisions to the proposed additional factors to account for more circumstances in which adjustments to the recommended conclusion for a Retail Lending Test Area may be warranted; and

• Changes to the approach for calculating a weighted average of Retail Lending Test Area conclusions to determine conclusions at the State, multistate MSA, and institution levels.

In addition to these substantive changes, the final rule adopts non-substantive clarifications and technical revisions to the regulatory text, including final appendix A, to improve readability and enhance clarity.

Retail lending volume screen. As under the proposal, the final rule Retail Lending Test applies two sets of metrics. First, in facility-based assessment areas only, the agencies will apply the Retail Lending Volume Screen to assess a bank's retail lending volume relative to its volume of deposits compared to peer lenders in the area. Specifically, under the final rule, a bank's Bank Volume Metric is the ratio of the bank's total dollars of lending in specified categories (closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans, as applicable), compared to the bank's dollars of deposits in the facility-based assessment area. The Bank Volume Metric is compared to the aggregate ratio of retail lending to deposits among all banks that operated a branch in the area, as measured by a Market Volume Benchmark. The Bank Volume Metric and Market Volume Benchmark under the final rule are substantially similar to the proposal, except that: (1) a bank's automobile loans are only included in the Bank Volume Metric if the bank is a majority automobile lender or opts to have its automobile loans evaluated under the Retail Lending Test; and (2) automobile lending is not included in the Market Volume Benchmark.

As under the proposal, the final rule provides that a bank with a Bank Volume Metric that meets or surpasses a Retail Lending Volume Threshold of 30 percent of the Market Volume Benchmark will be assigned a recommended conclusion for the facility-based assessment area based on the distribution analysis described below. With respect to a bank with a Bank Volume Metric that does not meet the Retail Lending Volume Threshold in a facility-based assessment area, the agencies will consider a set of factors to determine whether the bank has an acceptable basis for not meeting the threshold. As under the proposal, under the final rule a large bank that lacks an acceptable basis for not meeting the threshold is limited to receiving a Retail Lending Test conclusion of "Needs to Improve" or "Substantial Noncompliance" for the facility-based assessment area. An intermediate bank, or a small bank that opted into being evaluated under the Retail Lending Test, that lacks an acceptable basis for not meeting the threshold would remain eligible for all possible conclusion categories.

Geographic and borrower distribution analysis. Consistent with the proposal, the agencies will next evaluate the geographic and borrower distributions of a bank's major product lines in its Retail Lending Test Areas. The final rule adopts a revised approach to determine what is a major product line for facility-based assessment areas and outside retail lending areas. In a facility-based assessment area or outside retail lending area, a bank's originated and purchased closed-end home mortgage loans, small business loans, small farm loans, and automobile loans, as applicable, would qualify as a major product line if the

[806] For purposes of evaluating a bank's small business lending performance under the Retail Lending Test, the agencies consider the bank's loans to non-farm businesses only, and do not consider the bank's loans to farms. A bank's loans to farms are considered in the evaluation of the bank's small farm lending performance.

[807] The transition amendments included in this final rule will, once effective, amend the definitions of "small business" and "small farm" to instead cross-reference to the definition of "small business" in the CFPB Section 1071 Final Rule. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB Section 1071 Final Rule definition of "small business." This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB Section 1071 Final Rule. The agencies will provide the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[808] *See* the section-by-section analysis of final § ____.22(f) and the below discussion of the analysis of the final rule using historical data.

loans in the product line comprise 15 percent or more, based on a combination of loan dollars and loan count, of the bank's lending across all these product lines in the area. The final rule also adopts a revised approach for determining what is a major product line for retail lending assessment areas. In a retail lending assessment area, a large bank's originated and purchased closed-end home mortgage loans or small business loans, respectively, would qualify as a major product line if the large bank originated a sufficient number of closed-end home mortgage loans or small business loans to require delineation of a retail lending assessment area pursuant to final § ____.17 (*i.e.,* at least 150 reported closed-end home mortgage loans or at least 400 reported small business loans in each year of the prior two calendar years). As noted above, unlike in the proposal, the distribution of a bank's open-end home mortgage loans and multifamily loans are not evaluated under the final Retail Lending Test.

As under the proposal, the agencies will evaluate the geographic and borrower distributions of a large bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area. For an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, the agencies evaluate the geographic and borrower distributions of the bank's major product lines in its facility-based assessment areas. Furthermore, an intermediate bank or a small bank is evaluated in its outside retail lending area if the bank conducts a majority of its retail lending, by a combination of loan dollars and loan count outside of its facility-based assessment areas, or at the bank's option. For a small bank that opts to be evaluated under the Retail Lending Test, the final rule treats these small banks the same as intermediate banks with respect to the Retail Lending Test Areas in which the small bank's major product lines are evaluated.

As under the proposal, the agencies will calculate a series of bank metrics and benchmarks to evaluate the geographic and borrower distributions of a bank's major product lines. The final rule generally adopts the geographic and borrower distribution metrics and benchmarks as proposed, evaluating four separate categories of lending for each major product line in each Retail Lending Test Area:

- Low-income census tracts;
- Moderate-income census tracts;
- Low-income borrowers or businesses or farms with gross annual revenues of less than $250,000; and
- Moderate-income borrowers or businesses or farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million.

The bank's metrics are compared to:

- Market benchmarks that reflect the aggregate lending to low- and moderate-income census tracts or low- and moderate-income borrowers or lower-revenue small businesses or small farms in the Retail Lending Test Area by reporting lenders; and
- Community benchmarks that reflect local demographic data.

As in the proposal, the final rule evaluates a bank's performance on the geographic and borrower distribution analyses for closed-end home mortgage loans, small business loans, and small farm loans using performance ranges calculated with benchmarks and multipliers. Specifically, for each category of lending that is evaluated as part of a major product line in a Retail Lending Test Area, the agencies assign a supporting conclusion that corresponds to a performance range determined by: (1) the relevant market benchmark, multiplied by a specified multiplier; and (2) the relevant community benchmark, multiplied by a specified multiplier, whichever is lower.

Relative to the proposal, the final rule adjusts several of the proposed multiplier values downward; the agencies believe that the final rule multipliers are appropriately aligned with supporting conclusions, and that supporting conclusions of ''Outstanding,'' ''High Satisfactory,'' and ''Low Satisfactory'' are generally attainable. For example, the market multiplier for a ''High Satisfactory'' was adjusted from the proposed value of 110 percent to 105 percent, and the community multiplier for a ''High Satisfactory'' was adjusted from the proposed value of 90 percent to 80 percent. As a result, under the final rule, if the Geographic Bank Metric for closed-end home mortgage loans in low-income census tracts in a particular facility-based assessment area just exceeded (1) 105 percent of the corresponding Geographic Market Benchmark or (2) 80 percent of the corresponding Geographic Community Benchmark, whichever is lower, then the agencies would assign a ''High Satisfactory'' supporting conclusion to the bank's performance on closed-end home mortgage lending to low-income census tracts in the facility-based assessment area.

Product line score. The final rule generally adopts the proposed approach to combining the four supporting conclusions assigned to each of a bank's major product lines in a Retail Lending Test Area pursuant to the geographic and borrower distribution analyses. For each major product line, the agencies will combine these four supporting conclusions as follows. First, the agencies will determine a geographic distribution average using a weighted average calculation of the performance scores associated with the two geographic distribution supporting conclusions. For example, the agencies would combine a bank's closed-end home mortgage lending performance in low-income census tracts and moderate-income census tracts. Second, the agencies will determine a borrower distribution average using a weighted average of performance scores associated with the two borrower distribution supporting conclusions. For example, the agencies would combine a bank's closed-end home mortgage lending performance to low-income borrowers and moderate-income borrowers. Lastly, the agencies will average together the geographic and borrower distribution averages to arrive at a product line score (renamed from the proposed term ''product line average'').

Recommended conclusion for a Retail Lending Test Area. Next, the product line scores for all of a bank's major product lines in a Retail Lending Test Area are combined to produce a recommended conclusion for the Retail Lending Test Area. For purposes of combining product line scores, under the final rule, a bank's major product lines are weighted based on a combination of loan dollars and loan count in the product line, rather than by the volume of loan dollars alone, as under the proposal. The resulting Retail Lending Test recommended conclusion serves as the basis for the conclusion on the Retail Lending Test in the particular Retail Lending Test Area.

Additional factors and performance context. As in the proposal, the final rule recognizes that the distribution metrics and benchmarks may not capture all factors that should be considered when evaluating a bank's retail lending performance. For this reason, the final rule adopts an expanded set of additional factors in final § ____.22(g) relative to the proposal that the agencies may consider with respect to a bank's retail lending performance in a particular Retail Lending Test Area. The agencies will assign a Retail Lending Test conclusion to each of a bank's Retail Lending Test Areas based on the bank's performance on the Retail Lending Volume Screen (in the case of a facility-based assessment area), the Retail Lending

Test recommended conclusion, performance context factors provided in final § ____.21(d), and these additional factors.

Retail Lending Test conclusions for a State, multistate MSA, and institution. Lastly, the final rule generally adopts the proposed approach for combining Retail Lending Test conclusions assigned to a bank's Retail Lending Test Areas using a weighted average calculation to develop conclusions for the bank at the State, multistate MSA, and institution levels. For example, to calculate a large bank's Retail Lending Test conclusion for a particular State, the agencies will combine the Retail Lending Test conclusions for each of the large bank's facility-based assessment areas and retail lending assessment areas in the State. Each Retail Lending Test Area's conclusion will be weighted using a combination of the percentage of the large bank's product line loans (using a combination of loan dollars and loan count) in the area and deposits in the area. Under this example for a conclusion in a State, the percentages of the bank's product line loans and deposits in each area are calculated relative to the bank's total product line loans and deposits sourced from facility-based assessment areas and retail lending assessment areas in the State.

Retail Lending Test—General Topics

This section discusses topics that relate to the Retail Lending Test as a whole or to multiple aspects of the Retail Lending Test. Topics specific to a particular aspect of the Retail Lending Test are discussed in more detail in the section-by-section analysis below.

Overall Metrics-Based Approach

Comments Received

Metrics-Based Approach Generally. The agencies received numerous comments supportive of the proposed metrics-based approach to evaluating banks' retail lending performance. Many of these commenters indicated that the retail lending metrics would provide rigor on the proposed Retail Lending Test, address what some commenters referred to as CRA grade inflation, and incentivize banks to increase lending to underserved communities.

Conversely, many other commenters raised concerns about the proposed metrics-based approach to evaluating retail lending. As described below, these commenters stated that the Retail Lending Test was overly complex, did not sufficiently account for differences in bank business models, was overly stringent, and did not incorporate qualitative factors that should be considered in connection with a bank's retail lending performance.

Complexity of the metrics-based approach. Some commenters stated that the metrics-based Retail Lending Test approach was overly complex, with feedback including the recommendation that the agencies instead consider a less complicated approach with thresholds that can be modified by examiners based on performance context. Some commenters noted that the complexity of the proposed Retail Lending Test necessitated a more extended comment period to allow commenters time to fully understand the approach and its potential impact.

In addition to comments concerning the complexity of the Retail Lending Test as a whole, the agencies received numerous comments concerning the complexity of particular aspects of the performance test, such as the retail lending distribution metrics and benchmarks. These comments are discussed in the section-by-section analysis of final § ____.22(e) below.

Application of metrics-based approach to different bank business models. Other commenters stated that the Retail Lending Test did not sufficiently account for differences in banks' business models. For example, a commenter asserted that a bank primarily focused on commercial lending and with little retail lending would be unable to perform well on the Retail Lending Test.

Retail Lending Test stringency. Many commenters stated that banks would have difficulty achieving an ''Outstanding'' conclusion on the Retail Lending Test due to the performance test's stringency. In addition to comments concerning the stringency of the Retail Lending Test as a whole, the agencies received numerous comments concerning the stringency of particular aspects of the performance test, such as the multipliers used to establish performance ranges. These comments are discussed in the section-by-section analysis of final § ____.22(f) below.

Inclusion of qualitative factors. Some commenters suggested that the proposed Retail Lending Test lacked sufficient consideration of qualitative factors, including performance context, that should be considered in connection with a bank's retail lending performance. In this regard, a commenter asserted that the agencies' proposed metrics-based approach was too heavy on quantitative metrics and left little room for necessary qualitative analysis. Relatedly, other commenters conveyed that the proposed metrics-based approach would overshadow the qualitative aspects of retail lending that are beneficial to low- and moderate-income individuals and communities. Likewise, a commenter warned against overly standardizing the evaluation process with quantitative measurements at the expense of capturing more qualitative impacts, which could stifle creativity and diversity in the CRA market.

Several commenters recommended that the agencies incorporate impact factor reviews proposed for use with the Community Development Financing Test and the Community Development Services Test into the Retail Lending Test (as well as the Retail Services and Products Test). Relatedly, a commenter suggested that, to increase the incentive for banks to engage in community development financing activities, the agencies should provide banks with the option of receiving qualitative consideration for community development lending under the Retail Lending Test.

Numerous commenters asserted that the agencies' evaluation of home mortgage loans should not be a purely quantitative evaluation, and should consider qualitative factors related to the responsiveness of a bank's lending. Some commenters advocated for an impact review of home mortgage lending, with some of these commenters expressing the view that home purchase loans should receive more credit than other types of home mortgage lending. A few commenters urged the agencies to continue to evaluate a bank's use of innovative or flexible lending practices to address credit needs of low- and moderate-income individuals and geographic areas. Several commenters opined on the importance of home mortgage loans, particularly to minority, low-, moderate-, and middle-income individuals, and first-generation homebuyers, with a few commenters asserting that loans to these borrowers should receive extra consideration. A commenter stated that the agencies should award ''extra credit'' to banks for originating home mortgages involving community land trusts because such programs are designed to preserve affordable housing and prevent displacement. Another commenter suggested that banks should receive consideration for home mortgage products that address barriers to homeownership for underserved communities, such as appraisal bias and lack of down payment assistance. A commenter suggested that certain income-restricted mortgage assistance loans, including those made to middle-income borrowers, should receive positive consideration to incentivize banks to continue participating in these programs.

Some commenters asserted that the agencies should employ analysis of loan pricing and product terms to ensure that products are meeting local needs instead of extracting wealth. These commenters further recommended that the agencies evaluate how well loan products match local needs. Some commenters also suggested that the agencies should review the affordability and quality of loan terms in Retail Lending Test evaluations. Several of these commenters noted that banks should be penalized for offering high-cost loans that exceed State usury caps and borrowers' abilities to repay. A commenter emphasized that the agencies should review banks' small business lending and small farm lending qualitatively for predatory characteristics such as exorbitant interest rates or prepayment penalties.

Final Rule

The agencies are finalizing the proposed Retail Lending Test, with substantive modifications, clarifications, and technical revisions as described throughout the section-by-section analysis of final § ____.22. As in the proposal, the Retail Lending Test adopted in the final rule generally incorporates metrics, but also includes qualitative aspects. Under the final rule, this metrics-based approach is supplemented with consideration of qualitative factors that are relevant to evaluating a bank's lending performance or lending opportunities, but that are not captured in the metrics, including the performance context factors in final § ____.21(d) and the additional factors in final § ____.22(g). In addition, as discussed in the section-by-section analysis of final § ____.23, the agencies note that the responsiveness of a bank's credit products and programs is considered under the Retail Services and Products Test.

Metrics-based Approach Generally. The agencies believe that it is appropriate to adopt a Retail Lending Test that leverages metrics. In particular, the agencies believe that the approach adopted in the final rule will facilitate robust examinations and positively increase transparency and consistency in retail lending evaluations compared to the current regulations. For example, the final rule sets clearer retail lending performance expectations by incorporating performance ranges for evaluating the distribution of a bank's closed-end home mortgage loans, small business loans, and small farm loans. These performance ranges incorporate market and community benchmarks to set thresholds for conclusion categories. Although this approach to use performance ranges represents a change from the current regulations, the agencies note that the final rule distribution metrics and benchmarks closely resemble the metrics and benchmarks used in CRA evaluations today.[809]

Complexity of the metrics-based approach. The agencies have considered concerns expressed by a number of commenters regarding the complexity of the proposed Retail Lending Test. The agencies believe that the final rule Retail Lending Test appropriately balances the agencies' objectives of ensuring that CRA evaluations of retail lending performance are robust and comprehensive, providing greater consistency and transparency, and limiting overall complexity. As discussed throughout the section-by-section analysis of final § ____.22, the final rule includes various changes, relative to the proposal, to simplify the Retail Lending Test while still achieving the agencies' objectives. For example, the final rule reduces the number of product lines considered under the Retail Lending Test and, for large banks, the number of product lines that would be evaluated in any retail lending assessment area. However, the agencies believe that certain aspects of the Retail Lending Test that were viewed by some commenters as complex are necessary to advance the agencies' objectives of increasing the consistency and transparency of CRA evaluations and maintaining robust evaluation standards that take into account the performance context of an area, including the local credit needs and opportunities. In particular, these aspects include the evaluation of the geographic and borrower distributions of a bank's major product lines, the use of performance ranges to translate the bank's performance with respect to certain major product lines into supporting conclusions, and a standardized approach to developing Retail Lending Test conclusions for each Retail Lending Test Area and at the State, multistate MSA, and institution levels.

To further address concerns regarding the complexity of the Retail Lending Test, the agencies intend to develop data tools that will provide banks and the public with CRA information on specific Retail Lending Test Areas, including Retail Lending Test metrics, benchmarks, and performance ranges based on recent data. The agencies believe that these data tools will help banks monitor their retail lending performance relative to benchmarks and increase their familiarity with operation of the Retail Lending Test.

Application of metrics-based approach to different bank business models. The agencies have also considered feedback from some commenters that the proposed Retail Lending Test does not sufficiently account for differences in banks' business models. The agencies believe that the final rule Retail Lending Test approach appropriately accounts for differences in bank business models while also affirming the statute's focus on banks helping to meet the credit needs of their entire communities. In particular, the agencies believe that multiple elements of the final rule Retail Lending Test help to account for differences in bank business models, such as the following:

- Tailored approaches to delineating retail lending assessment areas for large banks and to evaluating small banks and intermediate banks in their outside retail lending areas, depending on a bank's asset size and percentage of lending within its facility-based assessment areas, as discussed in the section-by-section analyses of final §§ ____.16 through ____.18;
- Tailored evaluation of automobile loans for banks that are majority automobile lenders or that opt to have their automobile loans evaluated under the Retail Lending Test, as discussed below;
- Consideration of all of a bank's home mortgage loans, multifamily loans, small business loans, small farms loans, and automobile loans, as applicable, under the Retail Lending Volume Screen, as discussed in the section-by-section analysis of final § ____.22(c);
- For a bank that does not meet or surpass the Retail Lending Volume Threshold in a facility-based assessment area, consideration of the bank's business strategy as one of several ''acceptable basis'' factors, as discussed in the section-by-section analysis of final § ____.22(c)(3);
- Major product line standards that identify a bank's most significant product lines in a Retail Lending Test Area for evaluation under the distribution analysis, as discussed in the section-by-section analysis of final § ____.22(d);
- Calculation of bank distribution metrics based on the percentage, rather than the absolute number, of the bank's loans in a major product line in

[809] *See* Interagency Large Institution CRA Examinations Procedures (April 2014) at 6–8; Interagency Intermediate Small Institution CRA Examination Procedures (July 2007) at 4–6; Interagency Small Institution CRA Examination Procedures (July 2007) at 4–6.

categories of designated census tracts and to categories of designated borrowers, as discussed in the section-by-section analysis of final § ____.22(e);

• Weighting a bank's performance on each of its major product lines based on a combination of loan dollars and loan count, as discussed in the section-by-section analysis of final § ____.22(f);

• Consideration of performance context and additional factors in assigning Retail Lending Test conclusions, as discussed in the section-by-section analyses of final § ____.22(g) and (h); and

• Retention of the strategic plan option, which could result in appropriate modifications to the Retail Lending Test, as discussed in the section-by-section analysis of final § ____.27.

Retail Lending Test stringency. The agencies have considered commenters' concerns that the proposed Retail Lending Test as a whole was overly stringent and that achieving Retail Lending Test conclusions of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' would be overly difficult. The agencies analyzed historical CRA data to estimate the distribution of institution-level Retail Lending Test conclusions across banks, as well as recommended conclusions for different Retail Lending Test areas. A large majority of banks included in the historical analysis are estimated to have performed at a level consistent with an institution-level conclusion of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' based on the final rule provisions. The analysis informed the agencies' determination that the performance ranges for a ''Low Satisfactory'' or higher conclusion are generally attainable across a variety of circumstances, such as different Retail Lending Test Areas, bank asset-size categories, metropolitan and nonmetropolitan areas, and time periods. This analysis and results are discussed further in the historical analysis subsection of this section of this **SUPPLEMENTARY INFORMATION**. In addition, the agencies have considered the stringency of particular aspects of the Retail Lending Test, such as the Retail Lending Volume Screen, discussed further in the section-by-section analysis of final § ____.22(c), and the multipliers used to establish performance ranges, discussed further in the section-by-section analysis of final § ____.22(f).

Inclusion of qualitative factors. Although the agencies believe the Retail Lending Test should generally be informed by metrics, they also believe that a purely metrics-based approach to evaluating a bank's retail lending performance could be inflexible and provide an incomplete picture of a bank's retail lending performance. For this reason, the final rule supplements the use of metrics with consideration of qualitative additional factors that are relevant to evaluating a bank's lending performance or lending opportunities, but that are not captured in the metrics or benchmarks, as discussed in the section-by-section analyses of final § ____.22(c)(3) and (g). Additionally, the final rule specifies that the agencies will consider applicable performance context factors included in final § ____.21(d) when assigning Retail Lending Test conclusions, as discussed in the section-by-section analysis of final § ____.22(h). Together, the agencies believe that these qualitative aspects of the Retail Lending Test will enhance examiners' evaluation of a bank's performance as captured by the Retail Lending Test's metrics and provide a more accurate picture of the bank's overall retail lending performance.

The agencies considered commenter suggestions that specific qualitative factors, such as impact factors, should be incorporated into the Retail Lending Test, such as consideration of retail loan pricing and product terms and accounting for retail loans with predatory lending characteristics. The agencies believe that these considerations are appropriately addressed in other parts of the final rule. For example, the final rule includes a qualitative evaluation of a bank's responsive credit products and programs under the Retail Services and Products Test.[810] In addition, examiners may consider the affordability and quality of retail loan terms in consumer compliance examinations, and discriminatory or other illegal credit practices identified in these examinations would be taken into consideration in assigning a bank's CRA ratings, as discussed in the section-by-section analysis of final § ____.28(d).

In addition, the agencies considered commenter feedback to provide banks with the option of receiving qualitative consideration for community development lending under the Retail Lending Test. However, the agencies believe that community development lending is appropriately, and comprehensively, considered under the Community Development Financing Test, the Community Development Financing Test for Limited Purpose Banks, the Intermediate Bank Community Development Test, and the Small Bank Lending Test, as applicable. For this reason, the final rule does not include qualitative consideration of community development loans under the Retail Lending Test. However, under the final rule, certain home mortgage loans, small business loans, and small farm loans considered under the distribution analysis of the Retail Lending Test may also be considered under the Community Development Financing Test or the Intermediate Bank Community Development Financing Test, as discussed in the section-by-section analyses of final §§ ____.24 and ____.30.

Banks Evaluated for Automobile Lending

The Agencies' Proposal

The agencies proposed to evaluate automobile lending for banks evaluated under the proposed Retail Lending Test. Specifically, under the proposed Retail Lending Volume Screen, discussed further in the section-by-section analysis of final § ____.22(c), a bank's originated and purchased automobile loans in a facility-based assessment area would have been included in the Bank Volume Metric, which would be compared to a Market Volume Benchmark that would have included all originated automobile loans in counties wholly or partially within the facility-based assessment area reported by large banks that operated a branch in those counties.[811] In addition, under the proposed retail lending distribution analysis, discussed further in the section-by-section analysis of final § ____.22(d) through (f), the agencies would have evaluated the geographic and borrower distributions of a bank's automobile loans in a facility-based assessment area, retail lending assessment area, or outside retail lending area in which the bank's automobile loans constituted a major product line.

Comments Received

As discussed further in the section-by-section analysis of final § ____.22(d), the agencies received numerous comments concerning the proposed evaluation approach for automobile lending under the Retail Lending Test, with some commenters supporting the evaluation of automobile loans using the

[810] As discussed in the section-by-section analyses of final §§ ____.21, ____.23, ____.29, and ____.30, large banks are subject to the Retail Services and Products Test, with banks of other sizes optionally subject to evaluation of credit and deposit products.

[811] The agencies proposed to require large banks with assets greater than $10 billion to collect, maintain, and report to the agencies certain automobile lending data, as discussed further in the section-by-section analysis of final § ____.42.

proposed metrics-based approach but with most commenters opposing or expressing significant concerns with the proposed approach.

A few commenters specifically addressed the applicability of the proposed Retail Lending Test evaluation approach for automobile loans to different types of banks. These commenters stated that the metrics-based approach should only apply to automobile loans at a bank's option or, according to one commenter, if automobile loans constituted a majority of a bank's retail lending.

Final Rule

The agencies are finalizing the proposal to evaluate banks' automobile lending under the Retail Lending Test, with substantive modifications including a narrower standard for when a bank is required to be evaluated for automobile lending relative to the proposed approach. Specifically, under the final rule, the agencies will evaluate automobile loans under the Retail Lending Test only if the bank is a majority automobile lender, or the bank opts to have its automobile loans evaluated.[812] For banks that meet these criteria, automobile loans are included in their Bank Volume Metric in a facility-based assessment area, as discussed further in the section-by-section analysis of final § ____.22(c). In addition, the agencies will evaluate the distribution of these banks' automobile loans in a facility-based assessment area or outside retail lending area in which automobile loans are a major product line, as discussed further in the section-by-section analysis of final § ____.22(d).

Majority automobile lenders. As discussed further in the section-by-section analysis of final § ____.12, the agencies have decided that the Retail Lending Test evaluation of automobile lending will be mandatory for banks that are majority automobile lenders. In incorporating the majority automobile lending standard, the agencies considered that the ''substantial majority'' standard in the current regulations applies to all consumer loans for large banks [813] and that a majority standard is, therefore, appropriate for evaluating automobile loans, which are a component of consumer loans. In addition, in deciding on a majority standard for when an evaluation of a bank's automobile lending is required, the agencies sought to balance the benefits of achieving a more comprehensive evaluation of a bank's retail lending, recognizing that adding automobile lending as a major product line would require an affected bank to collect and maintain automobile lending data, and considering that evaluations of consumer lending are currently only required for banks that meet a substantial majority standard. As a result of employing a majority standard, relative to a lower standard and to the proposed approach, the agencies believe that the final rule approach will reduce complexity because the automobile lending evaluation and related data requirements will apply to a smaller number of banks. Furthermore, the agencies further believe that the final rule provision to allow banks that are not a majority automobile lender to opt into the evaluation automobile loans appropriately increases flexibility for banks.

The agencies considered, but are not adopting, an alternative approach to remove automobile lending entirely from the Retail Lending Test, or to make evaluation of automobile lending optional for all banks. The agencies believe that while this alternative approach would even further reduce complexity and data requirements for certain banks compared to the final rule approach, it could also result in evaluating a majority automobile lender under the Retail Lending Test without considering the bank's automobile loans. The agencies determined that evaluating the automobile lending of a majority automobile lender is important for an accurate and comprehensive evaluation of these banks, and that this approach appropriately takes into consideration the different tradeoffs discussed above.[814]

Based on supervisory experience and analysis of available data, the agencies anticipate that only a small number of banks are majority automobile lenders that would be required to have this product line evaluated under the Retail Lending Test.[815]

As discussed further in the section-by-section analysis of final § ____.12, the agencies will consider a bank to be a majority automobile lender if the following ratio, calculated at the institution level, exceeds 50 percent, based on a combination of loan dollars and loan count:

- The sum, over the two calendar years preceding the first year of the evaluation period, of the bank's automobile loans originated or purchased overall; divided by
- The sum, over the two calendar years preceding the first year of the evaluation period, of the bank's automobile loans, home mortgage loans, multifamily loans, small business loans, and small farm loans originated or purchased overall.

The agencies believe that this approach should promote consistency and predictability by ensuring that a bank with an anomalously high volume of automobile loans in a single year is not automatically considered a majority automobile lender.

Banks that opt to have their automobile lending evaluated. The agencies believe it is appropriate to provide banks that are not majority automobile lenders the flexibility to opt to have their automobile loans evaluated because this product line can meaningfully serve low- and moderate-income individuals and communities and may be an important part of a bank's strategy for meeting community credit needs. Further, the agencies believe that providing this option will help tailor examinations to account for differences in bank business models, consistent with the agencies' objectives for CRA modernization.

Exclusion of Consumer Loans Other Than Automobile Loans

The Agencies' Proposal

The agencies did not include consumer loans other than automobile loans as a major product line on the Retail Lending Test in proposed § ____.22(a)(4)(i). Specifically, consumer credit card loans and other types of consumer loans that are not automobile loans would not be evaluated under the proposed Retail Lending Test, neither as part of the Retail Lending Volume Screen in facility-based assessment areas, nor within the distribution analysis of each of a bank's major product lines in a facility-based assessment area, retail lending assessment area, or outside retail

[812] As discussed in the section-by-section analysis of final § ____.12 (definition of ''product line''), automobile loans are a Retail Lending Test product line for a majority automobile lender or a bank that opts to have its automobile loans evaluated.

[813] *See* current 12 CFR ____.22.

[814] Similarly, the agencies consider a bank's consumer loans under the current lending test if consumer lending constitutes a substantial majority of a bank's business. *See* Q&A § ____.22(a)(1)–2 (interpreting the ''substantial majority'' standard in current 12 CFR ____.22(a)(1)).

[815] For example, the agencies estimate that five banks with assets greater than $2 billion would currently meet the majority automobile lender standard based on Call Report automobile loan data, loans secured by residential properties, loans to small businesses, and loans to small farms from 2021–2022. Because of a lack of publicly available data on automobile loan originations and purchases, this analysis estimates the number of majority automobile lenders using Call Report data on the dollar value of outstanding loans on bank balance sheets, instead of the data on loans originated or purchased during the two years preceding the start of the evaluation period as described in final appendix A, paragraph II.b.3.

lending area. The agencies explained in the preamble to the proposed rule that consumer loans other than automobile loans span several product categories that are heterogeneous in meeting low- or moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis under the Retail Lending Test. Further, the agencies stated that credit card lending is concentrated among a relatively small number of lenders (with many currently designated as limited purpose banks), and that evaluating consumer credit card loans using a metrics-based approach under the Retail Lending Test may require new data collection and reporting requirements because 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. For these reasons, the agencies proposed to consider consumer loans other than automobile loans only under the responsive credit products and programs evaluation of the Retail Services and Products Test; this evaluation would assess 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, and would not include a distribution analysis.[816]

The agencies requested feedback on whether consumer credit card loans should be included in CRA evaluations, whether those credit card loans should be evaluated quantitatively under the proposed Retail Lending Test or only qualitatively under the proposed Retail Services and Products Test, and whether data collection and reporting challenges for consumer credit card loans could adversely affect the accuracy of metrics. The agencies also sought feedback on whether they should adopt a qualitative approach to evaluate consumer loans and whether the qualitative evaluation should be limited to certain consumer loan categories or types.

Comments Received

General comments on the evaluation of consumer loans other than automobile loans. Many commenters opined generally on the importance of consumer loans to low- and moderate-income individuals and communities, with several commenters suggesting that responsible consumer lending by banks can be a valuable alternative to predatory lending (such as payday loans, pawn shop loans, and high-cost credit card loans) and can help borrowers build credit. For example, a commenter stated that consumer loans can provide a record of payment-reporting to credit bureaus and can be an introduction to the banking system for the unbanked, benefitting low- and moderate-income borrowers. A commenter recommended consideration for consumer loan products that help low- and moderate-income borrowers refinance high-cost or predatory consumer loans. Another commenter stated that consumer loan products that banks develop collaboratively with MDIs, WDIs, LICUs, and CDFIs should receive full consideration, whereas consumer loan products developed in collaboration with fintechs should receive credit only if the borrower is low- or moderate-income or is located in a low- or moderate-income or underserved geographic area.

Other commenters expressed general concerns with consumer loan programs offered by banks in cooperation with third parties. For example, several commenters stated that the agencies should scrutinize consumer loans that banks offer through partnerships with fintechs, especially so-called ''rent-a-bank'' partnerships, which commenters said could be used to evade interest rate caps and consumer protections established under State laws. Some of these commenters stated that such partnerships should be banned, while another commenter characterized these partnerships as wealth-stripping. A commenter also recommended that intermediate bank consumer lending should be evaluated, because many banks that partner with non-banks to engage in indirect consumer lending would fall into the new intermediate bank asset-size category.

Support for a quantitative evaluation of consumer loans. Some commenters supported consideration of consumer loans under the Retail Lending Test, and addressed how one or more of these loan categories should be evaluated as a major product line under the Retail Lending Test. For example, recommendations included: evaluating consumer loans and a category for small-dollar loans; combining automobile loans, credit card loans, and other consumer loans into a single major product line; evaluating automobile loans, credit card loans, and small-dollar loans each as a separate product line; evaluating direct and indirect consumer loans as a major product line under the Retail Lending Test; and including only direct consumer loans as a major product line. In addition, a commenter stated that, to incentivize banks to provide small-dollar loans to low- and moderate-income borrowers, the agencies should allow a bank to elect which subset of its consumer loans in any category are evaluated, without requiring the bank to have all loans in that category evaluated. A commenter stated that the agencies should ensure that small-dollar loans with interest rates above 36 percent are included in CRA evaluations and offered the view that examiners exclude these loans under the current rule, thus discouraging banks from offering these products. Conversely, another commenter recommended adding unsecured personal loans as a distinct major product line on the Retail Lending Test (separate from automobile loans, credit card loans, and other secured or unsecured loans), but defining this category to exclude ''covered loans'' under the CFPB's Payday Lending Rule to avoid incentivizing high-cost personal loans with annual percentage rates above 36 percent. This commenter also offered the perspective that automobile loans and personal loans have similarities, and that both should be evaluated under the Retail Lending Test using a distribution analysis; the commenter further stated that the proposal represented a step backward compared to the current rule under which consumer loans are evaluated under the lending test if consumer lending constitutes a substantial majority of a bank's business or at the bank's option.

With respect to factors that should trigger an evaluation of consumer loan products as a major product line under the Retail Lending Test, commenters generally recommended a number of options. First, some commenters suggested that consumer loans should be evaluated only at the bank's option. For example, a commenter stated that making the evaluation of consumer loans optional would keep the focus of the Retail Lending Test on products that have been historically underrepresented in low- and moderate-income communities (namely, home mortgage loans, small business loans, and small farm loans). Second, some commenters stated that consumer loans should be automatically evaluated if they constitute a substantial portion or a majority of a bank's business, with a few commenters recommending retaining the current practice of evaluating consumer loans when they constitute a substantial majority or if a bank elects to have consumer loans considered and has collected and maintained the data.

[816] *See* the section-by-section analysis of final § ____.23.

Third, some commenters recommended applying a version of the proposed approach for other product lines tailored specifically to consumer loans. For example, a commenter recommended that consumer loans should trigger a major product line if they represent at least 30 percent of a bank's retail loans by number and 15 percent by dollar volume within an assessment area. A group of commenters suggested that the major product line standard for consumer loans should be the lesser of 15 percent by lending dollars or 50 loans. Another commenter recommended using an average of loan count and lending dollars in light of the fact that consumer loans tend to be smaller in loan amount.

Support for a qualitative evaluation of consumer loans other than automobile loans. Some commenters supported the proposal to qualitatively evaluate consumer loans other than automobile loans only under the Retail Services and Products Test, rather than also evaluating these loans quantitatively under the Retail Lending Test. For example, a commenter specified that consumer loans should be evaluated under the Retail Services and Products Test because that performance test allows for greater consideration of performance context, such as whether a bank ensures that a student loan borrower has exhausted any available Federal funds before taking out private loans. A few commenters also stated that evaluating consumer loans qualitatively allows the agencies to ascertain the purpose of consumer loans, emphasizing that minority business owners are more likely to request personal lines of credit and consumer loans for small business purposes and more likely to own businesses without employees.

Support for an evaluation of consumer loans under both the Retail Lending Test and the Retail Services and Products Test. Some commenters supported the evaluation of consumer loans other than automobile loans under both the Retail Lending Test and the Retail Services and Products Test. These commenters recommended a quantitative evaluation for consumer loans under the Retail Lending Test in combination with a qualitative evaluation under the proposed Retail Services and Products Test. These commenters offered a variety of rationales in support of this approach. For example, a few commenters stated that evaluating consumer loans under both performance tests would increase competition in the market for consumer loans to low- and moderate-income consumers and communities. Another commenter stated that the number and volume of consumer loans is considerable and that the importance of well-designed consumer loans to low- and moderate-income communities is substantial, making a qualitative-only evaluation of these loans inappropriate. A commenter expressed concern that evaluating consumer loans only under the Retail Services and Products Test, and not also under the Retail Lending Test, would result in insufficient consideration of these loans, particularly given the low proposed weighting assigned to that performance test. Another commenter reasoned that a quantitative analysis would help determine whether a bank is making consumer loans equitably in terms of geography and borrower income level, whereas a qualitative analysis would reveal whether the bank offers consumer loans that are accessible and affordable to low- and moderate-income borrowers and responsive to their credit needs.

Most commenters responding to the agencies' request for feedback specifically on how to evaluate consumer credit card loans also recommended that the agencies evaluate consumer credit card loans under both the Retail Services and Products Tests and, when credit card loans constitute a major product line, under the proposed Retail Lending Test. In general, these commenters stated that a purely quantitative evaluation of consumer credit card loans would be insufficient and could encourage unaffordable and abusive high-interest credit card lending. As such, some commenters that supported the hybrid evaluation of consumer credit card loans identified specific factors that should be included in the qualitative evaluation, including repayment rates, the affordability of terms (*e.g.,* interest rates, fees, and penalties), and safeguards or features that minimize adverse credit outcomes. Another commenter identified difficulties in obtaining information that the commenter viewed as necessary for evaluating the responsiveness of a consumer credit card loan, such as how and why a consumer is using a credit card loan (as opposed to another loan product), whether the credit card loan terms are responsive to the consumer's needs, and how equitable the terms are for low- and moderate-income and minority consumers compared to other consumers.

A few commenters that supported evaluation of consumer credit card loans under the Retail Lending Test and Retail Services and Product Test addressed the agencies' request for feedback on what data collection and reporting challenges, if any, might exist for credit cards that could adversely affect the accuracy of metrics and benchmarks. These commenters disputed the proposal's suggestion that banks may not currently retain or have the capability to capture credit card borrower income, at origination or subsequently, as the reason not to evaluate this product line under the Retail Lending Test. These commenters asserted that banks generally collect borrower income information on consumer credit card applications or at the time a credit card is issued, and suggested that the benefits of a metrics-based approach to evaluating consumer credit card lending (including more competition and better rates for low- and moderate-income consumers) would outweigh the modest cost of requiring banks to report this data. However, a commenter, opposing credit card lending in CRA evaluations altogether, expressed a different view that banks make underwriting decisions primarily based on an applicant's creditworthiness as revealed through credit bureaus, and borrower income information is not usually validated by banks; this commenter further stated that the operational nature of credit card lending would not easily support the need for data collection and reporting.

Opposition to CRA evaluation of consumer lending. There were also commenters that expressed opposition to the consideration of consumer loans under either the Retail Lending Test or the Retail Services and Products Test. For example, a few commenters opposed the proposal to qualitatively evaluate consumer loans and suggested that consumer loans should not be evaluated in CRA examinations. These commenters emphasized that a bank's consumer loans are already subject to examination under consumer lending laws, and asserted that evaluating these same loans under the CRA would be duplicative and cause inefficiencies for both bank staff and the agencies. Additionally, a few commenters specifically advocated for the exclusion of consumer credit card lending from CRA evaluations. These commenters argued that including consumer credit card loans in CRA evaluations could incentivize banks to provide this high-cost form of financing to consumers. One of these commenters additionally stated that including consumer credit card loans would distract from more important wealth-building credit products, such as home mortgage loans, small business loans, and small farm loans. Relatedly, a commenter advised that the agencies should carefully assess whether to include consumer credit card loans in CRA evaluations, weighing the desire for a comprehensive evaluation of a bank's lending performance against the risk of supporting lending that may be harmful to households.

Final Rule

For the reasons discussed below, final § ____.22(d)(1) retains the proposed approach of not including consumer loans other than automobile loans as a major product line for evaluation using distribution metrics in the Retail Lending Test. Under the final rule, as under the proposal, consumer loans other than automobile loans by large banks will be evaluated under the Retail Services and Products Test (*see* the section-by-section analysis of final § ____.23(c)(2)). Also, as proposed, intermediate banks, and small banks that opt into the Retail Lending Test, may seek additional consideration for consumer lending products and programs that qualify for evaluation under the Retail Services and Products Test.[817] Additionally, these loans are not quantitatively considered in the Retail Lending Volume Screen, although they may be considered as an acceptable basis for not meeting the Retail Lending Volume Threshold pursuant to final § ____.22(c)(3)(i)(A).

The agencies have considered, but decline to adopt, commenter feedback either to evaluate consumer loans other than automobile loans only under the Retail Lending Test or to evaluate these loans under both the Retail Lending Test and the Retail Services and Products Test. In determining that consumer loans other than automobile loans should be evaluated only under the Retail Services and Products Test, the agencies considered challenges and downsides of a quantitative distribution analysis of these loans under the Retail Lending Test. The agencies continue to believe that the heterogeneity of consumer loan products other than automobile loans would make these products challenging to evaluate appropriately under a distribution analysis. In particular, to evaluate consumer loans other than automobile loans under the Retail Lending Test, the agencies would need to define one or more categories of consumer loan products that may be reasonably compared across banks, so that bank metrics and corresponding benchmarks are sufficiently comparable. The agencies believe that the diversity of consumer product line delineations suggested by commenters illustrates the challenge of this approach. In addition, even if consumer loan products other than automobile loans could be reasonably disaggregated into discrete categories, doing so may introduce multiple new product lines into the Retail Lending Test, with the possibility that the bank has too few loans of any specific category to evaluate as a major product line. The additional product lines would involve additional metrics, benchmarks, and weights, thereby increasing the complexity of the evaluation. The agencies considered that including consumer loans other than automobile loans as a major product line under the Retail Lending Test would impose additional data collection and maintenance requirements on banks. Specifically, for the agencies to evaluate these loans using a distribution analysis, banks would need to collect and maintain data including borrower income and census tract, among other indicators, for each loan. The agencies also considered the potential unintended effects of a distribution analysis if these loans were evaluated under the Retail Lending Test—for example, evaluation under a distribution analysis could inadvertently encourage a bank to issue credit cards to customers who already have access to a consumer credit card, which may not be responsive to community credit needs. In addition, the agencies considered that a distribution analysis would not account for any fees or interest rates associated with these products, which the agencies believe is important to determining whether the products are serving the credit needs of the community.

In determining to evaluate consumer loans other than automobile loans under the Retail Services and Products Test, rather than excluding these loans entirely from the CRA evaluation, the agencies have considered the importance of these loans to consumers. Specifically, the agencies have considered feedback from some commenters noting the importance of credit card and personal loans, including that these loans can represent a foundational credit product that serves as a point of access to the banking system, by which consumers can build a positive credit history and that these loans can further serve as an alternative to higher-priced financing options provided by non-banks. Conversely, the agencies have also considered that some commenters disagreed with evaluating these loans under the Retail Services and Products Test, with a few suggesting that other consumer lending laws are sufficient and that an evaluation would be duplicative, that providing small-dollar and personal loans would not be incentivized, and that evaluating credit cards would distract from more wealth-building products (*e.g.,* home mortgage loans, small business loans, and small farm loans). However, the agencies believe that a qualitative evaluation of consumer lending, including consumer loans other than automobile loans, would contribute to an evaluation of whether a bank is meeting the credit needs of its entire community.

In adopting the final rule approach, the agencies have also determined that the responsive credit product evaluation in the Retail Services and Products Test is well suited to consider the different aspects of a bank's consumer loans other than automobile loans, including aspects of these loans raised by commenters. The final rule approach in the Retail Service and Products Test includes a responsive credit products and programs evaluation that qualitatively reviews a bank's responsiveness to community credit needs, including low- and moderate-income individuals and communities; this provision is discussed in more detail in the section-by-section analysis of final § ____.23(c)(2). For example, under the Retail Services and Products Test, the agencies will review the responsiveness of a bank's consumer loans, which may include the type of consumer product offered, the number of low- and moderate-income customers served, and whether the loan product has any accommodative features such as alternative credit scoring or underwriting. The responsive credit products evaluation could also consider other factors, such as whether the bank offers small-dollar loans with reasonable terms, offers credit-building opportunities via secured credit cards or secured personal loans, or engages in responsible cash flow-based underwriting for customers with thin or no credit files. The agencies have considered commenter feedback that there will not be adequate information to assess the responsiveness of a consumer credit product or program. However, the agencies expect that examiners will have the necessary information for this evaluation, including by obtaining information from banks at the time of their examination, as is the case in examinations today, as well as considering public feedback and other available information.

The agencies have also considered commenter feedback that the final rule approach for consumer loans that are not automobile loans is a step backward,

[817] *See* the section-by-section analysis of final § ____.21.

as well as commenter feedback that there will be insufficient consideration of consumer loans with a 15 percent weight assigned to the proposed Retail Services and Products Test. The agencies believe that the final rule takes an appropriate approach to evaluating consumer loans that are not automobile loans, as discussed above. In addition to the points raised above, the agencies have also considered that banks with a sizeable consumer lending portfolio that would meet the agencies' substantial majority standard under current guidance may elect an alternative evaluation under the final rule. For example, a bank that does a significant amount of consumer lending could seek approval under the strategic plan option.[818] Under an approved strategic plan, a bank may add additional product lines outside those that are considered under the Retail Lending Test, in its plan, such as consumer lending products other than automobile loans. Alternatively, a bank, such as a credit card lender may request designation as a limited purpose bank as provided in final § ____.26(a), the Community Development Financing Test for Limited Purpose Banks. If approved, the bank would only be evaluated under the Community Development Financing Test for Limited Purpose Banks and consumer lending would not be considered in evaluating the bank's performance. For further discussion of this aspect of the final rule, see the section-by-section analyses of final §§ ____.12 (definition of ''limited purpose bank'') and ____.26.

The agencies have considered commenter concerns about requiring the evaluation of an intermediate bank's consumer lending, citing that many banks that partner with non-banks to engage in indirect consumer lending would fall into the new intermediate bank asset-size category. The agencies note that, under final § ____.21(a)(2)(i), intermediate banks will be evaluated under Retail Lending Test and the Intermediate Bank Community Development Test, unless an intermediate bank chooses to have its community development loans and investments evaluated under the Community Development Financing Test. Therefore, consumer lending other than automobile lending will only be evaluated if an intermediate bank opts for additional consideration[819] under the Retail Services and Products Test as this test does not apply to intermediate banks. The agencies believe that the final rule approach for intermediate banks balances the agencies' objectives of tailoring performance standards for banks of different sizes while still allowing appropriate consideration of consumer loans, other than automobile loans, under the Retail Services and Products Test.

The agencies have also considered commenter sentiment to limit consideration provided for consumer loan programs offered in cooperation with third parties, specifically with fintechs, when there is not an explicit purpose to serve low- and moderate-income census tracts and borrowers or if the third party provides loans at rates higher than State laws allow. The agencies note that, as part of evaluating credit product and programs as responsive under the Retail Services and Products Test, examiners would consider whether loan terms are affordable for low-and moderate-income consumers. The agencies also note that evaluation of banks' third-party risk management is outside the scope of this rulemaking.

Inclusion of Purchased Loans

The Agencies' Proposal

The agencies proposed to include a bank's purchased loans in a bank's metrics for purposes of the Retail Lending Test.[820] Specifically, under the proposal, a bank's purchased loans would be included in the bank volume metric used in the retail lending volume screen and the retail lending distribution metrics used to evaluate a bank's major product lines.[821]

In proposing to include purchased loans in a bank's Retail Lending Test metrics, the agencies explained that purchased loans can provide liquidity to banks and other lenders, such as CDFIs, and extend their capacity to originate loans to low- and moderate-income individuals and in low- and moderate-income areas. The agencies noted that banks may also purchase loans to develop business opportunities in markets where they otherwise lack the physical presence to originate loans.

At the same time, the agencies acknowledged stakeholder concerns that purchased loans should not receive the same consideration as originated loans under the Retail Lending Test, because purchases require fewer business development and borrower outreach resources than originations. In addition, the agencies noted that despite their potential value in increasing secondary market liquidity, loan purchases may do less to extend the availability of credit than new originations, especially where loan purchases do not directly provide liquidity to the originator.[822]

The agencies sought feedback on whether retail loan purchases should be treated as equivalent to loan originations in a bank's metrics for purposes of the Retail Lending Test. If so, the agencies asked whether only certain loan purchases should be included, such as loans purchased from a CDFI or directly purchased from the originator, and whether other restrictions should be placed on the inclusion of purchased loans in a bank's Retail Lending Test metrics.

Comments Received

The agencies received feedback on the proposed inclusion of purchased loans in a bank's Retail Lending Test metrics from a variety of commenters, summarized below.

Support for including purchased loans in a bank's Retail Lending Test metrics. Many commenters generally supported including purchased loans in a bank's metrics for purposes of the retail lending volume screen and the distribution analysis component of the Retail Lending Test. These commenters pointed to various reasons why purchased loans should be included in a bank's Retail Lending Test metrics, including that: purchased loans provide essential liquidity to the affordable housing finance ecosystem and extend the capacity of mission-driven lenders; including purchased loans encourages banks to serve as correspondent lenders and allows banks to test and learn about business opportunities in markets where they lack on-the-ground resources to originate loans, ultimately increasing credit availability; and banks purchasing seasoned delinquent loans from other lenders and acting as loan servicers can help borrowers maintain homeownership. A few commenters

[818] *See* final § ____.27(g)(1) and the accompanying section-by-section analysis.

[819] See the section-by-section analysis of final § ____.21(a)(2)(i).

[820] The agencies consider a bank's origination and purchase of loans under the current lending test. *See* current 12 CFR ____.22(a)(2).

[821] However, as discussed in the section-by-section analyses of final § ____.22(c) and (e), the agencies proposed to exclude purchased loans from the market benchmarks against which a bank's metrics would be compared.

[822] Further, the agencies specifically acknowledged the possibility that loans made to low- or moderate-income borrowers or in low- or moderate-income census tracts could be purchased and sold repeatedly by different banks, with each bank receiving credit under the Retail Lending Test equivalent to the bank that originated the loans. In such cases, the agencies noted that the repurchase of loans would not provide additional liquidity to the originating bank nor additional benefit for low- and moderate-income borrowers and areas. For this reason, the agencies proposed to consider as an additional factor in assigning Retail Lending Test conclusions whether a bank purchased retail loans for the sole or primary purpose of influencing its retail lending performance evaluation. This proposed additional factor is discussed further in the section-by-section analysis of final § ____.22(g).

suggested that excluding purchased loans from a bank's metrics would force some banks to alter their safe and sound business plans because they have few options other than to purchase loans to obtain CRA credit. Commenters also indicated that originating CRA-qualifying loans (*e.g.,* loans to low-income borrowers) in certain high-cost areas can be difficult for some banks due to significant market competition for those loans.

Some commenters stressed the importance of including particular types of purchased loans in a bank's metrics for purposes of the Retail Lending Test, especially home mortgage loans. For example, a commenter warned that banks would exit the home mortgage market if purchased home mortgage loans do not receive positive CRA credit. A commenter noted that excluding purchased small business loans from a bank's metrics would punish certain banks that provide indirect commercial automobile loans, which are categorized as purchased loans.

Limitations on the inclusion of purchased loans in a bank's Retail Lending Test metrics. Many commenters stated that the inclusion of purchased loans in a bank's Retail Lending Test metrics should be subject to limitations. In general, these commenters stated that only certain purchased loans should be included in a bank's metrics, depending on characteristics of the purchased loan, including its impact, or the originating lender.

Several commenters stated generally that the Retail Lending Test should prioritize loan originations over loan purchases. A few commenters recommended weighting purchased loans less than originations in a bank's metrics for purposes of the Retail Lending Test, with some of these commenters emphasizing that originating a loan requires more time and effort than purchasing a loan, particularly in the case of low-income borrowers and minority borrowers. Additionally, one of these commenters pointed out that purchased loans have lower upfront investment costs. A few commenters recommended evaluating purchased loans separately from originations under the Retail Lending Test, with one of these commenters stating that purchased loans should be a separate major product line under the distribution analysis component and receive less weight than originations in determining a bank's Retail Lending Test conclusions.

Some commenters stated that any evaluation of purchased loans under the Retail Lending Test should focus on their impact on communities, including how purchased loans facilitate wealth-building and increase access to credit for low- and moderate-income and minority borrowers. Some commenters expressed the view that most purchased loans should be excluded from a bank's Retail Lending Test metrics, but that an exception should be made for purchased loans that result in a demonstrable benefit to low- and moderate-income borrowers, such as more favorable loan terms or a reduction in loan principal.

Other commenters suggested different treatment of purchased loans based on the extent of secondary market access of the originating lender. For example, a commenter suggested that loans purchased from an originator with limited access to the secondary market should be weighted equally to a bank's originations for purposes of a bank's Retail Lending Test metrics, while loans purchased from an originator with access to the secondary markets should be weighted less than loans originated by the bank.

A number of commenters recommended that only retail loans purchased from mission-driven lenders, such as CDFIs, MDIs, and WDIs, should be included in a bank's metrics for purposes of the Retail Lending Test. One of these commenters stated that mission-driven lenders face liquidity challenges that inhibit their ability to make non-housing loans, given the lack of maturity and smaller scale of these markets, and that giving banks CRA credit for the purchase of such loans would free up balance sheet space for mission-driven lenders to make additional housing loans. A commenter explained that including loans purchased from CDFIs in a bank's metrics would be appropriate because CDFIs are certified for their ability to reach underserved borrowers, while another commenter suggested that including such purchased loans in a bank's metrics would encourage banks to enter into broader partnerships with mission-driven lenders that support small businesses where they operate.

Some commenters recommended that only retail loans purchased from the originator, but not subsequent purchases, should be included in a bank's Retail Lending Test metrics, with a commenter noting that this treatment would ensure a sufficient level of liquidity without inappropriately promoting loan purchases. A few commenters stated that including the initial purchase of a retail loan in a bank's metrics would benefit banks that serve as master servicer to state housing finance programs, which commenters indicated is a vital service for low- and moderate-income areas. In a similar vein, a few commenters suggested that initial loan purchases should be included in a bank's Retail Lending Test metrics as equivalent to loan originations, but subsequent purchases should receive less credit in order to eliminate the incentive to continually resell the same loans. For example, a commenter stated that retail loans should not be included in a bank's Retail Lending Test metrics beyond the second purchase (excluding any initial, contractually required purchase by the bank from a vendor-originator), stating that this limit would accommodate intermediaries that frequently purchase loans to enhance the liquidity of the originator. Another commenter stated that the agencies should establish a reasonable limit on the number of times a loan could be sold before the loan would cease to be included in a purchasing bank's Retail Lending Test metrics.

Finally, other commenters suggested different parameters regarding the inclusion of purchased loans in a bank's metrics for purposes of the Retail Lending Test, including a recommendation to exclude loans purchased from nonbank originators. For example, a commenter noted that including purchased loans with excessively high interest rates in a bank's metrics would undermine the goals of the CRA, citing as an example small business loans with extremely high annual percentage rates purchased by banks from fintech companies. The same commenter also suggested excluding purchased loans for which the risk of loss is effectively maintained at the originating lender, such as when the purchasing bank has the right to request a substitution of the loan if the borrower defaults without providing any additional capital to the originating lender.

Opposition to including purchased loans in a bank's Retail Lending Test metrics. A few commenters opposed including any purchased loans in a bank's metrics for purposes of the Retail Lending Test, with some of these commenters stating that a bank should not be allowed to buy its way to a passing CRA rating, and that by including both loan originations and loan purchases in the Retail Lending Test metrics, the agencies would be double counting the same loans. Commenters also indicated that purchased loans are generally less responsive to the credit needs of low- and moderate-income areas than originations. For example, a commenter pointed to a research paper indicating that the inclusion of purchased loans in

CRA examinations did not increase access to credit for low- and moderate-income borrowers and communities.[823] Another commenter similarly stated that purchased loans originated by another bank are low-impact activities that should be ineligible for CRA credit.

Treatment of purchased small business loans. Several commenters requested clarification regarding whether purchased small business loans would be included in a bank's Retail Lending Test metrics following the transition to using section 1071 data because the CFPB Section 1071 Proposed Rule stated that purchased loans would not be reported.[824] A few of these commenters suggested that the agencies should give banks the option to report purchased small business loans for inclusion in the bank's Retail Lending Test metrics if the CFPB's final rule does not include purchased loans.

Final Rule

For the reasons discussed below, the agencies are finalizing the proposal to include purchased loans in a bank's metrics for purposes of the Retail Lending Test. Specifically, under the final rule, a bank's purchased loans are included in the Bank Volume Metric used in the Retail Lending Volume Screen as well as in the bank's metrics used in the distribution analysis of the bank's major product lines.[825]

Including purchased loans in a bank's metrics for purposes of the Retail Lending Test reflects the agencies' belief that purchased loans can support originations of loans to low- and moderate-income individuals and in low- and moderate-income census tracts. Specifically, loan purchases can enhance the liquidity of originated loans and thereby make capital available for lenders that are actively originating loans to low- and moderate-income borrowers and in low- and moderate-income census tracts, when their capacity to originate additional loans might otherwise be constrained. The agencies believe that excluding purchased loans from a bank's metrics could potentially disadvantage originating lenders that have limited access to the secondary market, such as a lender that is not an approved seller or servicer with Fannie Mae or Freddie Mac. In addition, the agencies considered that including purchased loans in evaluating retail lending performance is consistent with the current lending test evaluation approach.

As in the proposal, the final rule includes both originated loans and purchased loans in a bank's metrics without assigning greater weight to loan originations. In reaching this determination, the agencies considered commenter sentiment that purchased loans should receive a lower weight than originations because of the viewpoint that they require less effort and upfront investment costs compared to originations and that they may be less impactful than originated loans. However, the agencies also considered that weighting loan originations and purchases differently would make the Retail Lending Test metrics more complex and may have unintended consequences of reducing liquidity for loans to low- and moderate-income borrowers and communities, as noted above. The agencies also considered that it would be challenging to determine a fixed weight to assign to purchased loans that appropriately reflects the impact of those purchases relative to originated loans because the impact of a bank's originations and purchases of loans could vary based on a number of factors, including the credit needs and opportunities of the community. Furthermore, to address the potential downsides of including purchased loans in the Retail Lending Test metrics used to evaluate a bank, the agencies have included an additional factor in final § ____.22(g)(1), which is discussed in the section-by-section analysis of final § ____.22(g).

In addition, the agencies have also considered the impact of including purchased loans in a bank's metrics for purposes of the Retail Lending Test (and weighting loan purchases equal to loan originations) using historical data from 2018–2020. In this analysis, the agencies compared the distribution of estimated Retail Lending Test conclusions across facility-based assessment areas that would have resulted had the final rule approach been in effect during those years to the distribution of estimated conclusions that would have resulted from including only loan originations in a bank's distribution metrics. Based on the agencies' estimates, roughly similar percentages of facility-based assessment areas for banks included in the analysis would have received higher recommended conclusions (6.5 percent) or lower recommended conclusions (8.2 percent) if loan purchases were not included in the bank's metrics.[826] Given these results, the agencies have concluded that the impact of removing purchased loans from the Retail Lending Test bank metrics could have different impacts on different banks. As discussed above, the agencies have determined to include purchased loans in bank metrics, coupled with the additional factor in final § ____.22(g)(1). The agencies believe that this approach strikes an appropriate balance of avoiding unintended consequences of reducing liquidity for loans to low- and moderate-income borrowers and communities while also putting in place provisions to help ensure that loan purchases are not used for the purpose of inappropriately enhancing a bank's retail lending performance.

The agencies considered, but are not adopting, a commenter suggestion to disaggregate loan originations from loan purchases by evaluating purchased loans as a separate major product line under the distribution analysis component of the Retail Lending Test. The agencies believe that disaggregating originations from purchases is contrary to the intent discussed above in deciding to evaluate a bank's originations and purchased loans as part of the same analysis. In addition, the agencies believe that evaluating purchased loans as a separate product line would add to the complexity of the distribution analysis without sufficiently compensating benefits. The agencies also considered that there may not be sufficient data to construct robust market benchmarks based on only purchased small business and small farm loans once the agencies transition to using section 1071 data, which will not include purchased loans.

The agencies also considered, but are not adopting, alternative approaches suggested by commenters of including only certain purchased loans in a bank's

[823] *See* Kenneth P. Brevoort, Bd. of Governors of the Fed. Rsrv. Sys., ''Does Giving CRA Credit for Loan Purchases Increase Mortgage Credit in Low-to-Moderate Income Communities?'' Finance and Economics Discussion Series 2022–047 (June 7, 2022), *https://www.federalreserve.gov/econres/feds/files/2022047pap.pdf*.

[824] *See* 86 FR 56356, 56413 (Oct. 8, 2021).

[825] As discussed in the section-by-section analysis of final § ____.22(e), purchased loans are excluded from the market benchmarks against which the bank's metrics are compared, consistent with the proposal. In addition, as discussed in the section-by-section analysis of final § ____.22(g), in assigning Retail Lending Test conclusions to a bank, the agencies consider information indicating that the bank purchased closed-end home mortgage loans, small business loans, small farm loans, or automobile loans for the sole or primary purpose of inappropriately enhancing its retail lending performance.

[826] This analysis was calculated over the 2018–2020 period for a set of intermediate banks and large banks that are both CRA and HMDA reporters. Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage lending, small business lending, small farm lending, and deposits data from the CRA Analytics Data Tables. This analysis did not incorporate the Retail Lending Volume Screen.

Retail Lending Test metrics, or excluding certain purchased loans from a bank's Retail Lending Test metrics. The agencies believe that identifying particular types of purchased loans and either including or excluding these loan purchases from the banks' metrics adds a level of complexity to the Retail Lending Test and the reporting of purchased loans, and presents implementation challenges due to data availability. For example, loans originated or purchased by a financial institution that is not a HMDA reporter are not captured in HMDA data, and as a result, it is not possible to consistently identify how many times a purchased loan has been purchased since its origination, or identify the initial originator of the loan. Similarly, HMDA data do not identify the extent of access to the secondary market for all originating lenders that banks may be purchasing loans from. CRA small business and small farm data are even more limited in that these data do not identify the originating lender of a small business loan that is purchased by a bank, and do not indicate the number of times a loan has been sold.

With respect to comments suggesting that any evaluation of purchased loans should focus on community impact, such as increasing access to credit for low- and moderate-income and minority borrowers, or increasing loans purchased from mission-driven lenders, the agencies recognize the importance of supporting such institutions in their efforts to provide access to credit and other financial services in traditionally underserved communities. The agencies note that the final rule includes as part of the Retail Services and Products Test an evaluation of whether a bank's credit products and programs—including loans purchased from MDIs, WDIs, LICUs, and CDFIs—are, in a safe and sound manner, responsive to the needs of low- and moderate-income individuals, residents of low- and moderate-income census tracts, small businesses, and small farms. This provision is discussed further in the section-by-section analysis of final § ____.23(c). In addition to considering the responsiveness of a bank's purchased loans qualitatively under the Retail Services and Products Test, the agencies believe that it is also important to evaluate a bank's purchased loans quantitatively under the Retail Lending Test because loan purchases may help to meet the credit needs of low- and moderate-income borrowers, small businesses and small farms, and low- and moderate-income census tracts.

Treatment of purchased small business loans and small farm loans. As discussed further in the section-by-section analysis of final § ____.42, the final rule provides that once section 1071 data is used in CRA evaluations, a bank may, at its option, have purchased small business loans included in its Retail Lending Test metrics if the bank collects and maintains data on these loans. The agencies have considered that the CFPB Section 1071 Final Rule does not require the reporting of purchased loans.[827] However, the agencies determined that it is appropriate to provide banks with the option to collect and maintain data on their purchased small business loans and small farm loans for consideration in Retail Lending Test metrics once the agencies transition to using section 1071 data for CRA evaluations. The agencies believe that the optional inclusion of purchased small business loans and small farm loans in a bank's metrics appropriately tailors the evaluation approach to different bank business models, including those that involve purchases of these loan types as part of the bank's strategy for meeting the credit needs of the community. In addition, the agencies believe the final rule approach of allowing banks to continue to include purchased small business and small farm loans in the bank's metrics once the agencies transition to using section 1071 data will provide continuity with the current approach, which includes purchased small business loans in a bank's distribution metrics.

Section ____.22(a) and (b) Retail Lending Test—In General and Methodology Overview

The Agencies' Proposal

Proposed § ____.22(a) addressed the scope of the Retail Lending Test. Proposed § ____.22(a)(1) provided that the Retail Lending Test would evaluate 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. In addition, proposed § ____.22(a) set forth the geographic areas in which large banks and intermediate banks would be evaluated under the proposed Retail Lending Test and the major product lines that would have been evaluated under the distribution analysis. The proposed major product line standard is discussed in the section-by-section analysis of final § ____.22(d).

Proposed § ____.22(b) described the methodology of the proposed Retail Lending Test. Specifically, proposed § ____.22(b)(1) provided that the agencies would first review numerical metrics, developed under proposed § ____.22(c), regarding a bank's retail lending volume in each facility-based assessment area. Proposed § ____.22(b)(2) provided that the agencies would also employ numerical metrics, developed under proposed § ____.22(d), to evaluate the geographic and borrower distribution of a bank's major product lines in each facility-based assessment area, retail lending assessment area, and outside retail lending area, as applicable. Proposed § ____.22(b)(3) provided that the agencies would also use the additional factors described in proposed § ____.22(e) to evaluate a bank's retail lending performance in its facility-based assessment areas.

Comments Received

Although the agencies received numerous comments, discussed above, on the overall Retail Lending Test framework, including the use of a metrics-based approach in general, the agencies did not receive comments on the specific language of proposed § ____.22(a) and(b).

Final Rule

The agencies are finalizing a modified version of proposed § ____.22(a) and (b). Similar to the proposal, final § ____.22(a) and (b) address the general scope and methodology of the Retail Lending Test. However, the agencies have modified final § ____.22(a) and (b) from the proposal to reflect changes to the Retail Lending Test framework discussed throughout the section-by-section analysis of final § ____.22.

- Final § ____.22(a)—*Retail Lending Test*—clarifies which product lines will be evaluated pursuant to the Retail Lending Test and further clarifies when automobile loans will be evaluated. Specifically, final § ____.22(a)(1)—*In general*—provides generally that the Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans.
- Final § ____.22(a)(2)—*Automobile loans*—provides that the Retail Lending Test also evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of automobile

[827] A covered entity under the CFPB Section 1071 Final Rule will not be required to report small business lending data on purchased loans because purchased loans are not considered ''covered credit transactions.'' *See* 12 CFR 1002.104(b) and associated Official Interpretation.

loans if the bank is a majority automobile lender or if the bank opts to have it automobile loans evaluated under the Retail Lending Test.

- Final § ____.22(b)—*Methodology overview*—describes the Retail Lending Test's methodology with additional detail than provided in proposed § ____.22(b) in order to increase clarity.
- Final § ____.22(b)(1)—*Retail Lending Volume Screen*—provides that the agencies consider whether a bank meets or surpasses the Retail Lending Volume Threshold in each facility-based assessment area pursuant to the Retail Lending Volume Screen in final § ____.22(c).
- Final § ____.22(b)(2)—*Retail lending distribution analysis*—provides that except as provided in final § ____.22(b)(5), the agencies evaluate the geographic and borrower distributions of each of a bank's major product lines in each Retail Lending Test Area, as provided in final § ____.22(d) and (e).
- Final § ____.22(b)(3)—*Retail Lending Test recommended conclusions*—provides that except as provided in final § ____.22(b)(5), the agencies develop a Retail Lending Test recommended conclusion pursuant to final § ____.22(f) for each Retail Lending Test Area.
- Final § ____.22(b)(4)—*Retail Lending Test conclusions*—provides that the agencies' determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area is informed by the bank's Retail Lending Test recommended conclusion for the Retail Lending Test Area, performance context factors as provided in final § ____.21(d), and the additional factors provided in final § ____.22(g).
- Final § ____.22(b)(5)—*Exceptions*—describes two exceptions to the general four-step methodology discussed above.
- Final § ____.22(b)(5)(i)—*No major product line*— provides that if a bank has no major product line in a facility-based assessment area, the agencies assign the bank a Retail Lending Test conclusion for that facility-based assessment area based upon the bank's performance on the Retail Lending Volume Screen pursuant to final § ____.22(c), the performance context factors provided in final § ____.21(d), and the additional factors provided in final § ____.22(g). This final rule provision specifies that the distribution analysis in final § ____.22(d) through (f) does not apply to a facility-based assessment area in which there are no major product lines. There may not be a major product line, for example, where a bank maintains a deposit-taking facility and only conducts consumer lending other than automobile lending. The agencies determined that this provision adds clarity regarding evaluation procedures in cases where the proposed distribution analysis does not apply to a bank's business model in a facility-based assessment area.
- Final § ____.22(b)(5)(ii)—*Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold*—provides how the agencies assign a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Volume Threshold. Consistent with the proposed approach, these facility-based assessment areas do not receive a Retail Lending Test recommended conclusion based on a distribution analysis. The agencies have revised the final's rule regulatory text relative to the proposal to make more clear that, as described in the section-by-section analysis of final § ____.22(c)(3)(iii), the agencies will instead consider such a bank's performance on the Retail Lending Volume Screen, the distribution analysis, the performance context factors in final § ____.21(d), and the additional factors in final § ____.22(g) in assigning a conclusion. As discussed in the section-by-section analysis of § ____.22(c), and consistent with the proposed approach, a large bank that lacks an acceptable basis for not meeting the screen is limited to a Retail Lending Test conclusion of either ''Needs to Improve'' or ''Substantial Noncompliance'' in that facility-based assessment area. An intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, that lacks an acceptable basis for not meeting the screen is eligible for any Retail Lending Test conclusion in that facility-based assessment area.

Section ____.22(c) Retail Lending Volume Screen

In final § ____.22(c) and section I of final appendix A, the agencies are adopting the proposal to incorporate in the evaluation of a bank's retail lending performance a Retail Lending Volume Screen, which will measure the total dollar amount of a bank's retail lending relative to its presence and capacity to lend, based on deposits, in a facility-based assessment area compared to other lenders.[828] The agencies developed the Retail Lending Volume Screen to provide more rigor, clarity, consistency, and transparency in the evaluation of retail lending for banks evaluated under the final Retail Lending Test.

The final rule's Retail Lending Volume Screen reflects certain substantive, technical, and clarifying revisions to the proposed Retail Lending Volume Screen, as discussed below. The agencies have also reorganized the proposed regulatory text to provide additional clarity and consistency by: (1) in final § ____.22(c)(1), defining the volume screen components; (2) in final § ____.22(c)(2), outlining the agencies' approach regarding banks that meet or surpass the volume screen's threshold; and (3) in final § ____.22(c)(3), outlining the agencies' approach regarding banks that do not meet the screen's threshold.

Consistent with the proposal, final § ____.22(c)(1) provides that, for a bank evaluated under to the Retail Lending Test, the Retail Lending Volume Screen will measure the bank's lending volume relative to its deposits in a facility-based assessment area, calculated as a Bank Volume Metric, and compare the Bank Volume Metric to a Market Volume Metric, which measures the lending of all banks in the facility-based assessment area relative to their deposits. The bank will meet the Retail Lending Volume Threshold in that facility-based assessment area if the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark.

Final § ____.22(c)(2) and (c)(3)(ii) provide that, for a bank that meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area, or that has an acceptable basis for not meeting or surpassing the threshold—as provided in final § ____.22(c)(3)(i) and discussed further below— the agencies will develop a Retail Lending Test recommended conclusion for the facility-based assessment area, which could range from ''Outstanding'' to ''Substantial Noncompliance.''[829]

Additionally, final § ____.22(c)(3)(iii)(A) provides that large banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold will be limited to receiving a ''Needs to Improve'' or ''Substantial Noncompliance'' Retail Lending Test conclusion in a facility-based assessment area, determined based upon: the large bank's retail lending volume and the extent by which it did not meet the threshold; the distribution analysis in final § ____.22(d) and (f); the performance context factors in final § ____.21(d); and consideration of the

[828] *See* final § ____.22(c) and final appendix A, section I; *see also supra* note 145.

[829] *See* final § ____.22(d) and (f) and the accompanying section-by-section analyses.

additional factors in final § ____.22(g).[830]

Final § ____.22(c)(3)(iii)(B) provides that for intermediate banks, and small banks that opt to be evaluated under the Retail Lending Test, which lack an acceptable basis for not meeting the Retail Lending Volume Threshold, the agencies will consider a bank's performance under the lending distribution analysis in final § ____.22(d) and (f) before assigning a Retail Lending Test recommended conclusion—which could range from ''Outstanding'' to ''Substantial Noncompliance.'' The agencies will also consider a bank's retail lending volume and the extent by which it did not meet the threshold, along with performance context factors and the additional factors, before assigning a Retail Lending Test conclusion.

Overall Retail Lending Volume Screen Approach

The Agencies' Proposal

In proposed § ____.22(c), the agencies provided for a retail lending volume screen that would measure 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 banks.[831] The agencies indicated that the screen would serve 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. They also indicated that a bank would fail 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.

Comments Received

The agencies received many comments on the proposed ''retail lending volume screen'' from a variety of stakeholders.

Many commenters that addressed the proposed retail lending volume screen supported its inclusion in the proposed Retail Lending Test, with a number of these commenters recommending a more stringent Retail Lending Volume Threshold than proposed by the agencies, as discussed below. Many of these commenters asserted that a retail lending volume screen would help to reduce perceived ratings inflation in CRA evaluations.

However, many other commenters that addressed the proposed retail lending volume screen opposed it or raised concerns about the screen, with some suggesting modifications to the proposed screen and its incorporation into the CRA framework. For example, some commenters expressed concerns that the proposed retail lending volume screen would not account for all bank business strategies and that certain types of banks could have difficulty passing the screen. Points made by these commenters included, for example, that: a bank that operates without branches could have trouble meeting the screen in the facility-based assessment area delineated around its home office; the screen would disadvantage depository CDFIs that maintain branches in economically distressed areas where there is less demand for large loans; the screen would penalize and disadvantage banks with business models that do not focus on retail lending; and (banks that specialize in consumer lending might fail the screen because they did not engage in sufficient home mortgage lending, small business lending, and small farm lending.

A commenter suggested that the agencies apply a materiality standard such that the retail lending volume screen would not apply if a bank did not have a sufficient volume of both retail lending and deposits in a facility-based assessment area. Another commenter suggested that banks should be exempt from the retail lending volume screen if they demonstrate that their business structure is incompatible with originating a meaningful number of loans as a percentage of their deposits in facility-based assessment areas.

Various commenters expressed concerns that applying the retail lending volume screen might discourage banks from maintaining branches with low deposits even though those branches provide services to low-deposit customers. Commenters suggested that this could discourage banks from maintaining facilities in rural markets or markets that are incidental to the banks' business strategies or lead to consolidation or branch closures among banks, including depository CDFIs, serving rural or underserved areas. Concerns were also raised that the retail lending volume screen represented a pass/fail approach that would lead to banks prioritizing retail lending dollar volume at the expense of developing innovative products and services responsive to unbanked or underbanked consumers and microbusinesses.

A few commenters raised concerns that some lenders in certain markets could face challenges in meeting the threshold due to local lending conditions. For example, a commenter stated that in some rural and economically challenged assessment areas, loan demand is low, which could cause a bank to fail the proposed retail lending screen even if the bank is committed to providing a range of banking services to these communities. A commenter indicated that the screen would not account for a variety of scenarios that are common in suburban, exurban, and urban areas where large banks have high concentrations of deposits.

Some commenters also raised legal arguments with respect to the retail lending volume screen. A commenter suggested that the retail lending volume screen exceeds the agencies' statutory authority because it is not explicitly authorized by the CRA statute. Other commenters stated that the retail lending volume screen would conflict with congressional intent because section 109 of the Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 (section 109) instructs the agencies to use a loan-to-deposit ratio to determine whether a bank engaged in interstate branching meets the credit needs of the communities it serves.[832] In addition, a commenter suggested that if the retail lending volume screen prompts banks to close any branches to avoid adverse consequences under the Retail Lending Test the outcome would be contrary to the statutory purposes of the CRA.

Final Rule

As noted above, final § ____.22(c) and section I of final appendix A adopt the proposed Retail Lending Volume Screen, with certain clarifying, technical, and substantive edits described in more detail below. Based on the agencies' consideration of the comments and further analysis and deliberation, the agencies continue to believe that the Retail Lending Volume Screen is an appropriate baseline measure of the amount of a bank's retail lending relative to its presence and lending capacity in a facility-based assessment area, as indicated by the volume of deposits received from the

[830] For detailed information about the referenced final rule provisions, see the section-by-section analyses of final §§ ____.21(d) and ____.22(d), (f), and (g).

[831] *See* proposed § ____.22(c).

[832] *See* Public Law 103–328, sec. 109, 12 U.S.C. 1835a, as amended (section 109), implemented by subpart E to 12 CFR part 25 (OCC), 12 CFR 208.7 (Board), and 12 CFR part 369 (FDIC). Section 109(c)(1) specifies a threshold of ''half the average of total loans in the host State relative to total deposits from the host State.''

area surrounding the bank's deposit-taking facilities. The agencies also believe that a holistic evaluation of whether a bank is meeting the credit needs of its facility-based assessment areas necessarily includes consideration of not only a bank's loan distribution, but also the bank's lending volume relative to its presence and capacity.

The final rule reflects the agencies' view that the Retail Lending Volume Screen and the distribution metrics are both important to ensuring a complete and accurate evaluation of whether a bank has met the credit needs of its community. Specifically, the agencies generally do not believe that a bank with lending levels well below its community presence and capacity is meeting the credit needs of its entire community, regardless of the bank's distribution of loans to low- and moderate-income borrowers and low- and moderate-income census tracts. In this regard, the agencies considered that removing the screen from the Retail Lending Test approach for evaluating facility-based assessment areas would mean that a bank could achieve ''Outstanding'' performance by making only a very small number of loans relative to the bank's capacity, if a high percentage of those loans are to designated borrowers (*i.e.,* low-income borrowers, moderate-income borrowers, businesses with gross annual revenues of $250,000 or less, businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million, farms with gross annual revenues of $250,000 or less, or farms with gross annual revenues of more than $250,000 but less than or equal to $1 million) and designated census tracts (*i.e.,* low-income census tracts or moderate-income census tracts).

The Retail Lending Volume Screen is based on standardized metrics and will apply across banks evaluated in facility-based assessment areas under the Retail Lending Test, to ensure clarity, consistency, and transparency in this important volume-based assessment of a bank's retail lending. The agencies considered that the final rule approach builds upon the current evaluation approach, under which the agencies consider a bank's volume of retail lending in an assessment area without quantitative benchmarks or thresholds indicating what level of lending is adequate.

The agencies considered comments that it could be challenging for a bank to meet the Retail Lending Volume Threshold in markets with low levels of retail lending demand. However, the agencies determined that the final rule approach accounts for this concern both through the Market Volume Benchmark and the acceptable basis factors for not meeting the threshold, finalized in final § ____.22(c)(3)(i) and discussed in more detail further below. Specifically, the Market Volume Benchmark is based on retail loans and deposits from all banks with a branch in a geographic area, which will reflect the level of credit demand in that area. In addition, the acceptable basis factors include performance context information that could explain a bank's low level of lending in an area, such as the bank's business strategy and any other circumstances unique to a facility-based assessment area. These factors are designed to help address scenarios raised by commenters such as that of an internet bank not meeting the Retail Lending Volume Threshold in a headquarters facility-based assessment area and of a CDFI bank serving an area with lower loan demand.

The agencies understand that banks operate in variable conditions, and that they have different characteristics, business strategies, and customer bases. For this reason, the Retail Lending Volume Screen—both as proposed and as finalized—does not operate on a ''pass/fail'' basis. Rather, the Retail Lending Volume Screen is one aspect of the agencies' evaluation of a bank's retail lending performance; it functions as a key piece of the framework under which the agencies determine the appropriate approach for evaluating the retail lending performance of a particular bank in its facility-based assessment areas. For example, for a bank with a Bank Volume Metric above the Retail Lending Volume Threshold in a facility-based assessment area, the agencies believe it is appropriate to determine a recommended conclusion based on a distribution analysis of the bank's retail lending. In contrast, for a bank with a Bank Volume Metric below the Retail Lending Volume Threshold in a facility-based assessment area, the agencies believe it is important to first assess whether the bank had an acceptable basis for exhibiting a very low level of retail lending prior to applying the distribution analysis. The acceptable basis factors will address a variety of circumstances that could limit a bank's ability to lend in a facility-based assessment area. Accordingly, the agencies have not included any references in final § ____.22(c) to a bank ''failing'' to meet the Retail Lending Volume Threshold, as the agencies acknowledge that a bank may have a relatively low Bank Volume Metric due to the bank's business model or other acceptable basis factors that are not indicative of ''failing'' performance.

The agencies also considered, but are not adopting, a commenter suggestion to apply a materiality standard such that the Retail Lending Volume Screen would not apply if a bank did not have a sufficient volume of both retail lending and deposits in a facility-based assessment area. The agencies determined that it is beneficial to have consistent standards that apply to all facility-based assessment areas such that, for each bank evaluated in its facility-based assessment areas under the Retail Lending Test, a volume-based assessment of a bank's lending is a component of evaluating whether a bank is meeting the retail lending needs of these communities. In addition, the agencies believe that applying a materiality standard could result in less robust evaluation standards in smaller markets, rural areas, and low-income areas where banks may tend to conduct less lending and source lower volumes of deposits.

The agencies also considered, but are not adopting, a commenter suggestion that banks should be exempt from the Retail Lending Volume Screen if they demonstrate that their business structure is incompatible with originating a meaningful number of loans as a percentage of their deposits in facility-based assessment areas. Based on further consideration of this suggestion, the agencies determined that the variety of bank business strategies and structures presents significant challenges to establishing an appropriate exemption. Thus, the agencies believe that it is preferable to apply the Retail Lending Volume Screen and, if warranted, determine whether a bank has an acceptable basis for not meeting the Retail Lending Volume Threshold. As discussed elsewhere in this section-by-section analysis, the acceptable basis factors in final § ____.22(c)(3)(i) include consideration of a bank's business strategy and other aspects of the performance context of the area.

The agencies have also carefully reviewed and considered comments presenting legal considerations. The CRA statute's grant of rulemaking authority to the agencies empowers them to carry out the purpose of the statute.[833] As discussed in section I of

[833] *See* 12 U.S.C. 2905. *See also* 12 U.S.C. 2901(b) (''It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.'').

this **SUPPLEMENTARY INFORMATION**, in enacting the CRA, Congress was focused on the relationship between a bank's deposit-taking activity in an area and its lending activity, and on ensuring that banks meet not only the deposit needs but also the credit needs of their communities.[834] Thus, the agencies view consideration of a bank's loan-to-deposit ratios as within the appropriate purview of the agencies' approach to CRA examinations. The agencies also note that this reflects a longstanding position of the agencies; for example, since 1995, the agencies have used loan-to-deposit ratios as a criterion to evaluate small bank performance.[835] Further, based on supervisory experience, the agencies believe that the loan-to-deposit ratios of other banks in a facility-based assessment area are informative of credit needs in a community, and thus a useful point of comparison as part of a larger framework for determining whether a bank is meeting the credit needs of its community.

Regarding commenters' mention of provisions of section 109, the agencies have considered the distinct policy objectives, calculation methodologies, and applications of section 109 and of the CRA, and do not believe that section 109 precludes the agencies from implementing the Retail Lending Volume Screen in the final rule. First, section 109 was enacted 17 years after the CRA statute, but did not change or displace the agencies' CRA rulemaking authority. Second, although the section 109 loan-to-deposit ratios used by the agencies may have some conceptual similarities with the Retail Lending Volume Screen, their distinct policy objectives, calculation methodologies, and applications require separate metrics to achieve their respective purposes, as discussed in more detail further below. Congress enacted section 109 to ensure that a bank's interstate branches would not take deposits from a host state (or other host jurisdiction) without the bank reasonably helping to meet the credit needs of that host state. The application of section 109 requirements involves a loan-to-deposit ratio test that measures the lending and deposit activities of a bank's interstate branches and then compares the bank's statewide loan-to-deposit ratio with the relevant host state's loan-to-deposit ratio, which is based on host state banks' lending and deposits volumes.[836] If the bank's statewide loan-to-deposit ratio is at least one-half of the relevant host state loan-to-deposit ratio, the bank passes the section 109 evaluation and no further review is required.[837] If the bank fails the loan-to-deposit ratio test (or the loan-to-deposit ratio cannot be calculated because data are not sufficient or are not reasonably available), the agencies will determine whether the bank is reasonably helping to meet the credit needs of the communities served by the bank in the host state—this step requires examiners to review the activities of the bank, such as its performance under the CRA.[838] The Retail Lending Volume Screen is therefore a complement to, and not a substitute for, the section 109 evaluation of whether a bank with interstate branches impermissibly uses those branches to primarily engage in deposit production rather than serving the credits needs of its communities. Accordingly, the agencies do not believe that the Retail Lending Volume Screen intrudes on or otherwise conflicts with prior congressional decisions on interstate banking prescribed in statute.

The agencies have also considered commenter sentiment that the Retail Lending Volume Screen is onerous and would therefore result in banks closing branches in markets where their Bank Volume Metric may not meet the Retail Lending Volume Threshold. However, in considering these comments and additional agency analysis, the agencies believe that the Retail Lending Volume Screen is appropriately calibrated and that the Retail Lending Volume Threshold is generally attainable. In reaching this determination, the agencies considered a number of factors. First, the agencies considered that the current evaluation framework includes assessing a bank's volume of retail lending, and for small banks includes a loan-to-deposit ratio. The agencies believe that the Retail Lending Volume Screen is therefore grounded in the current approach and will not introduce significant new burden or complexity for banks. Second, the agencies considered that based on estimates using available data from 2018–2020, and as discussed more fully below, the Bank Volume Metric exceeds the Retail Lending Volume Threshold in approximately 96 percent of banks' facility-based assessment areas. The agencies also considered that this analysis was applied to years when the screen was not in effect. In future years when the screen is in effect, banks will have access to information such as recent estimates of relevant metrics and benchmarks in different geographic areas, which could be used to help monitor performance. Third, the agencies considered that the acceptable basis factors in final § ____.22(c)(3)(i) cover circumstances in which a bank's Bank Volume Metric does not meet the Retail Lending Volume Threshold due to performance context factors or other legitimate business reasons, such as a bank's business model. Taking into account these considerations, the agencies anticipate that the screen will appropriately evaluate whether a bank has conducted retail lending that is commensurate with peer lending in facility-based assessment areas, and is not unduly complex or burdensome.

Specific components of the Retail Lending Volume Screen are discussed below in the section-by-section analysis of final § ____.22(c)(1). The section-by-section analyses of final § ____.22(c)(2) and (3) address the ways in which a bank's performance on the Retail Lending Volume Screen informs the blend of quantitative and qualitative factors considered by the agencies in determining a bank's Retail Lending Test conclusion in a facility-based assessment area.

Section ____.22(c)(1) Retail Lending Volume Threshold

Consistent with the proposal, final § ____.22(c)(1) and section I of final appendix A provide that, for a bank evaluated under to the Retail Lending Test, the Retail Lending Volume Screen will compare its Bank Volume Metric against a Market Volume Benchmark in a facility-based assessment area. The bank will meet or surpass the Retail Lending Volume Threshold in that facility-based assessment area with a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark. The Bank Volume Metric, the Market Volume Benchmark, and the 30 percent threshold are discussed in turn below.

Bank Volume Metric

The Agencies' Proposal

To provide a consistent measure of how much of a bank's local capacity has been oriented toward retail lending, the agencies proposed that the retail lending volume screen would consist, in part, of a ''bank volume metric.'' [839] The

[834] *See* 12 U.S.C. 2901(a). *See also* 123 Cong. Rec. 17630 (1977) (statement of Sen. Proxmire) (discussing enactment of the CRA as a response to banks taking their deposits from a community without reinvesting them in that community).

[835] *See* current 12 CFR ____.26(b)(1).

[836] *See* 12 CFR 25.63 (OCC), 208.7(c) (Board), and 369.3 (FDIC).

[837] *Id.*

[838] *See* 12 CFR 25.64 (OCC), 208.7(d) (Board), and 369.4 (FDIC).

[839] *See* proposed § ____.22(c)(3) and proposed appendix A, section I.

proposed bank volume metric would be calculated as a ratio comparing bank lending against bank deposits. The numerator would have included the annual average of the year-end dollar amount of a bank's originated and purchased automobile loans, closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans in a facility-based assessment area.[840]

The denominator would include the annual average amount of the bank's deposits in that facility-based assessment area over the evaluation period, if the bank collected and maintained this data.[841] Specifically, the agencies proposed that 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, intermediate banks, and small banks that opted to be evaluated under to the Retail Lending Test.[842] For any bank evaluated under to the Retail Lending Test that did not collect and maintain deposits data, the agencies proposed to use the deposits assigned to the banks' branches in each assessment area as reported in the FDIC's Summary of Deposits data to calculate the local deposit base, in the denominator.[843] The agencies requested feedback on using alternative sets of deposits data than proposed, based on bank asset size, to construct the bank volume metric.

Comments Received

Numerator. Some commenters offered suggestions and requested clarification regarding the numerator of the proposed bank volume metric. A commenter indicated that the numerator should include personal loans, credit card loans, and other non-automobile consumer loans, while another commenter similarly expressed the view that the bank volume metric numerator should include personal loans, because some small business owners, particularly self-employed individuals, often use personal loans for commercial purposes.

Another commenter indicated that the agencies needed to clarify whether loan renewals would be considered in the bank volume metric numerator, asserting that the exclusion of loan renewals could adversely affect banks' performance under the Retail Lending Test (as well as under the Community Development Financing Test). Other commenters asserted that the proposal was unclear as to whether loans originated and sold before year-end would be included in the numerator, with a commenter specifically emphasizing a lack of clarity in the proposed numerator's description (''the annual average of the year-end total dollar amount of the bank's originated and purchased . . . loans'').

A commenter expressed concern that banks whose core retail lending businesses are excluded from the numerator of the bank volume metric may not meet the Retail Lending Volume Threshold as proposed.[844] Another commenter asserted that calculating the bank volume metric using dollar amounts would negatively affect small business lending, which the commenter stated represents only a small portion of overall retail lending, on a dollar amount basis, for some banks.

Denominator. Regarding the denominator for the proposed bank volume metric, a few commenters indicated that a bank's deposit base was not an appropriate measure of a bank's capacity and obligation to conduct retail lending.[845]

Some other commenters supported requiring large banks of all sizes to collect and maintain deposits data, including for calculating the bank volume metric, with one commenter expressly supporting this requirement for intermediate banks as well. Another commenter asserted that applying the deposits data collection and reporting requirements to all large banks would improve the accuracy of the bank volume metric because, as proposed, the metric mixed bank-collected data with the FDIC's Summary of Deposits data that is less accurate in capturing depositor location.

A commenter expressed concern that the proposal to give large banks with assets of $10 billion or less the option of separately collecting and maintaining deposits data would result in banks in predominantly rural communities feeling compelled to collect and maintain deposits data despite relatively limited resources. This commenter believed that collecting and maintaining deposits data might represent the only way that these banks might be able to pass the retail lending volume screen, as otherwise they might be adversely impacted by their relatively low retail lending volume when compared to their deposit volume in a facility-based assessment area based on the FDIC's Summary of Deposits data.

Some commenters suggested alternative ways to compute bank deposits (for large banks reporting deposits, as opposed to banks for which the FDIC's Summary of Deposits data would be used). A number of these commenters argued for removing corporate deposits from the bank volume metric based on their view that including corporate deposits could unfavorably skew a bank's performance on the retail lending volume screen, making it more difficult for a bank to pass the screen in the corresponding facility-based assessment area. These commenters pointed to various reasons to exclude corporate deposits, including that they can be large and fluctuate unpredictably and are typically centralized in a single branch location, as well as that commercial lending to larger entities would not be included in the numerator. Other commenters also suggested that including corporate deposits could lead to additional CRA hot spots in, or banks otherwise diverting lending to, urban areas at the expense of rural and suburban areas, because banks would endeavor to increase retail lending in these urban areas (where they have more deposits) to avoid failing the screen.

Some commenters made similar arguments for excluding government deposits from the proposed bank volume metric denominator. A commenter recommended that the agencies include bank deposits from domestic limited liability companies and trusts in a bank's bank volume metrics, noting that these are domestic deposits in substance and thus appropriately considered as part of a CRA metrics framework. A commenter noted that health savings account deposits that lack depositor location should be excluded from the bank volume metric and other relevant metrics.

Final Rule

Final § ____.22(c)(1) and paragraph I.a of final appendix A adopt the proposal to employ a Bank Volume Metric as the measure of how much of a bank's local capacity has been oriented toward retail lending. In light of comments received

[840] *See* proposed appendix A, section I.

[841] *See id.*

[842] *See* proposed § ____.42(a)(7) and (b)(5); *see also* proposed § ____.12 (defining ''small bank,'' ''intermediate bank,'' and ''large bank''). For further discussion of the final rule on deposits and deposits data collection, maintenance, and reporting, see the section-by-section analyses of final §§ ____.12 (''deposits'' and ''deposit location'') and ____.42(a)(7) (deposits data collection and maintenance) and (b)(3) (deposits data reporting).

[843] *See* proposed appendix A, section I.

[844] As discussed in the section-by-section analysis of final § ____.22(d), the agencies proposed to consider home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans under the proposed Retail Lending Test.

[845] *See* the section-by-section analyses of final §§ ____.12 (''deposits'') and ____.42(a)(7) and (b)(3), for an overview of deposits considerations in general and deposits data collection, maintenance, and reporting considerations in particular.

and based on further deliberations, the agencies are making substantive, technical, conforming, and clarifying edits in the final rule to increase clarity and consistency when calculating the Bank Volume Metric.

Numerator. As provided in paragraph I.a.1 of final appendix A, the numerator of the Bank Volume Metric will be the sum of the annual dollar volume of a bank's originations and purchases of all volume metric loans for the facility-based assessment area over the years in the evaluation period. The bank's annual dollar volume of volume metric loans is the total dollar volume of all home mortgage loans, multifamily loans, small business loans, small farm loans,[846] and automobile loans (for banks for which automobile lending is a product line) originated or purchased by the bank in the facility-based assessment area in that year. The agencies are finalizing a calculation based on the sum of the annual dollar volume of lending over the years in the evaluation period, rather than an annual average of the year-end dollar total amount as proposed, to reduce complexity in the calculation of the Bank Volume Metric by reducing the number of steps required without affecting the result of the calculations. The use of the term volume metric loans is intended to increase clarity.

The numerator of the Bank Volume Metric is based on the dollar volume of a bank's lending instead of the number of loans (as is the numerator of the Market Volume Benchmark). The agencies understand commenter concerns about the potential for a bank that makes a high volume of small-dollar loans and few or no larger dollar loans to have a relatively low Bank Volume Metric. For this reason, as discussed in further detail below, the agencies selected a Retail Lending Volume Threshold level that is significantly below the Market Volume Benchmark (specifically, 30 percent of the Market Volume Benchmark). In addition, the agencies note that the acceptable basis factors would include consideration of a bank's business model, such as a bank's specialization in small-dollar lending. In light of these considerations, the agencies believe that lending volume metrics comparing both loans and deposits in terms of dollars is an effective and appropriate measure of how fully a bank has utilized its lending capacity, and is also consistent with the CRA's emphasis on banks reinvesting their deposits back into their communities.

With respect to commenter sentiment indicating that the proposal was unclear as to whether loans originated and sold before year-end would be included in the numerator, the agencies are clarifying that the dollar volume of a bank's originations and purchases of all volume metric loans for the facility-based assessment area in any year of the evaluation period may be included in the Bank Volume Metric, even those loans that are subsequently sold. The agencies believe that this approach will appropriately give positive consideration to loan originations made through a variety of bank business models, including banks that sell originated loans on the secondary market to increase liquidity, which can increase a bank's capacity to lend and further meet the credit needs of the community.

Once the agencies have transitioned to using section 1071 data, as discussed in the section-by-section analyses of final §§ ____.12 and ____.51, the numerator will include purchased small business loans and small farm loans only at the bank's option (because section 1071 data does not include loan purchases). Specifically, a bank may opt to have the agencies include in its Bank Volume Metric numerator purchases of loans that meet the definition of a ''covered credit transaction'' under the CFPB Section 1071 Final Rule. The agencies believe that the inclusion of purchased small business loans and small farm loans reflects the different ways in which banks may meet the credit needs of communities. Once the agencies transition to using section 1071 data, the agencies have determined that the inclusion of these loan purchases should be optional to reduce data collection and maintenance requirements.

The agencies are also clarifying that, consistent with the treatment of reportable business loans pursuant to the CFPB Section 1071 Final Rule, once that data is used by the agencies, small business loan renewals and small farm loan renewals will be counted in the Bank Volume Metric only if the renewal increases the credit amount or credit line amount.[847] Generally, home mortgage loan renewals are not reportable pursuant to HMDA;[848] consistent with this standard, the agencies will not include home mortgage loan renewals in the Bank Volume Metric.

In the final rule, automobile loans are included in the bank's annual dollar amount of volume metric loans only if automobile loans are a product line for the bank (*i.e.,* if the bank is a majority automobile lender or opts to have its automobile loans evaluated). For those banks that collect and maintain automobile lending data pursuant to final § ____.42(a)(2), the numerator will include the annual dollar amount of the bank's originated and purchased automobile loans. The agencies determined that automobile loans should only be included in a bank's Bank Volume Metric for banks that have their automobile lending evaluated as a product line, in order to ensure a comprehensive evaluation. As a result, a bank that has automobile lending considered as part of the Bank Volume Metric would also have its automobile lending evaluated under the distribution analysis pursuant to final § ____.22(e) and (f) if its automobile lending is a major product line in one or more facility-based assessment areas or its outside retail lending area. The agencies determined that an alternative approach of considering automobile loans as part of the Bank Volume Metric for a bank that does not have automobile lending as a product line would result in a less comprehensive evaluation because the bank would receive favorable consideration for these loans in the Bank Volume Metric without any evaluation of the distribution of those loans to low- and moderate-income borrowers or in low- and moderate-income census tracts.

As in the proposal, the numerator of the Bank Volume Metric does not include non-automobile consumer loans. This decision reflects the lack of non-automobile consumer lending data and is also intended to align the Bank Volume Metric's numerator with the final rule's treatment of non-automobile consumer loans—namely, that they will not be evaluated as a product line under the Retail Lending Test, but will be considered pursuant to the Retail Services and Products Test. This aspect of the final rule is discussed in more detail in the section-by-section analyses of final §§ ____.22(d) and ____.23. To the extent that commenters expressed concerns that not including non-automobile consumer lending in the

[846] The transition amendments included in this final rule will, once effective, amend the definitions of ''small business'' and ''small farm'' to instead cross-reference to the definition of ''small business'' in the CFPB Section 1071 Final Rule. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB Section 1071 Final Rule definition of ''small business.'' This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB Section 1071 Final Rule. The agencies will provide the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[847] *See* 12 CFR 1002.103(a)(1).

[848] *See* 12 CFR 1003.2 and supplement I to part 1003, comment 2(o)–2.

numerator of the Bank Volume Metric would disadvantage banks, the agencies note that they will apply the acceptable basis factors in final § ____.22(c)(3)(i), as discussed below, as part of the operation of the Retail Lending Volume Screen for banks that do not meet the Retail Lending Volume Threshold. Specifically, pursuant to final § ____.22(c)(3)(i)(A), the agencies will take into account a bank's dollar volume of non-automobile consumer loans.

Denominator. The agencies are also making substantive, technical, and clarifying edits in the final rule regarding calculating the denominator of the Bank Volume Metric. As provided in paragraph I.a.2 of final appendix A, the denominator of the Bank Volume Metric will be the sum of a bank's annual dollar volume of deposits from that facility-based assessment area over the years in the evaluation period. The agencies are making revisions that clarify that a bank's annual dollar volume of deposits is: for a bank that reports deposits data pursuant to final § ____.42(b)(3), the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area in that year; and, for all other banks, the total of deposits assigned to branches reported by the bank in the FDIC's Summary of Deposits data in counties in the facility-based assessment area in that year. The agencies are finalizing a calculation based on the sum of the annual dollar volume of deposits over the years in the evaluation period, rather than an annual average as proposed, to reduce complexity in the calculation of the Bank Volume Metric by reducing the number of steps required without affecting the result of the calculations.

Pursuant to final § ____.42(a)(7) and (b)(3), collecting, maintaining, and reporting deposits data will be required for large banks with assets greater than $10 billion. Deposits data collection and maintenance will be optional for large banks with assets less than or equal to $10 billion, intermediate banks, and small banks that opt into the Retail Lending Test. Should a bank with assets less than or equal to $10 billion elect to collect and maintain deposits data pursuant to final § ____.42(a)(7), the bank will be required to report deposits data pursuant to final § ____.42(b)(3). The agencies have considered comments recommending that they modify their proposal to require large banks with assets greater than $10 billion to collect, maintain, and report deposits data and to allow large banks with assets less than or equal to $10 billion the option to collect and maintain this data. The agencies are finalizing this element of the Retail Lending Volume Screen as proposed, to appropriately balance the trade-off between maximizing the accuracy of the screen and corresponding data burden.

Deposits data that are collected and reported pursuant to final § ____.42(b)(3) will facilitate metrics that accurately reflect a bank's deposits inside and outside of its facility-based 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, a bank with assets less than or equal to $10 billion that sources deposits from outside of its facility-based assessment areas that elects to collect, maintain, and report deposits data could meaningfully increase its Bank Volume Metric in a facility-based assessment area by decreasing the dollar amount of deposits included in the denominator of the 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 facility-based assessment area would then be included in the denominator of the metric.

Regarding comments that requiring all intermediate banks, and large banks with assets less than or equal to $10 billion, to report deposits data would improve the accuracy and consistency of the Bank Volume Metric, to balance data collection burden the agencies decline to require these banks to all collect, maintain, and report deposits data. The agencies again note, however, that if a large bank with assets less than or equal to $10 billion, intermediate bank, or small bank that opts into the Retail Lending Test wishes to use more specific deposits data in the Retail Lending Test, then the bank must collect, maintain, and report this data.

With respect to comments recommending using the FDIC's Summary of Deposits data across all large banks to inform the Bank Volume Metric, the agencies decline to adopt this approach. The agencies considered that although this alternative approach would reduce data burden, the FDIC's Summary of Deposits data alone would be less accurate in capturing the location of depositors than the final rule's combination of bank-collected deposits and the FDIC's Summary of Deposits data. As discussed below, using the FDIC's Summary of Deposits data for all large banks would also result in the inclusion of 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 in deposit calculations for these banks. The combination of these two factors, in conjunction with the fact that large banks with assets greater than $10 billion hold over 80 percent of all deposits,[849] would have a disruptive impact on the functioning of the Retail Lending Volume Screen, both with regard to their own metrics and the impact of their deposits on construction of Market Volume Benchmarks.

The agencies have considered comments recommending that, when possible, government and foreign deposits should be excluded from the Bank Volume Metric. The agencies note that the definition of ''deposits'' in proposed § ____.12 specifically excluded: 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. Accordingly, under the proposal, the denominator of the bank volume metric did not include government or foreign deposits for banks with assets of greater than $10 billion. As described further in the section-by-section analysis of final § ____.12, the final rule's definition of ''deposits'' continues to exclude these types of deposits. However, the agencies are not excluding government and foreign deposits from the Bank Volume Metric for banks that do not collect and report deposits data (*i.e.,* banks that use deposits reported under the FDIC's Summary of Deposits data). This is because these government and foreign deposits are included in the FDIC's Summary of Deposits data at the aggregate (institution) level, without any information regarding how government and foreign deposits are distributed across a bank's individual branches or across the counties where these branches are located. This information about how these deposits are distributed would be necessary to accurately remove the deposits from the facility-based assessment areas for which Bank Volume Metrics are calculated. The agencies note that any bank that takes the position that it might be materially disadvantaged by the inclusion of these government and foreign deposits may choose to collect and report the more

[849] *See* FDIC, ''Summary of Deposits'' (June 2020), *https://www7.fdic.gov/sod/sodMarketBank.asp?barItem=2*.

limited set of deposits data for use in the Retail Lending Volume Screen and elsewhere in the CRA regulations.

The agencies are not excluding corporate deposits, health savings account deposits, and trust deposits from the Bank Volume Metric. The agencies find that in cases where large corporate or health savings account deposits or government or foreign deposits unfavorably skew a bank's performance on the Retail Lending Volume Screen, examiners could consider this factor as an acceptable basis pursuant to final § ____.22(c)(3)(i)(E) and (F) for a bank not meeting the Retail Lending Volume Threshold in a facility-based assessment area.

Market Volume Benchmark

The Agencies' Proposal

To assess the level of a bank's retail lending volume relative to local opportunities in a facility-based assessment area, the agencies proposed to compare the bank volume metric to a ''market volume benchmark.'' [850] As provided in paragraph I.2 of proposed appendix A, the market volume benchmark would have been comprised of the annual average of the year-end total dollar amount of automobile loan, closed-end home mortgage loan, open-end home mortgage loan, multifamily loan, small business loan, and small farm loan originations in the facility-based assessment area by all large banks that operated a branch in counties wholly or partially within the facility-based assessment area, in the numerator, divided by the annual average amount of deposits collected by those same banks from that facility-based assessment area, in the denominator.[851] The dollars of deposits in the denominator would have been based on: the annual average of deposits in counties in the facility-based assessment area reported by all large banks with assets greater than $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 the annual average of deposits assigned to branches in the facility-based assessment area by all large banks with assets less than or equal to $10 billion, according to the FDIC's Summary of Deposits data, over the evaluation period.[852]

The agencies requested feedback on using alternative sets of deposits data than proposed, based on bank asset size, to construct the market volume benchmark.

Comments Received

Some commenters expressed concerns that the market volume benchmark would be based on the lending and deposits of a limited subset of banks—large banks with branches in the relevant facility-based assessment area—rather than the total number of banks active in a facility-based assessment area.[853] In this regard, one commenter asserted that setting the market volume benchmark based on a subset of market participants would make the market volume benchmark susceptible to collusion, and indicated that the agencies would need to guard against such market manipulation.

Other commenters contended that the market volume benchmark, as proposed, would fail to provide banks or other stakeholders with appropriate notice regarding performance expectations. Some of these commenters expressed concerns that banks would not have the ability to adjust performance during an evaluation period, because the benchmark would be unknown until their evaluation periods have ended and their CRA examinations have started.

Commenters also raised concerns that the market volume benchmark would not sufficiently capture unique characteristics of a given market. For example, some commenters asserted that, in areas with one or a few dominant lenders, other lenders would be disadvantaged in meeting the proposed Retail Lending Volume Threshold, while another commenter suggested that the market volume benchmark should account for market loan demand.

Final Rule

In final § ____.22(c)(1) and section I.b of final appendix A, the agencies are making clarifying, technical, and substantive edits to the proposal to use a Market Volume Benchmark, to increase clarity, consistency, and readability.

Numerator. As provided in paragraph I.b.1 of final appendix A, the numerator of the Market Volume Benchmark will be the annual dollar volume of volume benchmark loans originated in the facility-based assessment area and reported by benchmark banks, over the years in the evaluation period.[854] Volume benchmark loans are the total dollar volume of all closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans originated in the facility-based assessment area in that calendar year that are reported loans originated by benchmark banks. A benchmark bank for a particular year is a bank that, in that year, was subject to reporting pursuant to final § ____.42(b)(1), 12 CFR part 1003, or both, and operated a facility included in the FDIC's Summary of Deposits data in the facility-based assessment area. In contrast to the proposed approach, benchmark banks under the final rule will include small banks, intermediate banks, and large banks that report loan data.

The agencies believe that this approach will increase the amount of data included in the Market Volume Benchmark and will result in a more robust and representative benchmark, without any increase in data burden or complexity, since there are no additional data requirements associated with this change. The use of the sum of the dollar volume rather than annual average of the year-end total dollar amount, as provided in the proposal, and the focus on banks that operated a facility included in the FDIC's Summary of Deposits data during a calendar year, rather than banks that operated a branch at year-end of a calendar year, represent changes from the proposal intended to increase clarity and reduce complexity in the calculation of the Market Volume Benchmark. The use of the terms benchmark bank and volume benchmark loans is intended to increase clarity.

The agencies are also specifying that the numerator of the Market Volume Benchmark is comprised of reported loan originations, and not all originations as proposed. The agencies are making this change to ensure the operability of the metrics-based approach, because data on loan originations that are not reported would not be available to include in the calculation of the benchmark. Accordingly, automobile loan originations would not be included. The agencies have determined that this approach appropriately balances the trade-off between, on the one hand, including automobile loans in this benchmark to support a more comprehensive analysis that accounts for different bank business models and

[850] *See* proposed § ____.22(c)(3) and proposed appendix A, paragraphs I.2 and I.3.

[851] *See* proposed appendix A, paragraph I.2.

[852] *See id.*

[853] *See* the section-by-section analyses of §§ ____.12 (''deposits'') and ____.42(a)(7) and (b)(3) for an overview of deposits considerations in general and deposits data collection, maintenance, and reporting considerations in particular.

[854] For a discussion of the exclusion of purchased loans from market benchmarks, see the section-by-section analysis of final § ____.22(e).

strategies and, on the other hand, limiting the data collection, maintenance, and reporting requirements for automobile lending data.

The agencies have determined that including the activity of reporting small banks and intermediate banks, and not just large banks as proposed, in the Market Volume Benchmark numerator will make the Market Volume Benchmark more reflective of the aggregate lending activity of the facility-based assessment area. As noted earlier, this only applies to small banks and intermediate banks that already reported data pursuant to CRA small business loan or small farm loan reporting requirements (or section 1071 data once the transition provisions discussed in the section-by-section analysis of § ____.51 take effect) or HMDA reporting requirements, and as a result this approach does not add any new data reporting requirements to these institutions.

Denominator. As described in paragraph I.b.2 of final appendix A, the denominator of the Market Volume Benchmark will be the sum over the years in the evaluation period of the annual dollar volume of deposits for benchmark banks. The annual dollar volume of deposits for benchmark banks is the sum across benchmark banks of: (1) the total of annual average daily balances of deposits reported by banks that report deposits data pursuant to final § ____.42(b)(3) in counties in the facility-based assessment area in that year; and (2) the total of deposits assigned to branches reported by banks in the FDIC's Summary of Deposits data in counties in the facility-based assessment area in that year for benchmark banks that do not report deposits data pursuant to final § ____.42(b)(3). As above, the agencies are finalizing a calculation based on the sum of the annual dollar volume of deposits over the years in the evaluation period, rather than an annual average as proposed, and with a focus on banks that operated a facility included in the FDIC's Summary of Deposits data during a calendar year, rather than banks that operated a branch at year-end of a calendar year as proposed, to increase clarity and to reduce complexity in the calculation of the Market Volume Benchmark, including because it would be difficult to determine based upon available data whether a branch was in operation at year-end. Furthermore, as noted above, the agencies have considered the comments that the proposed benchmark was limited by only including large bank data and that they should consider the lending and deposits data of a larger universe of banks.

The agencies acknowledge trade-offs in this adopted approach for establishing the denominator of the Market Volume Benchmark using both reported deposits data and the FDIC's Summary of Deposits data instead of requiring deposits data to be reported by all banks. The agencies believe, however, that the approach incorporated in the final rule strikes an appropriate balance between the additional precision provided by deposits data reporting relative to the FDIC's Summary of Deposits data and data reporting burden. The combination of reported deposits data and the FDIC's Summary of Deposits data will provide for the construction of more comprehensive and beneficial aggregate deposits data against which to measure bank performance.

The agencies have also considered comments that the Market Volume Benchmark, as proposed, would not provide banks with adequate notice regarding performance expectations, and that banks would not know the precise Market Volume Benchmark in advance of an evaluation period. The agencies believe that it is important that the Market Volume Benchmark reflect the level of retail credit needs and opportunities in the facility-based assessment area during the bank's evaluation period. Employing benchmarks that reflect the performance context of a facility-based assessment area further decreases the need to rely on examiner discretion to interpret bank retail lending performance. The agencies determined that the final rule approach will therefore result in greater consistency and standardization compared to an alternative approach in which the Market Volume Benchmark is calculated using years of data prior to the bank's evaluation period. Conversely, the agencies considered that under such an alternative, the benchmarks may not reflect the needs and opportunities of the facility-based assessment area and would not align with the years of data used to calculate the bank's Bank Volume Metric. The agencies note that Market Volume Benchmarks for facility-based assessment areas will be published in performance evaluations or through other means, such as data tools, to provide a historical guideline for retail lending activity.

In addition, the agencies note that under the final rule approach, the agencies would not automatically assign a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion for a bank with a Bank Volume Metric below the Retail Lending Volume Threshold; instead, the final rule provides for an evaluation of whether a bank has an acceptable basis for not meeting the threshold. The agencies note that the acceptable basis factors, discussed below, may address certain circumstances that result in relatively sudden changes in the Market Volume Benchmark, which the agencies believe may help to address the advance notice concerns described by commenters. For example, if a large competitor lender enters into, or exits from, a bank's facility-based assessment area, resulting in a significant change in the bank's lending opportunities or in the Market Volume Benchmark, the agencies may consider this circumstance as an acceptable basis for not meeting the Retail Lending Volume Screen pursuant to final § ____.22(c)(3)(i)(C).

Retail Lending Volume Threshold

The Agencies' Proposal

The agencies proposed that banks would meet or surpass the retail lending volume screen in a facility-based assessment area with a bank volume metric of 30 percent or more of the market volume benchmark.[855] The agencies provided that, in the absence of an acceptable basis for failing to meet the Retail Lending Volume Threshold pursuant to proposed § ____.22(c)(2)(iii), banks that do not meet at least 30 percent of the market volume benchmark are substantially underperforming their peers in terms of meeting the credit needs of their communities.[856] The agencies proposed to set the threshold at a level that is well below local averages so that banks with various business strategies could meet the threshold, including banks that generally hold loans on their balance sheet rather than selling loans on the secondary market. This threshold was also informed by agency analysis of historical lending data. The agencies also requested feedback on whether it would be appropriate for banks with retail lending volume performance that falls below a threshold lower than the proposed 30 percent threshold—such as a 15 percent threshold—to receive a Retail Lending Test recommended conclusion of ''Substantial Noncompliance'' in that facility-based assessment area.

Comments Received

Many commenters supported a Retail Lending Volume Threshold of at least 30 percent, with several advocating for

[855] *See* proposed § ____.22(c)(3) and paragraph proposed appendix A, paragraph I.3.

[856] *See* 87 FR 33884, 33935 (June 3, 2022).

certain adjustments. Some recommended that the agencies should adjust the threshold upward from 30 percent for underserved communities identified through statistical or other methods, with several commenters recommending that the proposed 30 percent threshold should be raised to at least 50 percent to more effectively ensure that banks are deploying their deposits. One of these commenters indicated that a threshold of 60 percent or 70 percent would be feasible and would help to prevent deposit harvesting and redlining. A number of commenters jointly stated their view that the 30 percent threshold would be too low based on their comparison of this threshold to the much higher threshold for lending activity provided in section 109, which requires interstate banks to meet certain statewide (or other jurisdiction) loan-to-deposit ratios with respect to their operations outside of their home states. Some commenters stated that if the agencies establish a retail lending volume screen, they should incorporate the section 109 standards into CRA.

Other commenters generally opposed the 30 percent threshold, indicating that it was set too high. A few commenters indicated that a 30 percent threshold was unreasonable, particularly for banks with substantial personal loan originations. Another commenter noted that it would be difficult for banks to meet the 30 percent threshold in facility-based assessment areas with high market penetration and dominant lenders. Relatedly, a commenter recommended that the 30 percent threshold be lowered in rural or economically distressed assessment areas with low loan demand.

Several commenters suggested alternative threshold levels. For example, a commenter suggested that the agencies set two thresholds—30 percent and 15 percent—and provide that no bank that surpassed the 15 percent threshold would receive a ''Substantial Noncompliance'' conclusion, with another commenter suggesting somewhat more stringent corresponding thresholds of 34 percent and 17 percent of the market volume benchmark. Another commenter proposed that the agencies set ranges for performance conclusions—for example, 30 percent would reflect ''Low Satisfactory'' performance and 35 percent would reflect ''Satisfactory'' performance—with examiners having the ability to adjust these results based upon performance context. A commenter also argued for separate Retail Lending Volume Thresholds based on bank size, with different thresholds for large banks with $10 billion or less in assets and large banks with over $10 billion in assets; this commenter indicated that the largest banks could unfavorably impact the results of the retail lending volume screen for other banks in urban areas where they have high concentrations of retail lending. Another commenter expressed the view that a bank that passes the screen in a facility-based assessment area should receive a presumption of at least ''Satisfactory'' Retail Lending Test performance in that assessment area. A commenter indicated that the proposed retail lending volume screen was insufficient because it was based on a bank's loan-to-deposit ratio benchmarked against other banks in the same geographic area. The commenter indicated that, consequently, banks would all pass the screen if they collectively reduced their lending volume. Instead, this commenter indicated, the agencies should base a screen on the ''loan price'' of deposits—for example, that a bank's annual loan origination value in a geography should exceed 10 percent of its annual average deposits.

Other commenters questioned whether the proposed 30 percent threshold was based on quantitative analysis, and expressed concern that neither banks nor other stakeholders currently have access to market volume benchmarks in order to self-assess how they would perform pursuant to the retail lending volume screen.

Final Rule

As provided in final § ____.22(c)(1) and section I.c of final appendix A, the agencies are finalizing their proposal that banks will meet or surpass the Retail Lending Volume Threshold in a facility-based assessment area with a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark. Pursuant to final § ____.22(c)(2), if a bank meets or surpasses the applicable threshold the agencies will develop a Retail Lending Test recommended conclusion pursuant to the distribution analysis in final § ____.22(d) through (f).

The agencies have considered commenter suggestions for both a higher or lower Retail Lending Volume Threshold, as well as alternative approaches for setting a threshold such as basing it on the loan price of deposits, and the reasons offered for these suggestions. On balance, the agencies believe that the final rule's threshold, set at 30 percent of the Market Volume Benchmark, provides a meaningful baseline measure of whether a bank is meeting the credit needs of its community, while necessarily accounting for the wide variety of bank business strategies that exist today and that will evolve in the future. The agencies note that the 30 percent threshold is set well below the Market Volume Benchmark, which is the local marketwide average loan-to-deposit ratio. The agencies determined that by setting a 30 percent threshold rather than a threshold closer to the Market Volume Benchmark, such as 50 percent or 70 percent, banks with various business strategies could reasonably be expected to meet or surpass the threshold.

In further considering an appropriate threshold, the agencies conducted a quantitative analysis of historical lending data on approximately 6,600 intermediate bank and large bank facility-based assessment areas from 2018–2020, summarized in Table 6. The analysis showed that bank performance in 96.4 percent of these facility-based assessment areas would have met or surpassed a 30 percent Retail Lending Volume Threshold during this period. Moreover, the same analysis showed that the share of these banks' facility-based assessment areas that would meet or surpass the threshold declines materially as the threshold is increased from 30 percent. For example, applying a 50 percent threshold to this same data results in 89.2 percent of these banks' facility-based assessment areas meeting or surpassing the threshold, and applying a threshold of 70 percent of the Market Volume Benchmark results in 79.8 percent of these banks' facility-based assessment areas meeting or surpassing the threshold. The agencies intend the Retail Lending Volume Screen to identify only those situations in which banks are far below average in terms of their lending relative to deposits in a facility-based assessment area. The agencies believe that applying a relatively narrow standard for identifying such banks is more consistent with current practice under the lending test, which primarily bases conclusions on the retail lending distribution analysis. As discussed earlier, the agencies believe that the screen helps to supplement the distribution analysis, and should not itself be the primary basis for assigning conclusions for the Retail Lending Test for a substantial segment of banks evaluated under this performance test. Accordingly, the agencies believe that the higher threshold alternatives recommended by some commenters would potentially overemphasize the screen relative to the distribution analysis.

By contrast, based on the same quantitative analysis, the agencies determined that decreasing the Retail Lending Volume Threshold below 30 percent would further increase the numbers of these banks' facility-based assessment areas that meet or surpass the threshold. More specifically regarding comments suggesting that the threshold be set at or near 15 percent (either as a stand-alone threshold or as one threshold of a tiered threshold approach), the agencies found that the rate at which facility-based assessment areas for banks included in the analysis met or surpassed a threshold of least 15 percent was 98.8 percent (versus 96.4 percent for a 30 percent threshold, as noted above).

The agencies' analysis of historical data also suggests that facility-based assessment areas of large banks included in the analysis with assets less than or equal to $10 billion are slightly more likely to fall below the Retail Lending Volume Threshold than those of large banks included in the analysis with assets greater than $10 billion. The same analysis reflected that the facility-based assessment areas of intermediate banks included in the analysis were the least likely to fall below the Retail Lending Volume Threshold. At the final rule threshold of 30 percent, historical data suggests that approximately 2.4 percent of facility-based assessment areas of intermediate banks included in the analysis and 4.2 percent of facility-based assessment areas of large banks included in the analysis with assets less than or equal to $10 billion would not meet or surpass the Retail Lending Volume Threshold. In contrast, approximately 4.1 percent of facility-based assessment areas of large banks included in the analysis with assets of $10 billion to $50 billion and 3.3 percent of facility-based assessment areas of large banks included in the analysis with assets greater than $50 billion would not meet or surpass the Retail Lending Volume Threshold. The agencies therefore believe that the 30 percent threshold is appropriate, and is generally attainable, including for intermediate banks and large banks of all asset sizes.

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Table 6 to § __.22(c)(1):

Share of Banks' Facility-Based Assessment Areas Not Meeting the Retail Lending Volume Threshold Retail Lending Volume Threshold Scenarios

Bank size category	10%	15%	20%	30%	40%	50%	60%	70%
Intermediate	0.7	1	1.4	2.4	3.5	5.5	8.2	11.5
Large: 2B to 10B	1.4	1.9	2.4	4.2	6.6	9.8	11.4	15.6
Large: 10B-50B	0.6	1.4	1.9	4.1	7.2	11.8	16.9	21.2
Large: >=50B	0.4	0.8	1.3	3.3	6.7	12.1	18.2	24.7
All	0.7	1.2	1.7	3.6	6.4	10.8	15.2	20.2

Note: Table 6 shows the percent of bank-facility based assessment areas, by bank asset category, where the Bank Volume Metric was below a range of hypothetical values of the Retail Lending Volume Threshold. This analysis is calculated over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters. Bank asset size was determined using 2019 and 2020 year-end asset data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis uses home mortgage, small business, small farm, and deposits data from the CRA Analytics Data Tables.

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In considering commenter feedback, the agencies have also reevaluated whether a 30 percent Retail Lending Volume Threshold accomplishes the policy objective of identifying banks for which retail lending is extraordinarily low, such that additional qualitative analysis of these banks' loans is warranted. In this regard, the agencies' quantitative analysis supports a conclusion that the 30 percent threshold establishes a material distinction between banks that meet or surpass this threshold and banks that do not. Specifically, the agencies' analysis showed that the median Bank Volume Metric of 15 percent for facility-based assessment areas of banks included in the analysis meeting or surpassing a 30 percent threshold was more than seven times greater than the median Bank Volume Metric of 2 percent for facility-based assessment areas of banks included in the analysis that would not have met the threshold, as a result indicating that banks that do not meet the threshold generally exhibit very low levels of retail lending relative to deposits. Barring information considered pursuant to the final rule in determining whether the bank has an acceptable basis in not meeting the threshold, banks that do not meet a Retail Lending Volume Threshold set at 30 percent or greater of the Market Volume Benchmark are substantially underperforming their peers in terms of meeting the credit needs of their communities.

The agencies have also reevaluated the analysis included in the proposal that used historical data to compare the actual assessment area conclusions received by banks on the current lending test with how those banks would have performed if they were evaluated under the Retail Lending Volume Screen at different threshold levels, including the proposed level of 30 percent of the Market Volume Benchmark. This updated analysis includes additional historical performance evaluation data compiled by the agencies. The agencies' updated analysis found that a 30 percent threshold is associated with a significant distinction between bank assessment areas that received ''Satisfactory'' conclusions and bank assessment areas that received ''Needs to Improve'' conclusions on prior evaluations under the current lending test.[857] Some threshold levels greater than 30 percent were associated with an even greater distinction between bank conclusion categories on past examinations under the current Lending Test. However, for the reasons described above, the agencies have concluded that it is appropriate to retain the proposed level of 30 percent, rather than increase the threshold level. Additionally, the agencies believe that retaining the proposed level of 30 percent will account for banks that are adequately meeting the credit needs of their communities but that have a business model or strategy that results in a lower-than-average loan-to-deposit ratio. The agencies continue to believe that setting the Retail Lending Volume Threshold at 30 percent is both appropriate and provides a meaningful baseline measure for identifying banks whose retail lending volume in a facility-based assessment area is extraordinarily low.

The agencies will apply the Retail Lending Volume Screen to all banks evaluated in facility-based assessment areas under the Retail Lending Test, including banks with different business strategies; as a result, as commenters noted, some banks may perform differently on the screen relative to others. However, as discussed above, the Retail Lending Volume Threshold is set so as to ensure that meeting the threshold will be reasonably achievable for banks with a range of business strategies. The screen is intended to identify those facility-based assessment areas where a bank may be lending significantly below, rather than moderately or slightly below, its presence and capacity.

Although the 30 percent Retail Lending Volume Threshold is designed to account for a wide range of bank business strategies, the agencies are sensitive to concerns raised by commenters that some banks might have difficulty meeting the 30 percent threshold, particularly in facility-based assessment areas with high market penetration and dominant lenders. The agencies have considered commenter feedback that market circumstances particular to rural or economically distressed assessment areas with low retail loan demand could affect a bank's ability to meet the 30 percent threshold. For these reasons, the agencies are finalizing an approach whereby examiners will determine whether a bank has an acceptable basis for not meeting the threshold, by considering specified acceptable basis factors as provided in final § ____.22(c)(3)(i). This aspect of the Retail Lending Volume Screen is discussed in greater detail below.

The agencies have considered, but decline to adopt, suggestions that large banks should receive a Retail Lending Test conclusion of ''Substantial Noncompliance'' for performance below the 30 percent threshold in a facility-based assessment area as well as, conversely, suggestions that a large bank with performance above the 30 percent threshold should receive a presumption of a ''Satisfactory'' conclusion or should never receive a ''Substantial Noncompliance'' conclusion, in a facility-based assessment area. The agencies have determined that it is preferable to retain discretion to assign a conclusion based on a range of factors relevant to a bank's retail lending performance. As discussed above, the agencies expect banks to demonstrate a baseline level of lending relative to their presence and capacity, which the agencies believe is reasonably demonstrated by meeting or surpassing the 30 percent threshold. Additionally, as explained earlier, the agencies believe that a holistic evaluation of whether a bank is meeting the credit needs of its facility-based assessment areas should generally include consideration of a bank's lending volume relative to presence and capacity *and* the distribution of its loans. For example, the agencies believe that a ''Substantial Noncompliance'' conclusion could be warranted for a bank that meets or surpasses the Retail Lending Volume Threshold, but has substantial deficiencies in its loan distribution performance in the facility-based assessment area pursuant to final § ____.22(d) through (f).

The agencies believe that large banks that do not meet the Retail Lending Volume Threshold and lack an acceptable basis for this should receive a final Retail Lending Test conclusion not exceeding ''Needs to Improve'' in a facility-based assessment area. However, the agencies believe that either a ''Substantial Noncompliance'' or ''Needs to Improve'' conclusion could be appropriate. Specifically, which of these two conclusions a large bank receives for a facility-based assessment area will be determined as provided in final § ____.22(c)(3)(iii)(A), as discussed below.

The agencies also considered comments that the Retail Lending Volume Screen would allow all banks to pass if they collectively reduced their lending volume because of the use of the market benchmark and an alternative approach, suggested by a commenter, to set a threshold based on a fixed number rather than a market benchmark. The agencies believe that the Market Volume Benchmark coupled with the applicable threshold reflects the credit needs and opportunities of an area, in contrast to a fixed performance standard, such as an expectation that the Bank Volume Metric always exceed 10 percent in every facility-based assessment area, as suggested by the commenter. However, the agencies acknowledge that the Market Volume Benchmark and Retail Lending Volume Threshold would both adjust downward in the event that all banks in a facility-based assessment area reduced their lending volume relative to deposits. The agencies note that the additional factor provided in final § ____.22(g)(7) allows the agencies to take into account ''information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs.'' This could include circumstances in which all banks in a facility-based assessment area have significantly reduced their lending levels such that the Market Volume Benchmark does not reflect community credit needs. In addition, the agencies intend to continue to monitor this issue and would consider appropriate steps to take if this emerged as an issue warranting further consideration.

The agencies also considered comments that neither banks nor other stakeholders currently have access to benchmarks in order to self-assess how they would perform pursuant to the

[857] The agencies found that, when replicating the analysis included in the proposal using the same historical performance evaluation data that was available at the time of the original analysis, the distinction at the 30 percent threshold level was slightly lower than the distinction at other, higher threshold levels. Nevertheless, the distinction in passing rates at the 30 percent threshold level was significant.

Retail Lending Volume Screen. The agencies intend to create data tools that would provide information such as estimates of the Market Volume Benchmark in different geographic areas based on recent data. Initially, prior to the availability of reported deposits data, the agencies would estimate these benchmarks using the FDIC's Summary of Deposits data.

Finally, the agencies have considered comments that section 109 standards be used in lieu of the Retail Lending Volume Screen or that the threshold for the screen should be based on loan-to-deposit ratios used under section 109. Upon consideration of the comments, the agencies have determined that importation of, or reliance on, section 109 standards would not effectuate the same evaluation that the screen is designed to further as part of the Retail Lending Test. As discussed above, Congress enacted section 109 to serve a specific purpose—namely, to prohibit interstate banks from acquiring or establishing a branch outside of their home state (or other jurisdiction) primarily for the purpose of deposit production, which is distinct from the agencies' CRA evaluations to assess whether a bank is meeting the credit needs of its entire community. In addition, as discussed earlier, the specified calculations used to derive the loan-to-deposit ratios pursuant to section 109 do not align with the specific approach adopted in the final rule for measuring a bank's volume of retail lending in a facility-based assessment area against its capacity to lend in that facility-based assessment area. For example, section 109 standards do not apply to a bank in its home state, are geographically limited in how they are calculated to the host state level, and do not incorporate non-host state banks in their benchmark calculations. As discussed above, section 109 has a specific focus on ensuring that a bank's interstate branches do not take deposits from a host state (or other host jurisdiction) without the bank reasonably helping to meet the credit needs of that host state.

Section ____.22(c)(2) Banks That Meet or Surpass the Retail Lending Volume Threshold in a Facility-Based Assessment Area

The Agencies' Proposal

The agencies proposed to evaluate a bank's major product lines pursuant to the distribution metrics approach, if the bank met or surpassed the Retail Lending Volume Threshold.[858] The bank would then be eligible for any Retail Lending Test recommended conclusion in that facility-based assessment area.

Comments Received

The agencies did not receive any comments that were directly responsive to this component of the proposal.

Final Rule

As provided in final § ____.22(c)(2), the agencies are finalizing the proposal that, for a bank that meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area, the agencies will develop a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to final § ____.22(d) through (f). The bank will be eligible for any Retail Lending Test recommended conclusion in that facility-based assessment area.

Section ____.22(c)(3) Banks That Do Not Meet the Retail Lending Volume Threshold in a Facility-Based Assessment Area

Section ____.22(c)(3)(i) Acceptable Basis Factors

The Agencies' Proposal

The agencies proposed that if the bank volume metric for a particular bank was less than 30 percent of the market volume benchmark in a facility-based assessment area the agencies would determine whether the bank had an acceptable basis for not meeting the 30 percent threshold[859] by reviewing qualitative factors that might have affected the bank's ability to lend in the facility-based assessment area.[860] The proposal recognized that not all performance context factors are captured in the metrics and, as a result, the agencies proposed specified additional factors that might serve as an acceptable basis for why a bank did not meet the threshold. Specifically, examiners would consider 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, the bank's business strategy, and other factors that limit the bank's ability to lend in the facility-based assessment area.[861] If the qualitative assessment concluded that the bank had an acceptable basis for not meeting the threshold, the agencies would then evaluate the retail loan distribution for each of the bank's major product lines.[862]

If these qualitative factors did not account for the bank's insufficient volume of bank retail lending in the facility-based assessment area, the agencies proposed to consider the bank to not have an acceptable basis for failing to meet the threshold.

Comments Received

The agencies received a few comments on this component of the proposal. Those commenters raised concerns that the proposal lacked clarity regarding how examiners would consider the qualitative factors that the agencies had proposed when determining whether a bank had an acceptable basis for failing the screen.

Final Rule

As provided in final § ____.22(c)(3)(i), the agencies are adopting their proposal that if a bank does not meet the Retail Lending Volume Threshold in a facility-based assessment area, the agencies will determine whether the bank has an acceptable basis for not meeting the Retail Lending Volume Threshold by considering specific qualitative factors. Specifically, final § ____.22(c)(3)(i) provides that the agency will consider: the bank's dollar volume of non-automobile consumer loans; the bank's institutional capacity and constraints, including the financial condition of the bank; the presence or lack of other lenders in the facility-based assessment area; safety and soundness limitations; the bank's business strategy; and other factors that limit the bank's ability to lend in the facility-based assessment area.

Recognizing that not all relevant performance context factors are captured in the Retail Lending Volume Screen, the agencies believe that this qualitative review will allow examiners to consider a bank's performance on the screen within the larger context of a bank's overall circumstances, which in turn may reveal appropriate grounds for why a bank's retail lending volume was otherwise insufficient relative to the Retail Lending Volume Threshold.

The agencies have added to the final rule's list of acceptable basis factors consideration of a bank's dollar volume of non-automobile consumer loans in the facility-based assessment area. This aspect of the final rule will allow the agencies to account for instances in which a bank has engaged in a substantial amount of such unreported lending (*e.g.,* personal loans) that is not otherwise considered under the Retail Lending Test, but has very few, if any, closed-end home mortgage loans, small business loans, small farm loans, or automobile loans.

[858] *See* proposed § ____.22(c)(1).

[859] *See* proposed § ____.22(c)(2)(i).

[860] *See* proposed § ____.22 (c)(2)(iii).

[861] *Id.*

[862] *See* proposed § ____.22(c)(2)(i).

With respect to commenter concerns regarding clarity about application of the acceptable basis factors, the agencies intend to routinely consider these qualitative factors in all instances where a bank does not meet the threshold in a facility-based assessment area. The agencies' consideration of acceptable basis factors will necessarily be situation-specific, with the objective in each instance being that of determining whether there were sufficient grounds to explain the bank's lack of lending volume relative to the threshold.

Section ____.22(c)(3)(ii) Banks That Have an Acceptable Basis for Not Meeting the Retail Lending Volume Threshold in a Facility-Based Assessment Area

The Agencies' Proposal

That agencies proposed that if they determined that a bank had an acceptable basis for not meeting the Retail Lending Volume Threshold they would then consider the distribution metrics pursuant to proposed § ____.22(d) in order to assign a Retail Lending Test recommended conclusion and consider the additional factors provided in proposed § ____.22(e) to determine whether to adjust that recommended conclusion.[863] A bank with an acceptable basis for not meeting the threshold would be eligible for all possible recommended conclusions: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.'' As discussed above, this approach would allow examiners to consider performance context factors that may not necessarily be captured in the metrics, such as institutional capacity and constraints.

Comments Received

The agencies did not receive any comments that were directly responsive to this component of the proposal.

Final Rule

The agencies are finalizing this provision in final § ____.22(c)(3)(ii). The final rule provision does not include specific references to assignment and adjustment of Retail Lending Test recommended conclusions because this is provided for in final § ____.22(f) and (g).

[863] *See* proposed § ____.22(c)(2)(i).

Section ____.22(c)(3)(iii)(A) Banks That Lack an Acceptable Basis for Not Meeting the Retail Lending Volume Threshold in a Facility-Based Assessment Area—Large Banks

Section ____.22(c)(3)(iii)(B) Banks That Lack an Acceptable Basis for Not Meeting the Retail Lending Volume Threshold in a Facility-Based Assessment Area—Intermediate Banks or Small Banks

The Agencies' Proposal

The agencies proposed that if an agency determined that a large bank did not have an acceptable basis for failing to meet the Retail Lending Volume Threshold, the agency would assign the bank a Retail Lending Test conclusion in that facility-based assessment area of either ''Needs to Improve'' or ''Substantial Noncompliance'' based on three factors: (1) the bank's retail lending volume and the extent by which it failed to meet the Retail Lending Volume Threshold; (2) the bank's retail loan distribution for each major product line pursuant to proposed § ____.22(d); and (3) the additional factors provided in proposed § ____.22(e).[864]

The agencies proposed for intermediate banks, or small banks that opt to be evaluated under the Retail Lending Test, that failed to pass the Retail Lending Volume Threshold in a facility-based assessment area with no acceptable basis for doing so that the agency would review the bank's performance relative to the Retail Lending Volume Threshold as an additional indicator of lending performance when determining the bank's Retail Lending Test recommended conclusion in the facility-based assessment area.[865] Unlike a large bank without an acceptable basis for failing to meet the threshold, the agencies proposed that if an intermediate bank, or a small bank that opted into the Retail Lending Test, did not have an acceptable basis, the bank would not be limited to receiving only a conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' in that facility-based assessment area. The agencies explained that the proposed approach resulting in differential treatment of large banks compared with intermediate banks and small banks was justified because: the agencies recognized that intermediate banks and small banks have less capacity to ensure that their lending is commensurate with their deposits in comparison to large banks; and the agencies recognized that the FDIC's Summary of Deposits data used as the default in the bank volume metric calculations for intermediate banks and small banks may not always accurately reflect the location of depositors.

[864] *See* proposed § ____.22(c)(2)(ii)(A).

[865] *See* proposed § ____.22(c)(2)(ii)(B).

Comments Received

Some commenters supported the agencies' proposal that an intermediate bank or a small bank that did not pass the retail lending volume screen would have the outcome reviewed as an additional indicator of lending performance when determining the bank's Retail Lending Test recommended conclusion in the facility-based assessment area. A few other commenters asserted that the agencies should extend this same treatment to large banks that did not pass the screen.

Final Rule

Large banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold. Final § ____.22(c)(3)(iii)(A) provides that if, after reviewing the factors in final § ____.22(c)(3)(i), the agencies determine that a large bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the agencies will assign the bank a Retail Lending Test conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' for the facility-based assessment area. In determining whether ''Needs to Improve'' or ''Substantial Noncompliance'' is the appropriate conclusion, the agency considers: the bank's retail lending volume and the extent by which it fell short of the threshold; the bank's distribution analysis pursuant to final § ____.22(d) through (f); the performance context factors in § ____.21(d); and the additional factors in final § ____.22(g).

The agencies' reason for the different treatment of large banks that lack an acceptable basis for not meeting the Retail Lending Volume Screen remains that large banks have greater capacity than intermediate banks and small banks to ensure that 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 their depositors.

The agencies have considered commenter feedback that the Retail Lending Volume Screen should be employed solely as performance context, including for large banks. For intermediate banks and small banks that opt into the Retail Lending Test, the screen already serves as an additional indicator of lending performance when determining the bank's Retail Lending Test recommended conclusion in a facility-based assessment area. The agencies believe that adopting that approach would not be desirable for large banks that significantly underperform relative to their presence and capacity to lend and lack an acceptable basis for doing so. The agencies find it unnecessary to provide additional examiner discretion for large banks with respect to assigning facility-based assessment area conclusions. The agencies note that the fact that a large bank does not meet the Retail Lending Volume Threshold does not automatically lead to assignment of any conclusion in any facility-based assessment area. Rather, as provided in final § ____.22(c)(3)(i), the agencies will also consider whether a bank meets any of the acceptable basis factors.

Intermediate and small banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold. Final § ____.22(c)(3)(iii)(B) provides that if, after reviewing the factors in final § ____.22(c)(3)(i), the agencies determine that an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the agencies will develop a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to final § ____.22(d) through (f). In turn, the agencies' determination of the bank's Retail Lending Test conclusion for the facility-based assessment area is informed by: the bank's Retail Lending Test recommended conclusion for the facility-based assessment area; the bank's retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold; performance context factors provided in final § ____.21(d); and the additional factors in final § ____.22(g). Consistent with the proposal, unlike large banks, these banks will not be limited to receiving a conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' in the facility-based assessment area.

The agencies believe that this approach accounts for the lower capacity of intermediate banks and small banks that opt into the Retail Lending Test to ensure that their lending is commensurate with their deposits. In addition, this approach would account for the proposed use of the FDIC's Summary of Deposits data to calculate the Bank Volume Metric for intermediate banks and for small banks (if these banks do not voluntarily collect and maintain deposits data pursuant to final § ____.42(a)(7) and, in turn, report that data pursuant to final § ____.42(b)(3)).

Section § ____.22(d) Scope of Retail Lending Distribution Analysis

Section § ____.22(d)(1) Product Lines Evaluated in a Retail Lending Test Area

To evaluate a bank's retail lending performance in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable, under the Retail Lending Test, the agencies proposed in § ____.22(a)(4) to identify a bank's major product lines in a geographic area from among six retail lending categories: closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans. For purposes of identifying a bank's major product lines in a geographic area, the agencies proposed to use a 15 percent standard based on loan dollars for closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans; the agencies proposed to use a 15 percent standard based on a combination of loan dollars and loan count for automobile loans. The agencies would evaluate the geographic and borrower distributions of a bank's major product lines under the distribution analysis component of the Retail Lending Test described in proposed § ____.22(d).

The agencies received numerous comments regarding each of the proposed retail lending product lines, and the proposed standards for identifying a bank's major product lines. Comments regarding each of the six proposed retail lending products are discussed in turn below. Comments regarding the proposed major product line standards as discussed in the section-by-section analysis of final § ____.22(d)(2), below.

For the reasons discussed below, the agencies are modifying, relative to the proposal, the scope of the distribution analysis component of the final rule Retail Lending Test. Under the final rule, only four retail product lines—closed-end home mortgage loans, small business loans, small farm loans, and automobile loans [866]—may be evaluated under the distribution analysis in a facility-based assessment area or outside retail lending area. The agencies will not evaluate open-end home mortgage loans and multifamily loans under the distribution analysis in final § ____.22(e).[867] In addition, only closed-end home mortgage loans and small business loans may be evaluated as a major product line in a large bank's retail lending assessment areas.[868]

As such, final § ____.22(d)(1) provides that in each applicable Retail Lending Test Area, the agencies evaluate originated and purchased loans in each of the following product lines that is a major product line, as described in § ____.22(d)(2): [869]

- Closed-end home mortgage loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;
- Small business loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;
- Small farm loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area; and
- Automobile loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area.

Each of the four product lines included in the final rule Retail Lending Test distribution analysis is discussed in turn below. Following this discussion, the two product lines excluded from the final rule Retail Lending Test distribution analysis are discussed.

Product Lines Included in the Retail Lending Test Distribution Analysis

Section ____.22(d)(1)(i) Closed-End Home Mortgage Loans

In final § ____.22(d)(1)(i), the agencies are adopting with certain substantive, clarifying, and technical revisions their proposed approach of evaluating closed-end home purchase, home refinance, home improvement, and other purpose home mortgage loans as a single major product line under the Retail Lending Test's distribution analysis. The

[866] As discussed in introduction to the section-by-section analysis of final § ____.22, automobile loans are only evaluated under the Retail Lending Test if the bank is a majority automobile lender or the bank opts to have its automobile loans evaluated under the Retail Lending Test.

[867] However, open-end home mortgage loans and multifamily loans are included in the bank's metrics for purposes of the Retail Lending Volume Screen, as discussed in the section-by-section analysis of final § ____.22(c).

[868] For further discussion of the product lines that may be evaluated in a retail lending assessment area, see the section-by-section analysis of final § ____.17(d).

[869] The agencies have determined that it is appropriate to relocate the provisions describing the scope of the distribution analysis component of the Retail Lending Test from proposed § ____.22(a) to final § ____.22(d), so that these scoping provisions immediately precede the regulatory text regarding the distribution analysis itself in final § ____.22(e).

agencies have decided that open-end home mortgage loans will not be evaluated under the Retail Lending Test, but rather, responsive open-end home mortgage loans will be considered under the Retail Services and Products Test, as discussed in the section-by-section analysis of final § ____.23.

The Agencies' Proposal

As discussed above, the agencies currently evaluate a bank's ''home mortgage'' lending under the lending test, which includes both closed-end home mortgage loans and open-end home mortgage loans.[870] The agencies proposed to evaluate closed-end home mortgage loans secured by a one-to-four family dwelling as a single major product line under the Retail Lending Test.[871] As proposed, this category would include one-to-four family closed-end home mortgage loans of all purposes, including home purchase loans, home refinance loans, home improvement loans, and other purpose closed-end home mortgage loans, but not including multifamily loans.[872] The agencies noted that, in comparison to a potential alternative in which closed-end home mortgage loans with different purposes are evaluated separately, the proposed rule would consolidate closed-end home mortgage loans in a single major product line, thereby streamlining the evaluation process and reducing complexity. As a major product line, the proposal contemplated that closed-end home mortgage loans would be evaluated using the distribution metrics included in the Retail Lending Test.[873]

The agencies sought feedback on whether to evaluate closed-end home mortgage loans of different purposes individually or collectively given that the factors driving demand for home purchase loans, home refinance loans, home improvement loans, and other purpose home mortgage loans can vary over time. In addition, the agencies noted that these closed-end home mortgage products can meet different credit needs for low- and moderate-income borrowers and communities. The agencies also requested feedback on whether aggregation could lead to less transparency in the reported metrics when one loan purpose category 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 home mortgage refinance lending performance could be similarly obscured during periods of high home purchase lending activity. The agencies sought feedback on the magnitude of this risk, and whether it outweighs the efficiency gained from more streamlined closed-end home mortgage lending evaluations.

The agencies also sought feedback on whether to evaluate home improvement loans and other purpose closed-end home mortgage loans reported under HMDA under both the Retail Lending Test and the Retail Services and Products Test or only under the Retail Services and Products Test. In addition, the agencies sought commenter views on the proposal to continue the current practice of evaluating closed-end home mortgage loans secured by one-to-four family owner-occupied properties and non-owner-occupied properties together.[874]

Comments Received

The agencies received many comments on evaluating closed-end home mortgage lending and open-end home mortgage lending pursuant to a CRA final rule.

Aggregation of closed-end home mortgage loans regardless of loan purpose. A number of commenters supported the proposed evaluation of all closed-end home mortgage loans on a combined basis, regardless of loan purpose. Some commenters expressed concerns that evaluating closed-end home mortgage loans separately by different loan purposes would introduce additional complexity into the proposed Retail Lending Test. A few commenters questioned whether, on balance, separating home purchase loans and refinance loans would affect a bank's performance sufficiently to offset added complexity. Other commenters preferred evaluating closed-end home mortgage loans as a single category because demand for closed-end home mortgage loans of different purposes varies over time for reasons beyond a bank's control.

However, other commenters expressed a preference for separately evaluating closed-end home mortgage loans of different purposes. In general, these commenters emphasized that different home mortgage products meet different credit needs and demand for such products can vary based on market conditions over time, with some highlighting the differences between home purchase loans and home refinance loans. These commenters favored separate evaluation of these products as a way to allow for more precise measurement of whether banks are meeting the needs of low- and moderate-income borrowers. For example, a commenter suggested that the agencies separately evaluate different types of closed-end home mortgage loans to avoid obscuring important differences among loan types; however, this commenter acknowledged that such disaggregation might not be possible in all assessment areas, especially rural areas with insufficient loan activity for separate evaluation. Another commenter recommended separately evaluating four categories of closed-end home mortgage loans—home purchase loans, home refinance loans, home improvement loans, and other purpose home mortgage loans—without distinguishing between closed-end home mortgage loans and open-end home mortgage loans, stating that this approach would promote a more standard comparison between like transactions. In addition, a commenter that supported disaggregating home purchase and home refinance loans suggested that the agencies should also separate cash-out refinances from rate-term refinances or remove cash-out refinances entirely from the Retail Lending Test because such loans could be used for equity stripping.

Home improvement and other purpose closed-end home mortgage loans. Many commenters supported the agencies' proposal to include home improvement loans and other purpose home mortgage loans as part of the closed-end home mortgage loan major product line. A number of commenters emphasized the ways in which home improvement loans can benefit low- and moderate-income borrowers and communities, such as by increasing the value of homes owned by low- and moderate-income borrowers and meeting significant credit needs. For example, a commenter emphasized the critical updating and maintenance needs of aging affordable housing stock and asserted that products such as combined purchase-rehabilitation loans

[870] *See* current 12 CFR ____.12(l) and ____.22(a)(1).

[871] *See* proposed § ____.22(a)(4)(i)(A). The agencies proposed in proposed § ____.12 to define ''closed-end home mortgage loan'' to have ''the same meaning given to the term 'closed-end mortgage loan' in 12 CFR 1003.2(d)'' (the CFPB's Regulation C, implementing HMDA), but excluding multifamily loans. For further discussion of the definition of ''closed-end home mortgage loan'' under the final rule, see the section-by-section analysis of final § ____.12 (''closed-end home mortgage loan'').

[872] *See* proposed § ____.22(a)(4)(i)(A). As under the CFPB's Regulation C, ''other purpose'' refers to any loan purpose other than home purchase, refinance, or home improvement. *See also* 12 CFR 1003.4(a)(3) and associated Official Interpretations.

[873] *See* proposed § ____.22(b) through (d).

[874] *See* proposed § ____.22(a)(4)(i)(A). This treatment would have obtained for the proposed separately evaluated open-end home mortgage lending product line as well. *See* proposed § ____.22(a)(4)(i)(B).

are important for supporting sustainable homeownership. Another commenter stated that considering home improvement and other purpose loans only under the Retail Services and Products Test would reduce the level of quantitative rigor applied to their evaluation. In addition, a number of commenters noted that evaluating home improvement loans and other purpose loans under the Retail Lending Test would create greater incentives for banks to offer these products to low- and moderate-income borrowers and to develop innovative products. However, another commenter suggested that home improvement loans and other purpose home mortgage loans should only be evaluated under the Retail Lending Test if the bank can demonstrate that the loans were made to increase home value, improve livability and accessibility, generate income through business space, allow for services in the home, or make the home more energy efficient. In addition, a number of commenters recommended that home improvement loans and other purpose home mortgages should be evaluated both quantitatively under the Retail Lending Test and qualitatively under the Retail Services and Products Test, which one commenter noted could consider the innovativeness of a bank's lending products.

A few commenters addressed whether the agencies should establish a separate product line under the Retail Lending Test for home improvement loans and other purpose home mortgage loans, noting that these loans are distinct from home purchase loans and refinancing loans. A commenter recommended that home improvement loans and other purpose home mortgage loans lending should be considered separately in a third category if the agencies determined to consider home purchase loans and refinance loans separately. Another commenter suggested that home improvement loans be evaluated either separately or together with other retail loans under the Retail Lending Test, if there is a sufficient volume of these loans.

A few commenters opposed the evaluation of home improvement loans and other purpose home mortgage loans under the Retail Lending Test. Some of these commenters stated that the Retail Lending Test should focus on home purchase loans and refinance loans. Other commenters stated that home improvement loans and other purpose home mortgage loans should be evaluated solely under the Retail Services and Products Test, with a commenter noting that these loans would rarely trigger a major product line. Another commenter supported evaluating these loans only qualitatively, but recommended the agencies consider implementing a quantitative evaluation if demand for this type of loan increases.

Non-owner-occupied home mortgage loans. A few commenters supported the proposal to include loans secured by one-to-four family non-owner-occupied housing in the closed-end home mortgage loan product line, noting that these loans represent an investment in low- and moderate-income communities and play an important role in ensuring access to naturally occurring affordable housing.

However, many other commenters opposed including non-owner-occupied housing loans in the evaluation of closed-end home mortgage loans. Some commenters stated that non-owner-occupied housing loans should be excluded altogether because such loans do not represent access to credit for low- and moderate-income individuals and can fuel gentrification and displacement. Another commenter similarly raised concerns that granting credit for non-owner-occupied housing loans to investors would not address inequities in credit access for minority individuals and communities.

Several commenters provided other suggestions related to the evaluation of non-owner-occupied housing loans. A few commenters recommended that non-owner-occupied home loans should be evaluated under the Retail Services and Products Test. Some commenters stated generally that owner-occupied home loans should be prioritized over loans secured by investor-owned properties. For example, a commenter suggested that the agencies include non-owner-occupied housing loans in the Retail Lending Test, but assign them less weight than loans secured by owner-occupied homes; this commenter also supported non-owner-occupied housing loans being considered under the Community Development Financing Test. Some commenters also advocated for an impact review of non-owner-occupied home loans to ensure that these loans build wealth and do not displace or harm low- and moderate-income or minority individuals. Relatedly, a number of commenters recommended that only certain non-owner-occupied housing loans be included in the bank's evaluation, such as loans made to low- and moderate-income, minority, or mission-driven nonprofit organization borrowers, or loans originated by mission-driven nonprofit organizations.

Other closed-end home mortgage loan products. Several commenters provided feedback related to evaluating other specific closed-end home mortgage loan products. For example, a commenter encouraged the agencies to evaluate manufactured housing loans as a separate category under the Retail Lending Test to incentivize more manufactured home lending. This commenter stated that manufactured homes tend to be affordable options for low- and moderate-income individuals and suggested that the agencies separately track home mortgage loans titled as personal property.

A few commenters submitted feedback regarding construction loans. A commenter stated that the agencies should include construction loans to home builders and borrowers for the construction of one-to-four family residential properties under the Retail Lending Test to incentivize banks to make more construction loans and increase the housing supply. A few commenters suggested that construction loans be eligible for CRA consideration even if the occupant is not a low- or moderate-income individual, as long as the home sale price does not exceed four times the area median family income. These commenters indicated that this would help address the lack of supply of affordable starter homes and encourage community stabilization and revitalization.

A few commenters offered views on the treatment of reverse mortgage loans. For example, a commenter asserted that reverse mortgage loans are essential to aging borrowers and stated that banks should consider the needs of their aging deposit customers with reverse mortgages to avoid foreclosure and displacement. In contrast, another commenter suggested that reverse mortgage loans should not be encouraged and should be excluded from the Retail Lending Test because they have the potential to impact the borrower negatively.

A commenter suggested that certain income-restricted home mortgage assistance loans and programs, such as downpayment assistance, should be counted as closed-end home mortgage loans under the Retail Lending Test to incentivize banks to continue participating in these special programs. Another commenter stated that the agencies should award ''extra credit'' to banks for originating home mortgages involving community land trusts because such programs are designed to preserve affordable housing and prevent displacement.

Final Rule

Final § ____.22(d)(1)(i) adopts the proposed approach of evaluating closed-end home purchase, home refinance, home improvement, and other purpose home mortgage loans as a single major product line pursuant to the Retail Lending Test's distribution analysis.[875]

Aggregation of closed-end home mortgage loans regardless of loan purpose. The agencies' decision to adopt the proposal is based on a number of factors. First, the agencies believe that a combined evaluation of closed-end home purchase loans, home refinance loans, home improvement loans, and other purpose home mortgage loans allows for an appropriate degree of flexibility for a bank to meet the closed-end home mortgage credit needs of its community, accounting for diverse bank business models and strategies. Under this approach, a bank may achieve strong performance in the closed-end home mortgage product line by serving low- and moderate-income borrowers and low- and moderate-income census tracts through any combination of home purchase loans, home refinance loans, home improvement loans, or other purpose closed-end home mortgage loans.

The agencies also believe that a combined evaluation of closed-end home mortgage loans will result in greater stability and consistency of associated metrics and benchmarks over time. The agencies determined that, as some commenters noted, a combined market benchmark may be less volatile than separate market benchmarks for home purchase loans and home refinance loans.

Additionally, the agencies believe that a combined evaluation of closed-end home mortgage loans is more consistent with the current regulations and introduces fewer complexities than separately evaluating home mortgage loans of different purposes. For example, agency analysis of lending data from 2018–2020 demonstrated that evaluating home purchase loans and refinance loans as separate product lines would likely result in an increase in the number of major product lines for approximately 4,040 facility-based assessment areas, which is approximately 58 percent of all large bank and intermediate bank facility-based assessment areas.[876]

Finally, the agencies considered that establishing separate product lines for closed-end home purchase, home refinance, home improvement, and other purpose home mortgage loans could result in instances where a bank does not have a sufficient number of loans in one or more of these individual categories to conduct a robust distribution analysis. For example, the agencies believe that in evaluation years in which home mortgage refinance activity is relatively low, some banks might have too little activity to count as a separate product line. However, a combined approach will ensure that these loans are subject to a distribution analysis as part of a larger aggregate category for closed-end home mortgage loans. The agencies also note that if separate product lines were created for home purchase loans and home refinance loans, a similar potential loss of coverage from a distribution analysis might occur for home improvement loans and other purpose home mortgage loans, because these loans too would by default then need to be evaluated separately.

The agencies also considered the potential benefits of an alternative approach of separately evaluating closed-end home mortgage loans based on loan purpose. In particular, as some commenters noted, home purchase, home refinance, home improvement, and other purpose home mortgage loans fulfill different purposes. For example, home purchase loans facilitate access to homeownership, while home refinance loans can help borrowers to obtain a lower monthly payment when interest rates fall. A separate evaluation of these categories could provide more specific visibility into a bank's record of meeting important yet distinct closed-end home mortgage credit needs, clarifying instances in which a bank had lower relative performance for either home purchase lending or home refinance lending. The agencies also considered that different benchmarks, thresholds, and performance ranges for these categories might reflect differences in the credit needs and opportunities in an area more specifically than a combined product line category for all closed-end home mortgage lending, thus informing the efforts of the agencies, banks, and other stakeholders to identify and address community credit needs.

However, on balance, the agencies have determined that these potential benefits of separately evaluating home purchase, home refinance, home improvement, and other purpose home mortgage loans are outweighed by the considerations discussed above. These include the agencies' determination that designating a combined closed-end home mortgage loan category is more adaptive to a diversity of both bank business models and community credit needs. At the same time, the agencies appreciate the potential benefits of greater precision in understanding the ways that banks meet community credit needs, and note that they will consider ways to provide information to the public about the breakdown of home purchase and home refinance loans within the combined closed-end home mortgage loan category.

Home improvement and "other purpose" closed-end home mortgage loans. The final rule also adopts the proposed approach of including closed-end home improvement loans and other purpose home mortgage loans as part of the overall closed-end home mortgage loan product line under the Retail Lending Test's distribution analysis. The agencies believe that this approach is appropriate because low- and moderate-income borrowers and communities have needs for closed-end home improvement loans and other purpose home mortgage loans. Furthermore, the agencies have considered commenter feedback that evaluating these loans under the Retail Lending Test will help to emphasize bank activities that address these needs. Evaluating home improvement loans and other purpose home mortgage loans as part of a combined closed-end home mortgage loan product line will ensure that these tools for meeting community credit needs are accounted for under the Retail Lending Test distribution metrics and benchmarks.

The agencies also considered an alternative approach of creating separate product line categories for home improvement and other purpose home mortgage loans, or a product line category combining home improvement loans and other purpose home mortgage loans. However, the agencies believe that the number of home improvement loans and other purpose home mortgage loans for many banks and Retail Lending Test Areas could often be insufficient for robust evaluation as a separate product line. For example, a separate evaluation would include constructing market benchmarks based solely on home improvement loans and other purpose home mortgage loans, which the agencies note are significantly less prevalent than home purchase and home refinance loans. Furthermore, the agencies considered that these alternative approaches would

[875] As discussed in the section-by-section analysis of final § ____.12, the final rule defines "closed-end home mortgage loan" as follows: "*Closed-end home mortgage loan* has the same meaning given to the term 'closed-end mortgage loan' in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in [§ ____.12]."

[876] This analysis is based on a set of intermediate and large banks that are both CRA and HMDA reporters. Wholesale banks, limited purpose banks, strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or District of Columbia are excluded from the analysis.

increase the complexity of the distribution analysis due to the additional product lines and associated metrics, benchmarks, performance ranges, weighting, and other quantitative components of the evaluation. In light of these considerations, the agencies determined that the increased complexity resulting from creating a separate product line category for home improvement loans and other purpose home mortgage loans is not warranted.

The agencies also considered commenter sentiment that home improvement loans and other purpose home mortgage loans be evaluated under the Retail Lending Test only if a bank can demonstrate that these loans were made to increase home value, improve livability and accessibility, generate income through business space, allow for services in the home, or make the home more energy efficient. The agencies believe that the Retail Lending Test is appropriately focused upon evaluating a bank's distribution of loans to low- and moderate-income borrowers and low- and moderate-income census tracts, and that the credit products component of the Retail Services and Products Test will effectively evaluate whether a bank's credit products and programs are, consistent with safe and sound operations, responsive to the credit needs of the bank's entire community, including the needs of low- and moderate-income individuals, residents of low- and moderate-income census tracts, small businesses, and small farms.

Non-owner-occupied home mortgage loans. The agencies considered, but are not adopting, commenter sentiment that non-owner-occupied home mortgage loans should either be excluded from evaluation under the Retail Lending Test or afforded less weight than owner-occupied home mortgage loans. In making this determination, the agencies considered a number of factors.

The agencies considered that including loans secured by non-owner-occupied properties in a bank's borrower and geographic distribution analyses provides a more complete picture of the bank's closed-end home mortgage lending activity and capacity in light of opportunities in the area. For example, where a bank has made a large number of non-owner-occupied closed-end home mortgage loans, including these loans in the distribution analyses would better demonstrate the extent to which a lender is meeting the needs of low- and moderate-income individuals and low- and moderate-income census tracts relative to its capacity to lend. In contrast, excluding the bank's non-owner-occupied loans from the Retail Lending Test evaluation would result in metrics that would not as accurately reflect the bank's capacity to lend to low- or moderate-income individuals and in low- or moderate-income census tracts.

The agencies also considered that loans secured by non-owner-occupied properties can support access to credit and fulfill a credit need in low- and moderate-income census tracts. The agencies considered that lower credit availability in these geographic areas might negatively affect local housing markets due to the difficulty of obtaining home-secured financing in these areas to buy, sell, refinance, or improve a home. Furthermore, home mortgage loans secured by non-owner-occupied properties may support expanded affordable housing options.

In addition, the agencies are concerned that separately evaluating or differentially weighting one-to-four family closed-end home mortgage loans secured by non-owner-occupied properties to reflect the impact of these loans would introduce undue compliance and examination complexity. Differential weighting would be challenging to calibrate and implement, because a range of factors could affect the level of impact that loans for non-owner-occupied and owner-occupied properties have on a community. The agencies considered that an alternative approach of assigning lower weighting to loans for non-owner-occupied properties could inadvertently discourage a bank from meeting credit needs for such loans in a community. Furthermore, the agencies considered that there may be insufficient data to support a separate distribution analysis of these loans in many Retail Lending Test Areas.

The agencies considered commenter concerns regarding the responsiveness and affordability of home mortgage loans secured by non-owner-occupied properties. The agencies note that the final rule also evaluates home mortgage loans secured by non-owner-occupied properties under final § ____.23(c)(2) of the Retail Services and Products Test for responsiveness to community credit needs, including the needs of low- and moderate-income borrowers and low- and moderate-income census tracts. Also, as discussed further in the section-by-section analysis of final § ____.13(b)(3), the final rule provides that certain one-to-four family rental housing with affordable rents in nonmetropolitan census tracts qualifies as a community development activity for which a bank could receive CRA consideration.

The agencies considered, but are not adopting, an alternative approach to only include non-owner-occupied home mortgage loans made to low- and moderate-income, minority, or mission-driven nonprofit organization borrowers, or loans originated by mission-driven nonprofit organizations. As discussed above, the agencies determined that non-owner-occupied closed-end home mortgage loans reflect a bank's capacity to conduct retail lending and are a way that a bank can meet the credit needs of a community. In addition, the agencies believe that applying additional exclusions to certain categories of non-owner-occupied home mortgage loans would add complexity to the evaluation of this product line. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Other closed-end home mortgage loan products. The final rule retains the proposal's approach to include product lines that would be reportable as closed-end home mortgage loans in HMDA data. In making this determination, the agencies considered comments regarding including other specific types of loan products in the closed-end home mortgage loan product line evaluation. As a general matter, the agencies believe that including closed-end home mortgage loans that are reportable in HMDA data in CRA evaluations promotes consistency across regulations, which in turn facilitates compliance and consistent information within a cohesive banking regulatory framework.

The agencies considered, but are not adopting in the final rule, commenter sentiment to include rate-term refinances, and to exclude cash-out refinances, in the Retail Lending Test evaluation of closed-end home mortgage lending. The agencies believe that all refinance types can be an important credit source for individuals and that there could be unintended consequences to limiting the refinance mortgages that are determined to meet community credit needs. For example, the agencies have considered that excluding specific categories of home mortgage refinance loans from the closed-end home mortgage product line could reduce the flexibility of banks to serve the community in a way that accords with the bank's business model and strategy. Accordingly, the final rule maintains the proposed approach of including all closed-end home mortgage loans, including all closed-end home refinance loans, in the closed-end home mortgage product line.

As proposed, the final rule includes closed-end manufactured housing loans in the closed-end home mortgage loan product line. As noted above and discussed in the section-by-section analysis of final § ____.12, the final rule defines ''closed-end home mortgage loan'' as equivalent to the term ''closed-end mortgage loan'' in Regulation C. A closed-end mortgage loan under Regulation C is an extension of credit that is secured by a lien on a ''dwelling'' and that is not an open-end line of credit.[877] Regulation C defines a ''dwelling'' as ''a residential structure, whether or not attached to real property'' that ''includes but is not limited to . . . a manufactured home or other factory-built home.'' [878] The agencies note that loans for manufactured housing may be titled as real estate (generally secured by a manufactured home and the land on which it is sited) or as personal property (generally secured by the manufactured home only). Manufactured home loans titled as real estate and those titled as personal property are both secured by a dwelling and thus both closed-end mortgage loans included in the HMDA data; as such, both of these manufactured loan types will be used for evaluating the closed-end home mortgage product line under the Retail Lending Test.

The agencies believe that including manufactured housing loans in the closed-end home mortgage product line is appropriate for several reasons. The agencies believe that these loans may help meet community credit needs, especially in certain areas where affordable housing is limited and where manufactured housing may be relatively common. Further, the agencies considered that in markets where a significant share of low- and moderate-income households own manufactured housing, excluding loans made to these households could result in market benchmarks that do not appropriately reflect the credit needs and opportunities of the area. The agencies also considered that the responsive credit products component of the Retail Services and Products Test will enable the agencies to make informed determinations about the responsiveness of a bank's manufactured housing lending.

Finally, the agencies considered that it may not be feasible for Retail Lending Test evaluations to exclude, or separately consider, manufactured housing that is titled as personal property because the HMDA data field identifying these loans may not be complete for banks that are partially exempt from HMDA reporting. In addition, the agencies considered that the number of these loans may be too low to conduct a robust separate analysis, including developing market benchmarks in Retail Lending Test Areas.[879]

Regarding construction loans, under the final rule, the agencies will evaluate only closed-end construction loans that are reported under HMDA, consistent with the agencies' proposal. The agencies considered, but decline to adopt, an alternative suggested by some commenters to evaluate all construction-only loans, including those not reported under HMDA, for one-to-four family residential properties in the closed-end home mortgage loan product line under the Retail Lending Test. A construction-only loan that is designed to be replaced by permanent financing is considered temporary financing and excluded from HMDA reporting.[880] The agencies have determined that this temporary financing should not be included in the closed-end home mortgage product line of the Retail Lending Test, because the borrower of a construction-only loan may be a commercial entity, and it is not clear how the borrower distribution analysis would apply to these loans. Including these loans in the distribution analysis could impact the evaluation of closed-end home mortgage loans because the metrics and benchmarks would reflect lending in multiple substantially different loan product types. Thus, construction-only loans considered temporary financing under the HMDA reporting requirements will not be evaluated in the closed-end home mortgage product line. In contrast, a combined construction-to-permanent loan based on a single legal obligation is reportable pursuant to HMDA, and the agencies believe that they should be included with other HMDA-reportable closed-end home mortgage loans to avoid increasing the complexity of the Retail Lending Test evaluation. In addition, the agencies note that certain construction loans and other temporary financing could be considered as community development loans, if the loan meets a community development definition pursuant to § ____.13.

Regarding reverse mortgage loans, the agencies have also considered commenter sentiment that these loans should not be evaluated under the Retail Lending Test because of commenter views that these loans may vary considerably in their responsiveness to low- and moderate- income borrowers and low- and moderate-income communities in ways are not contemplated by the proposed distribution analysis. In considering how best to evaluate reverse mortgage loans, the agencies note that a large majority of these loans are open-end home mortgage loans.[881] The agencies believe that the final rule approach, discussed below, of evaluating open-end home mortgages only under the Retail Services and Products Test's responsive credit products and programs component in final § ____.23(c)(2), and not also under the Retail Lending Test, appropriately focuses the evaluation of the significant majority of reverse mortgage loans on their responsiveness to low- and moderate-income individuals and low- and moderate-income census tracts.

The agencies believe that including the relatively small share of reverse mortgage loans that are closed-end home mortgages within the closed-end home mortgage loan product line on the Retail Lending Test is appropriate for a number of reasons. The agencies note that closed-end reverse mortgage loans typically provide borrowers with a specified amount of money upfront that cannot be subsequently increased over time and generally feature a fixed interest rate.[882] The agencies believe that these features make closed-end reverse mortgage loans more like the forward closed-end home mortgage loans with which they are aggregated under the final rule's closed-end home mortgage loan product line, compared to open-end reverse mortgage loans, which the final rule would not evaluate as a major product line. The agencies also note that they have issued detailed guidance to the banks they supervise regarding the consumer financial protection laws and regulations that

[877] *See* 12 CFR 1003.2(d) (defining ''closed-end mortgage loan'') and (o) (defining ''open-end line of credit'').

[878] *See* 12 CFR 1003.2(f).

[879] Certain data points reported in HMDA, including the manufactured housing secured property type, are exempt if the transaction is covered by a partial exemption. *See generally* 12 CFR 1003.3(d) and associated Official Interpretations.

[880] *See* 12 CFR 1003.3(c)(3) and associated Official Interpretations.

[881] Board analysis of HMDA Loan/Application Register (LAR) data from 2018–2020 showed that approximately 80 percent of all reverse mortgages were open-end; among depository institutions only, 84 percent of reverse mortgages were open-end.

[882] *See* CFPB, ''Reverse Mortgages: Report to Congress'' 98 (June 28, 2012), *https://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf.*

apply to reverse mortgage lending, and setting forth supervisory expectations related to ensuring the protection of reverse mortgage loan consumers.[883]

Additionally, the agencies note that, due to HMDA partial exemptions available to certain banks,[884] reverse mortgages are not consistently identifiable under HMDA, which would make it challenging to identify and remove reverse mortgages from a bank's reported closed-end home mortgages. Finally, the agencies believe that the inclusion of closed-end reverse mortgages allows for an appropriate degree of flexibility for a bank to meet the closed-end home mortgage credit needs of its community, accounting for diverse bank business models and strategies. Permitting banks to receive consideration for these loans preserves an additional means for banks to meet community credit needs.

The agencies considered commenter sentiment that certain income-restricted home mortgage assistance loans and programs, such as downpayment assistance, should be counted as closed-end home mortgage loans under the Retail Lending Test. Under the final rule, the agencies note that income-restricted home mortgage assistance programs could receive consideration under the Retail Services and Products Test as a responsive credit product and program. Under the final rule, the agencies also note that if such programs involve originating or purchasing closed-end home mortgage loans, those loans would be evaluated under the Retail Lending Test. For example, a program focused on originating home mortgages involving community land trusts could receive qualitative consideration under the Retail Services and Products Test and any closed-end home mortgages originated under this program would also be evaluated under the Retail Lending Test's distribution analysis, provided that closed-end home mortgage loans are a major product line for the bank. The agencies believe this approach appropriately evaluates a range of bank activities that serve community credit needs while maintaining a metrics-based approach for evaluating retail lending.

Section ____.22(d)(1)(ii) and (iii) Small Business Loans and Small Farm Loans

In final § ____.22(d)(1)(ii) and (iii) and (d)(2) and in paragraphs II.b.1 and II.b.2 of final appendix A, the agencies are adopting their proposal to evaluate the distribution of a bank's originated and purchased small business loans and small farm loans as separate major product lines under the Retail Lending Test.

The Agencies' Proposal

In proposed § ____.22(a)(4)(i), the agencies provided that they would evaluate the distribution of small business loans and small farm loans as separate major product lines under the Retail Lending Test,[885] and sought feedback on the corresponding evaluation framework. As discussed further in the section-by-section analysis of final § ____.12, the agencies sought feedback on definitions and size standards for "small business," "small business loan," "small farm," and "small farm loan." The agencies also sought comments on sunsetting the current small business loan and small farm loan definitions when transitioning to using section 1071 data for CRA evaluations (discussed in the section-by-section analyses of final §§ ____.12 and ____.22(e)).

Comments Received

The agencies received many comments on different aspects of evaluating small business lending and small farm lending as major product lines under the proposed Retail Lending Test, including the aspects of the proposal related to the section 1071 rulemaking.[886] The section-by-section analysis of final § ____.12 discusses feedback on the proposed definitions of small business, small business loan, small farm, and small farm loan.

In general. A few commenters specifically addressed the designation of small business loans and small farm loans as major product lines, evaluated under the Retail Lending Test's distribution analysis, with most generally favoring continuing to evaluate these loans. Some commenters noted that such an evaluation of a bank's small business loans and small farm loans, along with home mortgage loans, is consistent with longstanding interpretation of the core focus of the CRA and regulatory practice. Some commenters suggested that the agencies consolidate the six proposed major product lines into a smaller number—between two and four product line types—including some sentiment that small business loans and small farm loans could be considered as a combined product line category. As discussed above in the section-by-section analysis of final § ____.22(d)(2), commenters advocating for evaluation of fewer product lines under the Retail Lending Test generally indicated that this would simplify the Retail Lending Test evaluation and lessen regulatory burden. Some commenters stated that small farm loans are functionally considered a type of business loan, such that a combined evaluation would be appropriate.

Evaluation of small business credit card loans. A few commenters offered views on evaluating small business credit card loans as part of a bank's small business lending under the distribution analysis of the Retail Lending Test. A commenter stated generally that the agencies should carefully consider whether business credit cards are a good form of small business lending or are near-predatory. This commenter also expressed concerns that, although some banks market credit cards to small businesses, these credit card loans might not be easily distinguished from consumer credit card loans if data collection requirements are not revised.

A few commenters suggested that small business credit card loans should not be evaluated as small business loans. A commenter suggested that credit cards in general, including small business credit cards, should not be in CRA evaluations. This commenter more specifically objected to small business credit card renewals counting as new originations, indicating in support of this objection that small business credit card loans are typically renewed on an annual basis. Another commenter recommended that small business credit card loans should generally not be evaluated as small business loans, but also suggested that larger banks engaging in direct small business credit card lending should retain an option to have these credit card loans evaluated as small business loans. This commenter raised concerns about treating small business credit card loans the same for larger banks as for smaller community banks, due to the different business models these banks may have with respect to this product line. In

[883] *See* OCC, Board, FDIC, NCUA, U.S. Dept. of Treasury Office of Thrift Supervision, "Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks," 75 FR 50801 (Aug. 17, 2010).

[884] A transaction may be partially exempt if a bank is eligible for partial exemptions. A bank eligible for partial exemptions does not need to collect and report certain data on HMDA reportable transactions. *See generally* 12 CFR 1003.3(d) and associated Official Interpretations.

[885] *See* proposed § ____.22(a)(4)(i)(D) and (E).

[886] The agencies also received comments on evaluating small business lending as a community development activity, which, along with the agencies' proposed and final rules on the economic development category of community development, are discussed in the section-by-section analysis of final § ____.13(c). In addition, the section-by-section analysis in of final § ____.12 discusses comments on the proposed definitions of small business, small business loan, small farm, and small farm loan.

particular, the commenter thought that evaluating small business credit card loans as small business loans in a uniform manner across banks would disadvantage smaller banks that engage in indirect credit card lending with affiliates or partner lenders, compared with larger banks that have small business credit card direct lending programs.

Some commenters supported qualitative evaluation of small business credit card lending. A commenter stated that the agencies should analyze the pricing and terms of all loans, including small business credit card loans, to ensure that these products are meeting local needs and not extracting wealth. A few commenters indicated similar interest in ensuring that small business credit card loans be subject to a qualitative evaluation, expressing support for evaluating small business credit card loans under both the proposed Retail Lending Test and the proposed Retail Services and Products Test. One of these commenters specifically stated that the agencies should consider factors such as repayment rates and the affordability of credit card terms in evaluating small business credit card loans.

Final Rule

In general.[887] In final § ____.22(d)(1)(ii) and (iii), the agencies have provided that they will evaluate the distribution of a bank's originated and purchased small business loans and small farm loans as separate major product lines under the Retail Lending Test. Specifically, the agencies will evaluate the distribution of a bank's small business loans and small farm loans in facility-based assessment areas and in an outside retail lending area in which small business loans and small farm loans constitute major product lines. Additionally, as discussed in the section-by-section analysis of final § ____.17, the agencies will evaluate the distribution of a bank's small business lending as a major product line in retail lending assessment areas if small business loans meet or exceed the delineation threshold provided in final § ____.17(c)(2).

Separate evaluation of small business loans and small farm loans. In determining to evaluate small business loans and small farm loans as separate major product lines under the Retail Lending Test, the agencies considered that this approach is consistent with the current large bank lending test[888] and ensures continuity in the evaluation of these two product lines. Additionally, the agencies believe that small business loans and small farm loans should be evaluated separately because these products can serve distinct borrower groups with different challenges and credit needs.[889] The agencies believe that the additional visibility provided by separate evaluations of a bank's small business loans and small farm loans better facilitates determining whether a bank is helping to serve the credit needs of small businesses and small farm as part of the bank's entire community. The agencies expect that the final rule's distribution analysis for small business loans to small businesses and small farm loans to small farms with gross annual revenues of $250,000 or less and for small business loans to small businesses and to small farm loans to small farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million, as discussed in the section-by-section analysis of final § ____.22(e)(2)(ii)(C) and (D), will provide additional clarity regarding how banks are serving the needs of these different types of borrowers.

The agencies considered, but are not adopting, an alternative approach of combining small business loans and small farm loans into a single major product line category, and evaluating the distribution of these loans on a combined basis. The agencies considered that this alternative approach would reduce complexity for banks that would otherwise have both a small business and small farm product line, by reducing the total number of product lines and associated metrics, benchmarks, and performance ranges. However, as discussed above, the agencies determined that defining small business loans and small farm loans as separate categories would bring the important benefits discussed above of consistency with the current approach, and provide greater visibility into how a bank has served the credit needs of its community. In light of these considerations, the final rule maintains the current and proposed approach of evaluating small business loans and small farm loans as separate major product lines.

Evaluation of small business credit card loans. The final rule retains the current and proposed approaches of including small business credit card loans as small business loans when evaluating a bank's retail lending. The agencies believe that evaluating small business credit card loans is important due to the role these loans can play in providing short-term financing for small businesses and small farms. Based on supervisory experience, the agencies believe that small business credit card loans can provide liquidity to small businesses and small farms that addresses key short-term credit needs, such as providing working capital, facilitating cash flow, and meeting unexpected expenses. As a result, the agencies believe that considering small business and small farm financing comprehensively is important for a broader understanding of how banks are meeting the credit needs of their communities. In addition, the agencies considered that including small business credit card loans in the distribution analysis of a bank's small business lending allows appropriate flexibility for a bank to meet community credit needs in a way that accords with the bank's business model and strategy. For these reasons, as well as for simplicity, clarity, and consistency with the current framework, the agencies will continue to consider small business credit card loans as part of the small business product line.

Regarding treatment of small business credit card renewals in particular, the agencies note that the final rule is consistent with current guidance, which provides that a bank should collect and report its refinanced or renewed small business loans and small farm loans as loan originations, but that a bank may only report one origination per loan per year, unless an increase in the loan amount is granted.[890] When the agencies transition to using section 1071 data for CRA evaluations (as discussed

[887] The transition amendments included in this final rule will, once effective, amend the definitions of ''small business'' and ''small farm'' to instead cross-reference to the definition of ''small business'' in the CFPB Section 1071 Final Rule. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB Section 1071 Final Rule definition of ''small business.'' This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB Section 1071 Final Rule. The agencies will provide the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[888] *See* current 12 CFR ____.22(a).

[889] Data analysis conducted by the agencies of market benchmarks in facility-based assessment areas where small business and/or small farm were a major product line indicated that the median benchmarks for small business lending and small farm lending differed significantly, reinforcing the agencies' view that the credit needs and opportunities associated with the two lending product lines are distinct and should be evaluated separately.

[890] Renewals of lines of credit for small businesses and small farms are treated in the same manner as renewals of small business loans and small farm loans. *See* Q&A § ____.42(a)—5. The treatment of renewals and refinancings pursuant to the Community Development Financing Test (and the Community Development Financing Test for Limited Purpose Banks and Intermediate Bank Community Development Evaluations) is discussed in the section-by-section analysis of final § ____.24.

in the section-by-section analyses of final §§ ____.12 and ____.22(e)), renewals will be considered to the extent that they are reported under section 1071.[891]

The agencies considered, but are not adopting, a commenter suggestion to separately evaluate direct and indirect small business credit card loans. The agencies believe that evaluating small business loans and small farm loans conducted through both direct and indirect channels contributes to a more comprehensive and consistent review of the ways in which a bank is meeting its community's credit needs. As similarly discussed in the section-by-section analysis of § ____.22(d)(1)(iv), regarding automobile lending, not distinguishing between direct and indirect small business loans is intended to ensure consistency across product lines, facilitating certainty, predictability, and transparency regarding distribution analysis. At the same time, the agencies recognize that performance context, including a bank's business strategy and product offerings, is a key factor to consider in assessing a bank's CRA performance. For this reason, the agencies may consider performance context factors that are not accounted for in the Retail Lending Test's metrics and benchmarks, including consideration of whether a bank's lending in a major product line was primarily through direct or indirect channels, when assigning Retail Lending Test conclusions.[892]

In determining to evaluate small business credit card loans within the small business product line as part of the Retail Lending Test distribution analysis, the agencies also considered that the Retail Services and Products Test will evaluate other aspects of a bank's small business credit card lending. Specifically, as explained in the section-by-section analysis of final § ____.23, the agencies will qualitatively evaluate whether a bank's credit products and programs, which may include small business credit card lending, are responsive to the needs of the bank's community, consistent with safe and sound operations.[893]

In addition, the agencies considered commenter sentiment that small business credit card lending may not in all cases appropriately serve the credit needs of a bank's community. The agencies note that these considerations are part of the agencies' consumer compliance examinations and, where applicable, pursuant to final § ____.28(d), the agencies' evaluation of a bank's CRA performance would take into consideration evidence of discriminatory or other illegal credit practices.

In determining to include small business credit card loans within the small business product line, the agencies have also considered how the mixture of different product types included in the small business product line could impact the Retail Lending Test distribution analysis for different banks. For example, the agencies considered that when evaluating the small business lending of a bank that primarily offers one small business loan product and does not offer small business credit cards, the market benchmarks used in the bank's distribution analysis may not reflect the bank's product offerings. In such circumstances, the agencies may consider the bank's business strategy and product offerings, pursuant to § ____.21(d)(5), when assigning Retail Lending Test conclusions for this bank, which the agencies believe will address cases in which additional considerations are necessary to inform the distribution analysis.

Section ____.22(d)(1)(iv) Automobile Loans

The agencies proposed to evaluate the distribution of a bank's automobile loans using a metrics-based approach under the Retail Lending Test. Under the proposed approach, automobile loans would be evaluated in a facility-based assessment area, retail lending assessment area, or outside retail lending area if the bank's originated and purchased automobile loans are a major product line in such facility-based assessment area, retail lending assessment area, or outside retail lending area.

The agencies received feedback on the proposal to evaluate the distribution of a bank's automobile loans under the Retail Lending Test from a variety of commenters expressing a range of views regarding whether the agencies should evaluate automobile loans under the distribution analysis component of the Retail Lending Test when automobile loans constitute a major product line, with some commenters supporting the proposed approach, and other commenters recommending an alternative approach for evaluating automobile loans, such as a qualitative evaluation approach. Some commenters also disagreed about the types of automobile loans that the agencies should be considered in the distribution analysis, especially indirect automobile loans.

The agencies are adopting the proposal to evaluate the distribution of a bank's automobile loans under the Retail Lending Test, with certain changes. Specifically, under the final rule, the agencies only evaluate automobile loans under the distribution analysis component of the Retail Lending Test if (1) automobile lending constitutes a majority of the bank's retail lending, or (2) the bank opts to have its automobile loans evaluated. In these cases, the agencies evaluate the distribution of a bank's originated and purchased automobile loans, including indirect automobile loans, in facility-based assessment areas or outside retail lending area in which automobile loans constitute a major product line.

The Agencies' Proposal

The agencies proposed in § ____.22(a)(4)(i)(F) to include a bank's automobile lending in the distribution analysis under the Retail Lending Test if automobile loans constitute a major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area. Under the proposal, automobile loans would be the sole consumer loan type evaluated under the distribution analysis component of the Retail Lending Test.[894] The agencies explained in the preamble to the proposed rule that automobile loans should be evaluated under the Retail Lending Test because automobile loans can be important in areas where jobs are located a significant distance away from an individual's residence, particularly where public transportation is not readily available. The agencies also explained that automobile loans can serve as a means for consumers to build a credit history.

The agencies requested feedback on whether the benefits of evaluating automobile lending under the distribution analysis component of the

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[891] *See* 12 CFR 1002.104.

[892] *See, e.g.,* the section-by-section analysis of final §§ ____.21(d) and ____.22(e) and (g).

[894] Under the proposal, automobile loans and other types of consumer loans could also be considered under the responsive retail lending products and programs prong of the Retail Services and Products Test. The proposed treatment of automobile loans and other consumer loans would thus depart from the practice of the current CRA regulations, under which the geographic and borrower distributions of a bank's motor vehicle, credit card, other secured, and unsecured loans are evaluated as separate consumer loan categories under the lending test if consumer lending constitutes a substantial majority of a bank's business. *See* current 12 CFR ____.22(a)(1). 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.

Retail Lending Test would outweigh other considerations such as the impact of data collection and reporting requirements on banks. The agencies also asked whether they should instead adopt a qualitative approach to evaluating automobile lending for all banks.

Comments Received

Evaluation of automobile loans under the Retail Lending Test distribution analysis. A few commenters expressed support for evaluating the distribution of a bank's automobile loans under the Retail Lending Test as proposed. In general, these commenters stated that including automobile lending in the distribution analysis would make the evaluation of a bank's retail lending more comprehensive and would encourage this type of lending to low- or moderate-income borrowers.

Other commenters recommended that the agencies pair the metrics-based evaluation of automobile lending with a qualitative assessment that considers whether a bank's automobile lending program is, for example, conducted in a safe and sound manner, compliant with consumer lending laws, meeting consumer needs, and promoting climate resiliency.

However, most commenters that addressed the evaluation approach for automobile loans opposed or expressed significant concerns with evaluating automobile loans under the distribution analysis of the Retail Lending Test as proposed. Many of these commenters explicitly stated that the agencies should evaluate automobile lending purely qualitatively, with several commenters specifying that the evaluation should take place only under the Retail Services and Products Test. Another commenter observed that banks lack a historical foundation to estimate expected performance for new retail product lines that the agencies proposed to evaluate under the distribution analysis component of the Retail Lending Test, such as automobile lending and multifamily lending.

Commenters that opposed or expressed concerns with evaluating the distribution of a bank's automobile loans under the Retail Lending Test discussed a number of issues, including the nature and composition of the automobile finance market; potential data issues associated with a metrics-based approach; the objectives of the CRA; and possible unintended consequences with the proposed quantitative approach.

First, a number of these commenters asserted that the banking industry represents a relatively small percentage of the overall automobile lending market and described the market as being heavily composed of nonbanks, credit unions, and captive finance companies, none of which are subject to CRA. Further, these commenters stated that most banks conduct automobile lending primarily through indirect channels via partnerships with third parties that remain primarily responsible for marketing, originating sales, and financing for customers. For these reasons, these commenters asserted that banks have limited control over the geographic and borrower distributions of automobile loans. Thus, these commenters stated that automobile loans are unsuitable for a metrics-based evaluation under the proposed Retail Lending Test.

Second, some commenters stated that the agencies' proposal to limit data collection and reporting requirements for automobile lending to banks with assets of over $10 billion would create a universe of reporters that would capture only a small segment of total bank automobile lending. These commenters stated that this incomplete dataset would lead to inaccurate market benchmarks under the proposed Retail Lending Test for this product line. To address this issue at least one commenter recommended expanding the automobile lending data requirements to all large banks, and to wholesale and limited purpose banks with assets over $10 billion.

Third, some commenters asserted that the proposed approach for evaluating a bank's automobile lending performance would be inconsistent with their view of the CRA's historic focus and mission, and with the evaluation of consumer loans under the current rule. Specifically, these commenters expressed that the CRA focuses on home mortgage and small business loans for low- or moderate-income individuals, communities, and small businesses, and not on depreciable assets such as automobiles. These commenters further maintained that adding automobile lending as a major product line would deemphasize other wealth-building products. For this reason, a few commenters recommended that, if the metrics-based approach to evaluating automobile loans is retained, the agencies should cap the weight and impact of automobile loans in each assessment area so as not to dilute the impact of more important loan products, especially home mortgage and small business loans. Relatedly, a few commenters stated that the agencies did not provide supporting data or analysis demonstrating that automobile loans facilitate job access and credit building, or otherwise justifying the special treatment of automobile loans compared to other types of consumer loan products.

Finally, a few commenters shared viewpoints on potential unintended consequences that could result from the evaluation of the distribution of a bank's automobile loans under the proposed Retail Lending Test. For example, some of these commenters warned that banks may elect to scale back their automobile lending, may exit the automobile lending market entirely, or may become less attractive to automobile dealers than nonbank providers if banks require dealers to take certain actions to comply with CRA. As a result, these commenters stated that the proposal would lead to a reduction in the availability of safe, responsible automobile loans, and ultimately leave the automobile lending market to nonbank lenders not subject to the CRA.

Types of automobile loans considered. A number of commenters addressed the types of automobile loans that the agencies should include or exclude from consideration if automobile loans are evaluated under the distribution analysis component of the Retail Lending Test. For example, a commenter encouraged the agencies to define automobile lending as all automobile lending, including automobile purchase loans, loans to consumers for household purposes that are secured by automobiles, and automobile refinance lending, stating that all of these loan products are important means of establishing and building credit for low- or moderate-income individuals.

Several commenters recommended excluding, or otherwise expressed concerns with, indirect automobile loans due to the limited role that banks play in indirect automobile lending. At least one such commenter recommended that if the agencies do not exclude indirect automobile loans from evaluation, then the agencies should evaluate direct and indirect automobile loans as separate product lines under the distribution analysis. At least one other commenter recommended that the agencies consider performance context and qualitative factors to a greater extent when evaluating indirect automobile loans. A different commenter similarly stated that it would be unfair to compare a direct to an indirect automobile lender, and recommended that the agencies consider a bank's automobile lending volume and business model in determining whether and how to evaluate the bank's automobile lending, including what automobile lending data requirements apply to the bank.

By contrast, a few commenters stated that the agencies should consider and scrutinize a bank's indirect automobile lending, emphasizing that indirect automobile loans may be predatory.

Final Rule

For the reasons discussed below, the agencies are adopting the proposal, with substantive modifications, to evaluate the distribution of a bank's automobile loans under the Retail Lending Test pursuant to final § ____.22(d)(1)(iv). As discussed above in the introduction to the section-by-section analysis of § ____.22, under the final rule, automobile loans are only evaluated under the Retail Lending Test, including the distribution analysis, if the bank is a majority automobile lender, as defined in § ____.12, or if the bank opts to have its automobile loans evaluated. In these cases, under the final rule the agencies will evaluate the distribution of a bank's originated and purchased automobile loans, including indirect automobile loans, in the bank's facility-based assessment areas and, as applicable, outside retail lending area.[895]

Evaluation of automobile loans under the Retail Lending Test distribution analysis. The agencies believe it is appropriate to evaluate the distribution of a bank's automobile loans for certain banks using an approach that leverages metrics under the Retail Lending Test. While some commenters expressed that automobile loans are not a wealth-building credit product, the agencies believe that access to automobile loans may increase the incomes and economic mobility of low- and moderate-income individuals through improved access to education, vocational training, and employment opportunities in geographic areas where public transportation is not readily available. Furthermore, automobile loans represent the second largest category of household debt in terms of total debt outstanding, after home mortgages, and slightly greater than student loans.[896] Inclusion of automobile loans in the retail lending distribution analysis thus reflects the importance of this product line to low- and moderate-income borrowers and communities.

The agencies considered adopting a purely qualitative approach, without a distribution analysis, to evaluating automobile loans, as some commenters suggested. However, the agencies believe that a qualitative approach would be less transparent and less predictable than a distribution analysis, and thus, would not be consistent with the agencies' objectives. In addition, and as discussed in the section-by-section analysis of final § ____.23(c), automobile loans may also be qualitatively evaluated under the Retail Services and Products Test, which considers whether a bank's credit products and programs are, consistent with safe and sound operations, responsive to the credit needs of the bank's entire community, including the needs of low- and moderate-income individuals and residents of low- and moderate-income census tracts. The Retail Services and Products Test would therefore allow the agencies to assess qualitative aspects of a bank's automobile lending (such as affordability), as many commenters recommended.

The agencies have considered other commenter concerns regarding the significant role that nonbank lenders represent in the automobile lending market, and regarding the banking industry's relatively small percentage of the automobile lending market. However, based on supervisory experience and agency analysis, the agencies are aware that, for a particular bank, automobile lending may be a significant share of its retail lending. Therefore, the agencies believe it is appropriate to evaluate the distribution of certain banks' automobile loans to ensure these banks are meeting the automobile financing credit needs of their entire communities.

The agencies have also considered some commenters' concerns that the market benchmarks that the agencies proposed to use in evaluating the distribution of a bank's automobile loans could be incomplete or skewed due to the limited applicability of the proposed automobile lending data requirements or the differences between the business models of banks that make automobile loans. As discussed further in the section-by-section analysis of § ____.22(e), the agencies have determined that there would be insufficient bank automobile lending data necessary to construct suitable market benchmarks and corresponding performance ranges. In light of this determination, under the final rule, a bank's geographic and borrower distributions with respect to automobile lending are compared only to community benchmarks, and not to market benchmarks. Thus, the agencies will develop supporting conclusions regarding the distribution of a bank's automobile lending without the use of performance ranges, similar to how the agencies evaluate consumer loans in CRA examinations under the current regulation. The agencies believe the changes in the final rule, relative to the proposal, resolve the potential issues noted by commenters regarding the reliability of the market benchmarks for automobile lending, because market benchmarks will not be used under the final rule approach for automobile lending.

The agencies also considered the range of views expressed by commenters about the potential impact of evaluating the distribution of a bank's automobile loans under the Retail Lending Test, with some commenters predicting that such an evaluation approach would encourage more automobile lending, and other commenters warning that banks would withdraw from the automobile loan market. As discussed above, however, under the final rule, evaluation of automobile loans under the distribution analysis component of the Retail Lending Test is optional for the vast majority of banks. For this reason and based on the other changes to the evaluation approach to automobile lending discussed above, the agencies believe that the final rule approach to evaluating automobile lending is reasonable and appropriately tailored.

Treatment of indirect automobile loans. Under the final rule approach, the agencies evaluate the distribution of a bank's automobile loans without regard to whether the loans are originated or purchased through direct or indirect channels. In making this determination, the agencies have considered commenter concerns regarding indirect automobile loans, including commenters recommending that indirect automobile loans be excluded from the distribution analysis. However, based on supervisory experience, the agencies are aware that indirect automobile loans may represent a significant majority of automobile loans for certain banks, and that excluding indirect automobile loans from evaluation may therefore provide an incomplete picture of a bank's

[895] The agencies proposed to also evaluate the distribution of a large bank's automobile loans in retail lending assessment areas if such loans constitute a major product line. However, as discussed in greater detail in the section-by-section analysis related to § ____.17(d), under the final rule, only closed-end home mortgage loans and small business loans are evaluated in retail lending assessment areas.

[896] *See* Federal Reserve Bank of New York, Center for Microeconomic Data, ''Total Household Debt Reaches $17.06 Trillion in Q2 2023; Credit Card Debt Exceeds $1 Trillion'' (Aug. 8, 2023), *https://www.newyorkfed.org/newsevents/news/research/2023/20230808*; *see also Household Debt and Credit Report (Q2 2023), https://www.newyorkfed.org/microeconomics/hhdc.*

automobile lending.[897] In addition, excluding indirect loans from the automobile loan product line would be inconsistent with other major product lines evaluated under the distribution analysis of the Retail Lending Test, which do not exclude indirect loans.

The agencies have also determined that an alternative approach of separately evaluating the distribution of a bank's direct and indirect automobile loans would increase complexity in the Retail Lending Test evaluation and could require setting separate major product line thresholds for these two types of automobile lending. Furthermore, the agencies note that aggregating direct and indirect automobile loans is consistent with how a bank reports its automobile loans on its Call Report, which does not distinguish direct and indirect lending.

Product Lines Excluded From Retail Lending Distribution Analysis

Open-End Home Mortgage Loans

The Agencies' Proposal

The agencies proposed to evaluate all open-end home mortgage loans secured by a one- to four-unit dwelling as a separate product line under the Retail Lending Test.[898] The agencies proposed that this product line would include home equity lines of credit and other open-end lines of credit secured by a dwelling, excluding multifamily loans.[899] The agencies explained that they recognized that closed-end home mortgage loans and open-end home mortgage loans serve distinct purposes for low- and moderate-income borrowers and communities and are sufficiently different to warrant separate evaluation.

The agencies proposed to use a distribution analysis to evaluate all open-end home mortgage loans under the approach described in the Retail Lending Test.[900] However, the agencies also sought feedback on whether to instead solely evaluate open-end home mortgage loans qualitatively under the proposed Retail Services and Products Test. The agencies noted that a qualitative review under the Retail Services and Products Test would focus on the responsiveness of open-end home mortgage loans, which might be appropriate given the range of potential uses for an open-end home mortgage loan. Similarly, the agencies noted that lower lending volumes for open-end home mortgage loans might limit the usefulness of market benchmarks under the Retail Lending Test for an open-end home mortgage product line, particularly in assessment areas with limited open-end home mortgage lending.

Comments Received

A few commenters supported the proposal to evaluate open-end home mortgage loans quantitatively under the proposed Retail Lending Test. A commenter stated that evaluating open-end mortgage loans only under the Retail Services and Products Test would be too subjective. Another commenter emphasized the importance of open-end home mortgage loans for providing ready access to capital for home improvement or emergency repairs.

A few commenters expressed support for the proposed approach of evaluating open-end home mortgage loans under both the Retail Lending Test and the Retail Services and Products Test. A commenter favored evaluating the distribution of a bank's open-end home mortgage lending under the proposed Retail Lending Test and whether these products have features responsive to low- and moderate-income community needs under the proposed Retail Services and Products Test. Another commenter suggested that the agencies evaluate open-end home mortgage loans qualitatively under the Retail Services and Products Test due to lower volumes, but also include open-end home mortgage loans in the retail lending volume screen and ensure a quantitative evaluation of the distribution of these loans if demand for these loans increases. Another commenter supported evaluating the distribution of a bank's open-end home mortgage loans and also recommended evaluating pricing and terms of home equity loans, suggesting that home equity lines of credit can be wealth-extracting.

In contrast, several commenters suggested that open-end home mortgage loans should not be evaluated quantitatively under the proposed Retail Lending Test and should be evaluated solely under the proposed Retail Services and Products Test. Some of these commenters reasoned that evaluating the distribution of open-end home mortgage loans is not appropriate because many banks are not required to report these loans under HMDA, which would limit the usefulness of Retail Lending Test market benchmarks. A commenter asserted that open-end home mortgage loans would be unlikely to qualify as a Retail Lending Test major product line. Another commenter reasoned that market conditions can vary significantly among local geographic areas and that market uncertainty can be accounted for under a qualitative approach but not under a quantitative approach. This commenter also warned that some lenders use risk-based pricing and high loan-to-value ratios to underwrite home equity loans, raising safety and soundness concerns.

Other commenters suggested that the agencies should conduct more research to analyze the extent to which open-end home mortgage lending is critical for low- and moderate-income households in meeting needs and whether such lending is affordable and sustainable before determining whether open-end home mortgage loans should be evaluated under the proposed Retail Lending Test or the proposed Retail Services and Products Test.

Final Rule

Under the final rule, the agencies will not evaluate a bank's open-end home mortgage lending using the Retail Lending Test's distribution analysis.[901] The agencies will evaluate all of a large bank's retail lending, including its open-end and closed-end home mortgage lending, for responsiveness to the credit needs of its community under the Retail Services and Products Test in final § ____.23 (discussed in detail in the section-by-section analysis of final § ____.23). Closed-end home mortgage lending would also be evaluated under the Retail Lending Test distribution analysis, as discussed above, while open-end home mortgage lending would not be included in this analysis. Additionally, intermediate banks and small banks may request additional consideration for responsive retail products and programs, including open- and closed-end home mortgage products and programs.[902] Consistent with the proposal, the final rule also provides that originations and purchases of open-end home mortgage loans will continue to be quantitatively considered as part of the Bank Volume Metric of the Retail

[897] *See* Andreas Grunwald, Jonathan Lanning, David Low, and Tobias Salz, ''Auto Dealer Loan Intermediation: Consumer Behavior and Competitive Effects,'' National Bureau of Economic Research Working Paper 28136 (Nov. 2020), *https://www.nber.org/system/files/working_papers/w28136/w28136.pdf*.

[898] *See* proposed § ____.22(a)(4)(i)(B). The agencies proposed in proposed § ____.12 to define ''open-end home mortgage loan'' to have ''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 [§ ____.12].''

[899] *See* proposed § ____.22(a)(4)(i)(B).

[900] *See* proposed § ____.22(b) through (d).

[901] As discussed in the section-by-section analysis of final § ____.12, the final rule defines ''open-end home mortgage loan'' as follows: ''*Open-end home mortgage loan* has the same meaning given to the term ''open-end line of credit'' in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in [§ ____.12].''

[902] *See* the section-by-section analysis of final § ____.21.

Volume Lending Screen applied in facility-based assessment areas for all banks subject to the Retail Lending Test.[903]

In determining to evaluate open-end home mortgage lending under the Retail Services and Products Test and not also as a major product line under the distribution analysis of the Retail Lending Test, the agencies considered a number of factors. First, the agencies considered that, although open-end home mortgage loans can help to meet important community credit needs, these products may involve unique risks, in part because they are designed to allow borrowers to reduce equity in their homes at irregular intervals and often involve variable interest rates. These risks are not considered under the Retail Lending Test distribution analyses. In addition, the agencies also considered that open-end home mortgage loans include a heterogeneous mixture of unique product types that are designed to serve a wide variety of consumer credit needs. As a result, evaluating all open-end home mortgage loans as a single product line would include a mixture of product types within a single product line, such as open-end home equity lines of credit and open-end reverse mortgage loans. Evaluating these products on a combined basis may result in market benchmarks that are not an appropriate point of comparison for a bank that specializes in only one specific open-end home mortgage loan product type. Alternatively, further separating open-end home mortgage loans into additional product lines would increase the complexity of the Retail Lending Test approach and may result in instances where a bank has too few loans in any specific open-end home mortgage loan product line to evaluate as a major product line.

The agencies also believe that excluding open-end home mortgage loans from the distribution analysis in the final rule appropriately reduces complexity associated with the Retail Lending Test, and is responsive to commenter concerns in that regard.[904] However, the agencies acknowledge commenter feedback that evaluating open-end home mortgages solely under a qualitative approach in the Retail Services and Products Test would result in additional subjectivity relative to a quantitative approach. While a distribution analysis of open-end home mortgage lending may support a more consistent and standardized evaluation compared to a fully qualitative approach, for the reasons discussed above, the agencies believe it is preferable not to designate open-end home mortgage loans as a product line subject to a distribution analysis. At the same time, the agencies believe that retaining some measure of a quantitative evaluation of open-end home mortgage loans is appropriate. The final rule achieves this balance by evaluating these loans qualitatively under the Retail Services and Products Test and quantitatively under the Retail Lending Test, by incorporating them into the Retail Lending Volume Screen for all banks subject to the Retail Lending Test in their facility-based assessment areas. The agencies believe that considering a bank's open-end mortgage lending under the credit products and programs component of the Retail Services and Products Test will best focus evaluations on whether these products are responsive to the credit needs of communities, including low- and moderate-income individuals and census tracts.

Exclusion of Multifamily Loans

In the final rule, the agencies have decided that they will not evaluate multifamily lending under the distribution analysis of the Retail Lending Test. Rather, as discussed in the section-by-section analyses of §§ ____.13, ____.23, and ____.24, multifamily lending may be evaluated under the Retail Services and Products Test, the Community Development Financing Test, the Community Development Financing Test for Wholesale and Limited Purpose Banks, the Intermediate Bank Community Development Test, and the Small Bank Lending Test, as applicable.

The Agencies' Proposal

The agencies proposed in § ____.22(a)(4)(i)(C) to evaluate multifamily loans as a major product line using the distribution metrics under the proposed Retail Lending Test.[905] The agencies noted that this approach would recognize the role of multifamily loans in helping to meet community credit needs, such as financing housing in different geographies and for tenants of different income levels. In addition, the agencies sought feedback on standards for determining when to evaluate multifamily loans under the Retail Lending Test, if included as a major product line in the final rule approach. As discussed further in the section-by-section analyses of final §§ ____.13 and ____.22, and consistent with the approach under the current CRA regulations,[906] the agencies also proposed: (1) consideration of multifamily loans that provide affordable housing to low- or moderate-income individuals under the proposed Community Development Financing Test, the Community Development Financing Test for Wholesale or Limited Purpose Banks, or the intermediate bank community development evaluation; and (2) that 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 loan considered under the Retail Lending Test, or, if the loan is a qualifying activity pursuant to proposed § ____.13, under the Community Development Financing Test or the intermediate bank community development performance standards.[907]

The agencies proposed that a bank's multifamily lending performance under the Retail Lending Test would be evaluated using loan count, as was the case under the proposal for other major product lines evaluated using the Retail Lending Test's distribution analysis.[908] The agencies proposed to evaluate multifamily loans using only geographic distribution analysis and not borrower distribution analysis. As a result, under the proposal, borrower income, tenant income, and housing affordability would not factor into the evaluation of multifamily loans under the Retail

[903] *See* the section-by-section analysis of final § ____.22(c); final appendix A, paragraph I.a.1.

[904] Analysis of historical lending data showed that excluding open-end home mortgage loans reduced the number of major product lines for approximately 1,500 facility-based assessment areas (approximately 20 percent of facility-based assessment areas for large banks and intermediate banks included in the analysis), in which open-end home mortgage lending would have been a major product line under the proposal. This analysis used 2018–2020 data for facility-based assessment areas from the CRA Analytics Data Tables. The number of facility-based assessment areas with fewer product lines is calculated as the number of facility-based assessment areas that would have fewer product lines when removing open-end mortgages from the major product line calculation, compared to an approach with four product lines (closed-end home mortgage loans, open-end home mortgage loans, small business loans, and small farm loans). Major product lines were determined in this analysis using the final rule major product line threshold of at least 15 percent of a bank's retail lending based on the average of loan count and loan amount.

[905] The agencies proposed in proposed § ____.12 to define "multifamily loan" to mean "a loan for a 'multifamily dwelling' as defined in 12 CFR 1003.2(n)."

[906] *See* current 12 CFR ____.12(g)(1) and (h) and ____.22(b)(4).

[907] *See* proposed § ____.12 (definition of "community development loan"); *see also* proposed § ____.22(a)(5).

[908] *See* proposed appendix A, paragraph III.1.

Lending Test.[909] Given the general lack of available borrower income data with respect to multifamily loans, and that many are made to entities that do not report personal income, the agencies explained that distribution analysis based on borrower income would not meaningfully measure whether multifamily loans met community credit needs. The agencies sought feedback on whether an alternative measure of geographic loan distribution for multifamily lending would be preferable, such as the number of units a bank's multifamily lending financed in low- and moderate-income census tracts. The agencies suggested that this measure may better accord with the benefit the bank's lending brought to its community.

Alternatively, the agencies sought feedback on whether to evaluate multifamily loans only under the Community Development Financing Test. In raising this alternative, the agencies identified potential concerns with evaluating multifamily loans under the Retail Lending Test. Specifically, the agencies noted that the Retail Lending Test distribution analysis of multifamily loans, which would include a geographic distribution and not a borrower distribution, may not effectively measure a bank's record of serving the credit needs of its community. For example, the geographic distribution of a bank's multifamily loans would not indicate whether low- and moderate-income individuals benefit from those loans. Relatedly, the proposal noted that the number of multifamily loans made in low- and moderate-income census tracts may not adequately reflect their value to the community. Unlike home mortgage loans, one multifamily loan could represent housing for anywhere from five households to hundreds of households, which could make loan count an inadequate measure for how multifamily loans benefit local communities. The agencies noted that, under the Community Development Financing Test, examiners could evaluate affordability and the degree to which multifamily loans serve low-or moderate-income tenants. The agencies stated that this approach would also avoid double-counting of multifamily lending under the Retail Lending Test and applicable community development financing performance tests. The agencies sought feedback on whether an alternative Retail Lending Test 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- and moderate-income census tracts. The agencies suggested that this measure may better accord with the benefit the bank's lending brought to its community.

The agencies requested additional feedback on whether banks that are primarily multifamily lenders should be designated as limited purpose banks and have their multifamily lending evaluated only under the Community Development Financing Test.

Comments Received

The agencies received a number of comments regarding evaluating multifamily lending under the proposed Retail Lending Test and/or under other performance tests.

Community Development Financing. Most commenters addressing how multifamily loans should be evaluated supported evaluating multifamily loans under the Community Development Financing Test and not under the distribution analysis of the Retail Lending Test, with some of these commenters stating that multifamily loans are largely commercial loans and not retail loans. A number of commenters indicated that the Community Development Financing Test would more appropriately place focus on the affordability of multifamily units to low- and moderate-income residents, rather than on their geographic distribution as would be required under the Retail Lending Test. A few commenters asserted that banks typically have little control over where multifamily loans are located, and that uneven market demand in low- and moderate-income and other areas alike is driven by market trends and governmental incentives. A commenter also emphasized that the geographic distribution analysis would not exclude upscale housing targeted to middle- and upper-income residents.

Some commenters also raised other concerns with evaluating multifamily loans under the Retail Lending Test distribution analysis. For example, a commenter stated that evaluating multifamily loans under the Retail Lending Test would produce a distorted picture of a bank's retail lending performance because multifamily loans have much larger dollar amounts. Another commenter stated that because most banks consider multifamily loans to be commercial loans, there could be logistical challenges in how banks manage the impact of CRA Retail Lending Test distribution requirements on multifamily product lines, such as subjecting a commercial lending business to CRA evaluations for the first time. This same commenter stated that the evaluation of multifamily loans under the Retail Lending Test would be a departure from the agencies' previous focus on home mortgage loans and small business loans, and asserted that, unlike multifamily loans, home mortgage loans and small business loans have been proven to help borrowers and their communities create and sustain wealth. Another commenter raised a concern that evaluating multifamily loans under the Retail Lending Test would cause banks to favor financing multifamily rental properties before making retail loans to low- and moderate-income borrowers or to borrowers in historically low-income geographic areas. In addition, a few commenters stated that HMDA data are too limited to support a reliable Retail Lending Test distribution analysis for evaluating multifamily loans. Some commenters asserted that using loan counts for evaluating multifamily loans under the Retail Lending Test would not allow for sound analysis of loans for different properties. Another commenter stated that a Retail Lending Test geographic distribution analysis of multifamily loans would inappropriately focus on the location of the corporate borrower and not the location of the actual property benefitting and moderate-income individuals.

Some commenters expressed concerns regarding the proposed major product line thresholds and the inclusion of multifamily loans as a major product line. Several commenters stated that multifamily lending for most banks would not exceed the proposed Retail Lending Test's 15 percent major product line threshold, underscoring the importance of evaluating multifamily loans under the Community Development Financing Test. In contrast, a different commenter stated that the large dollar size of multifamily loans may account for a significant percentage of a bank's loan volume, potentially making it less likely for other product lines of the bank to surpass the major product line standard.

Dual Consideration. Some commenters supported multifamily loans being evaluated under both the Retail Lending Test and the Community Development Financing Test. These commenters generally suggested that evaluating multifamily loans under both proposed performance tests would appropriately reflect the importance of this product line to low- and moderate-

[909] *See* proposed § ____.22(d)(2)(ii) and (iii) (including multifamily lending in the geographic distribution analysis and excluding multifamily lending from the borrower distribution analysis).

income communities and would not be duplicative because each performance test would evaluate different aspects of a bank's multifamily lending. A commenter urged the agencies to evaluate both the geographic and borrower distributions of a bank's multifamily lending, noting that there is evidence that minority developers are less likely to receive financing from traditional banks. Another commenter suggested that the agencies consider additional Retail Lending Test evaluation criteria for multifamily lending that would generally focus on the affordability, stability, and quality of the housing (by considering, for example, whether the housing is subsidized, unsubsidized, rent-regulated, or market rate, as well as housing conditions and eviction rates). A commenter recommended that the agencies evaluate multifamily loans financing unsubsidized properties under the Retail Lending Test and multifamily loans financing subsidized properties under the Community Development Financing Test. This commenter noted that unsubsidized properties are not part of a concerted government preservation or revitalization strategy and do not have long-term affordability restrictions.

In contrast, several commenters suggested that evaluating multifamily loans under both the Retail Lending Test and the Community Development Financing Test would create undesirable incentives for banks. For example, a commenter warned that consideration under both performance tests could incentivize banks to finance multifamily housing in low- and moderate-income census tracts regardless of affordability and whether it would help or hurt low- and moderate-income individuals and communities. A few other commenters expressed the view that considering multifamily loans under both performance tests would incentivize banks to make affordable housing loans over equity investments. These commenters noted that equity investments in affordable housing are generally more responsive to low- and moderate-income community needs compared to affordable housing loans and involve more complex bank involvement.

Evaluation of multifamily loans under either the Retail Lending Test or the Community Development Financing Test. A few commenters stated that it would be appropriate to evaluate multifamily loans under either the Retail Lending Test or the Community Development Financing Test, but not both. For example, a commenter recommended that multifamily loans that qualify for consideration under the Community Development Financing Test should be evaluated only under that performance test so as not to reduce banks' incentives to finance specific types of housing, such as naturally occurring affordable rental housing. Another commenter recommended evaluating multifamily loans solely under the Community Development Financing Test for most banks, but suggested that banks that specialize in multifamily lending should be given the option to classify multifamily loans as either retail loans or community development loans due to the proposed heavy weighting of the Retail Lending Test.

Multifamily lenders evaluated as limited purpose banks. Some commenters addressed whether banks that are primarily multifamily lenders should be evaluated as limited purpose banks and should have their multifamily lending evaluated only under the Community Development Financing Test for Wholesale or Limited Purpose Banks. A few commenters supporting this approach suggested that banks that are engaged in 60 percent or more of a certain activity, such as multifamily lending, should be measured against other limited purpose banks so as not to dilute peer group data, which would allow for a more appropriate comparison to peer data. A commenter stated that banks that are primarily multifamily lenders should be designated as limited purpose banks, except that such banks should also be evaluated under the Retail Services and Products Test to the extent that they operate branches and take deposits from, or otherwise serve, the general public. Commenters opposed to evaluating banks that are primarily multifamily lenders as limited purpose banks stated that such banks should be evaluated under the Retail Lending Test to ensure that the geographic distribution of their multifamily lending does not exclude low- and moderate-income communities.

Qualitative factors. Several commenters provided general feedback about multifamily housing, and noted certain considerations that should factor into the CRA evaluation of multifamily lending. In general, these commenters advocated for a more holistic review of a bank's multifamily lending to ensure that it serves low- and moderate-income communities and minority communities. A few of these commenters highlighted that high-cost multifamily housing located in low- and moderate-income areas should not result in displacement of low- and moderate-income individuals. Several of these commenters stated that banks should not finance multifamily housing that displaces or otherwise harms low- and moderate-income and minority tenants (*e.g.,* multifamily housing that does not comply with local housing and civil rights codes, and other applicable laws).

Final Rule

Based on consideration of commenter input and further deliberation, the agencies have decided that they will not evaluate multifamily lending under the distribution analysis of the Retail Lending Test.[910] The agencies have determined that the proposed geographic distribution analysis would not sufficiently evaluate the responsiveness of multifamily lending to community credit needs, including low- and moderate-income credit needs. In particular, the evaluation of a bank's geographic distribution of multifamily loans would not account for housing affordability or whether low- and moderate-income families benefit from these loans, which the agencies believe are essential factors for determining whether a bank's multifamily lending is responsive to local credit needs. In order to consider affordability and benefits to low- and moderate-income communities of multifamily lending within the framework of the Retail Lending Test, the agencies believe it would be necessary to construct market and community benchmarks for these evaluation factors, which the agencies believe would add complexity to the evaluation. In addition, such an approach may be constrained by data limitations, as the agencies are not aware of comprehensive market data on multifamily loan originations and purchases that includes information on the rents charged and income levels of the tenants of the properties financed.

In the absence of benchmarks for housing affordability and benefits to low- and moderate-income families, the agencies believe that a Retail Lending Test evaluation based on a geographic distribution analysis alone would not accurately reflect the responsiveness of a bank's multifamily lending. For example, originating multifamily loans for affordable housing in middle- and upper-income census tracts might be highly responsive to community needs, but a geographic distribution analysis alone would not identify these loans as

[910] Accordingly, the agencies are not including the referenced exclusions included in proposed § ___.22(a)(5) that would have allowed multifamily loans to qualify for both retail lending and community development consideration in certain circumstances.

serving low- and moderate-income individuals and communities.

In addition, the agencies recognize that there are other challenges associated with evaluating multifamily lending under the Retail Lending Test using a distribution analysis. These challenges include that: a limited number of multifamily loan originations in smaller facility-based assessment areas may not support a robust geographic distribution benchmark; the use of loan counts may not reflect the number of housing units supported by multifamily loans; and that multifamily lending may not meet the major product line standard for evaluation for many banks.

The agencies also considered comments that the proposed rule's inclusion of six product lines on the Retail Lending Test could create significant challenges for banks due to the potential complexity of monitoring numerous metrics and benchmarks for each potential major product line. To consider how excluding multifamily lending as a product line on the Retail Lending Test might address these concerns, the agencies analyzed historical lending data. The analysis showed that, applying the final rule's major product line standard to intermediate bank and large bank retail lending during the 2018–2020 period, for banks included in the analysis, approximately 400 facility-based assessment areas would have fewer product lines when multifamily lending is excluded.[911] Consequently, excluding multifamily lending from evaluation under the Retail Lending Test would reduce the number of major product lines evaluated in these bank facility-based assessment areas.

For the reasons described above, the agencies believe that the Retail Lending Test framework is not sufficiently suited to evaluating multifamily lending, neither in combination with the community development performance tests, nor as the sole performance test that evaluates these loans. Instead, the agencies determined that multifamily lending is more appropriately and effectively evaluated solely as community development lending. Accordingly, the final rule provides that if a multifamily loan is a community development loan, the agencies will: (1) for large banks, evaluate the multifamily loan under the Community Development Financing Test; (2) for intermediate banks, evaluate the loan under the Intermediate Bank Community Development Test, or alternatively, under the Community Development Financing Test; (3) for small banks, evaluate the loan under the renamed Small Bank Lending Test; and (4) for limited purpose banks, evaluate the loan under the renamed Community Development Financing Test for Limited Purpose Banks.

The agencies considered, but are not adopting, an approach whereunder banks specializing in multifamily lending would be given the option to classify multifamily loans as either retail loans or community development loans. As discussed above, based on analysis and supervisory experience, the agencies have determined that multifamily lending is not conducive to a distribution analysis under the Retail Lending Test. In addition, as discussed in the section-by-section analysis of final § ____.28 the Community Development Financing Test and Retail Lending Test will be equally weighted at 40 percent each under the final rule, which the agencies believe helps to ensure that a bank's multifamily lending meeting the standards in § ____.13(b) is appropriately factored into its overall ratings.

The agencies have also determined to not evaluate banks that are primarily multifamily lenders as limited purpose banks. As discussed in the section-by-section analyses of final §§ ____.12 and ____.26, a bank, such as a primary multifamily lender, may request designation as a limited purpose bank and, if the relevant agency approves the designation, will be evaluated under the Community Development Financing Test for Limited Purpose Banks. The agencies believe that multifamily lenders designated as limited purpose banks will be appropriately evaluated because a community development financing framework provides a more robust assessment of a bank's overall multifamily lending performance and its responsiveness to serving its communities, including low-and moderate-income communities, than would the Retail Lending Test.

Finally, with respect to qualitative evaluation of multifamily loans, the agencies will evaluate a large bank's multifamily lending for responsiveness to the credit needs of its community under the Retail Services and Products Test in final § ____.23(c)(2). Additionally, intermediate banks and small banks may request additional consideration for their responsive retail products and programs.[912]

Section ____.22(d)(2) Major Product Line Standards

The agencies proposed in § ____.22(d) to evaluate the geographic and borrower distributions of a bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area as applicable, under the Retail Lending Test. To focus the distribution analysis of a bank's retail lending on those products with a greater importance to the bank and its community, the proposal provided that closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, or small farm loans are a major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area if the product line comprised 15 percent or more of a bank's retail lending in the particular area, by dollar amount, over the relevant evaluation period. For automobile loans, the agencies proposed to calculate the 15 percent standard using a combination of the dollar amount and number of loans, recognizing that automobile loans are generally lower in dollar amount compared to other products. The agencies sought feedback on the proposed major product line standards, including whether an alternative standard should apply to multifamily loans in particular.

Commenters submitted a range of feedback on the proposed major product line standards, with a few commenters supporting the proposed major product line approach, but most commenters expressing concerns with or offering alternatives to the proposed approach. In general, these commenters warned that the proposed major product line standards would not necessarily ensure that a bank's major product lines reflect the bank's business model and core product offerings. Some of these commenters recommended alternative major product line standards, such as a standard based on loan counts, a standard based on both loan dollars and loan counts, a market share approach, or an institution-level approach. Commenters also expressed a range of views on the proposed major product line standard for multifamily loans, including for monoline multifamily lenders.

For the reasons discussed below, the final rule adopts a modified version of the proposed major product line

[911] The agencies calculated the number of facility-based assessment areas in the 2018–2020 retail lending test sample that would have fewer major product lines when moving from a product line calculation with four major products (*i.e.,* including multifamily lending) to a product line calculation with only three major products (only closed-end home mortgage, small business, and small farm).

[912] *See* the section-by-section analysis of final § ____.21.

approach. Under the final rule, closed-end home mortgage loans, small business loans, small farm loans, or automobile loans (if automobile loans are a product line for the bank) are major product lines in a facility-based assessment area or outside retail lending area if the bank's loans in the product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the area.[913] This 15 percent standard is calculated based on a combination of loan dollars and loan count, as described further in the section-by-section analysis related to § ____.12 (definition of ''combination of loan dollars and loan count''). In addition, under the final rule, closed-end home mortgage loans or small business loans are a major product line in a retail lending assessment area in any year of the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage loans or small business loans as determined by the standard in final § ____.17(c) (*i.e.,* at least 150 reported closed-end home mortgage loans, or at least 400 reported small business loans in each of the two preceding calendar years).

The Agencies' Proposal

In proposed § ____.22(d), the agencies proposed to evaluate the geographic and borrower distributions of a bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area as applicable, under the Retail Lending Test. Proposed § ____.22(a)(4)(i) defined major product line as retail lending in each of the following six categories: closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans. Proposed § ____.22(a)(4)(ii) specified that closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans are considered a major product line if such loans 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, by dollar amount, over the relevant evaluation period. By contrast, proposed § ____.22(a)(4)(iii) specified that automobile loans are considered a major product line if such loans 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.[914]

The agencies proposed these major product line standards to focus the evaluation of a bank's retail lending products on those products with a greater importance to the bank in a specific community. The agencies further reasoned that the proposed major product line standards would offer increased predictability.

Under the proposal, the major product line standards would apply at the level of a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable. For example, a large bank that primarily extends home mortgage loans and small business loans but also specializes in small farm loans in a handful of rural facility-based assessment areas would, under the proposal, have the geographic and borrower distributions of its small farm loans evaluated in those rural facility-based assessment areas (assuming the small farm lending exceeds 15 percent of the bank's retail lending in those facility-based assessment areas by dollar volume), but not in facility-based assessment areas or retail lending assessment areas where the large bank makes few or no small farm loans. The agencies stated in the proposal that applying the major product line standard at the level of a facility-based assessment area, retail lending assessment area, or outside retail lending area would capture lending that affects local communities, even if such lending might not meet a 15 percent standard at the institution level.

Because the proposed Retail Lending Test divided retail lending into six distinct categories, every facility-based assessment area, retail lending assessment area, or outside retail lending area in which a bank conducts retail lending would have at least one product that represents at least 16.6 percent (or one-sixth) of the dollar volume of its total retail lending in that geographic area. For this reason, the agencies proposed setting the major product line standards at 15 percent—below the 16.6 percent mark—to preclude the possibility of a bank having no major product lines.

In the preamble to the proposed rule, the agencies sought feedback about whether they should use a different standard for determining when to evaluate a bank's closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans under the distribution analysis of the Retail Lending Test, and if so, what should that standard be and why. Additionally, the agencies asked whether they should use a different standard for determining when to evaluate multifamily loans under the distribution analysis of the Retail Lending Test. For example, the agencies suggested that multifamily lending could be considered a major product line only where the bank is a monoline multifamily lender or where the bank is predominantly a multifamily lender within the applicable facility-based assessment area, retail lending assessment area, or outside of facility-based assessment area, as applicable, or at the institution level. The agencies further suggested that ''predominantly'' could mean that multifamily lending ranks first in the dollar amount of a bank's retail lending in a geographic area or that it accounts for a significant percentage of the dollar volume of a bank's retail lending, for example 50 percent. The agencies noted that using a different standard for determining whether multifamily lending is a major product line would help ensure that the agencies assess a bank's relevant multifamily lending performance under the Retail Lending Test.

With respect to automobile loans, the agencies proposed to apply the 15 percent standard using a combination of dollar amount and number of loans, rather than using dollar amount alone. For example, if a bank's automobile lending accounted for 10 percent of its total retail lending dollars and 22 percent of its total retail loans by loan count in a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable, its combined percentage would be 16 percent, and automobile lending would be evaluated as a major product line under the distribution analysis component of the Retail Lending Test. The agencies proposed this modified major product line standard for automobile loans in recognition of the fact that automobile loans are generally lower in dollar amount compared to other products. As such, the agencies were concerned that a threshold of 15 percent of a bank's retail lending calculated based on dollar

[913] Under the final rule, automobile loans are a product line for the bank if the bank is a majority automobile lender as defined in final § ____.12, or if the bank opts to have its automobile loans evaluated pursuant to final § ____.22.

[914] Specifically, the agencies proposed that automobile loans would 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. *See* proposed § ____.22(a)(4)(iii)(B).

amount alone may rarely result in automobile loans being identified as a major product line. By considering both the average of dollar amount and loan count, the agencies' proposal would treat automobile loans as a major product line for banks that would not otherwise meet a standard that considers only dollar volume. The agencies stated in the proposal that this approach recognized that automobile loans can fulfill unique and important credit needs for low- and moderate-income borrowers and communities. The agencies sought feedback in the proposal on whether they should use a different standard for determining when to evaluate automobile loans.

Comments Received

Support for proposed major product line standards. A few commenters supported the proposed major product line standards without modification. For example, at least one commenter stated that the proposed major product line standards would ensure more consistent Retail Lending Test evaluations, provide clarity to banks, reduce reliance on examiner judgment, and ensure that the agencies evaluate the geographic and borrower distributions of all significant areas of a bank's retail lending portfolio.

Concerns with proposed major product line standards. Most commenters that addressed the proposed major product line standards expressed concerns with the proposed approach. While some of these commenters opposed having a major product line standard at all, others supported a major product line standard in concept, but expressed concerns with different aspects of the proposed approach. Many of these commenters suggested alternative approaches to determining whether a product line is a major product line, as discussed below.

In general, commenters that expressed concerns with the proposed major product line standards stated that the proposed standards would not necessarily ensure that a bank's major product lines reflect the bank's business model and core product offerings. For example, a number of commenters stated that the proposed threshold of 15 percent could inadvertently capture products that a bank offers to customers as an accommodation, but that do not represent a core offering of the bank.

Several commenters warned that the proposed major product line standards would result in the agencies evaluating a relatively low percentage of small business lending under the distribution analysis of the Retail Lending Test. For example, a commenter cited an analysis showing that the small business lending of some of the most significant small business lenders in a particular assessment area would not constitute a major product line under the proposed approach. Another commenter estimated that, under the proposed approach, the number of its assessment areas in which the agencies would evaluate the geographic and borrower distributions of its small business lending would decrease from nearly all assessment areas to less than 20 percent of assessment areas. The same commenter noted that the loan amounts associated with a bank's home mortgage lending may be much larger than a bank's small business lending, and, as such, the bank's small business lending might not trigger a major product line, even if the bank has relatively large small business lending market share in its assessment area.

A few commenters emphasized a different concern with the proposed major product line standards, stating that the proposed approach would create uncertainty because banks would not know which products constituted major product lines until examination time, and, as a result, banks' ability to implement credit programs responsive to community needs would be impeded. At least one of these commenters stated that increasing the proposed major product line threshold from 15 percent to a higher threshold would reduce volatility in the application of the distribution analysis component of the proposed Retail Lending Test.

Alternative major product line approaches suggested by commenters. Commenters that opposed or expressed concerns with the proposed major product line standards generally suggested one of four alternative approaches (with some commenters suggesting combinations of these approaches) for determining whether a particular loan product constitutes a major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area: (1) using loan counts; (2) using both loan dollars and loan counts; (3) using a market share approach; or (4) using an institution-level approach.

First, some commenters recommended that the agencies use loan counts, rather than a loan dollar standard as proposed for certain product lines, to determine whether a bank has a major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area. Many of these commenters suggested that a major product line should be triggered where a bank makes more than a threshold number of loans of a particular type in a geographic area, with suggestions ranging from a de minimis number of loans (to capture any bank that routinely makes loans in the product line) to 150 loans per evaluation period. Other commenters that supported using loan counts suggested other alternate approaches. For example, a commenter suggested a major product line standard based on whether: (1) the bank makes more than 30 loans (for small banks) or 50 loans (for large banks) in the product line in the geographic area; or (2) loans in the product line represent at least 15 percent of the bank's retail loans by loan count in the relevant geographic area.

Second, some commenters supported using both loan dollars and loan counts to determine all of a bank's major product lines, instead of only using this approach for automobile lending as proposed. At least one commenter recommended that the agencies apply the proposed major product line standard for automobile loans to all other product types. Several other commenters suggested a major product line standard based on whether: (1) the bank made more than 50 loans in the product line in the geographic area (without specifying whether this threshold would apply annually or over the evaluation period); or (2) loans in the product line represent at least 15 percent of the bank's retail loans by loan dollars in the geographic area. A commenter recommended using a 15 percent threshold by loan dollars in geographic areas where home mortgage loans are similar in size to small business and small farm loans, but using a 15 percent threshold by loan count in other geographic areas.

Third, at least one commenter suggested that the major product line standard should be based on the bank's market share in the facility-based assessment area, retail lending assessment area, or outside retail lending area. Specifically, the commenter stated that a major product line should be triggered if a bank's loans in a geographic area account for more than 20 percent of the loans in the product line in the geographic area across all banks. The commenter asserted that, absent such an approach, an important segment of a local credit market would not be evaluated, particularly in geographic areas with low retail lending volumes overall.

Finally, a number of commenters suggested that a bank's major product lines should be determined at the institution level. These commenters generally believed that this approach would ensure consistent evaluations across a bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending areas and enable a bank to know at the beginning of an exam cycle which product lines the agencies will evaluate under the distribution analysis component of the Retail Lending Test. Commenters suggested various approaches for the institution-level determination, with some commenters favoring an institution-level determination based on loan count, and other commenters favoring an institution-level determination based on loan dollars. In addition, at least one commenter suggested that banks should designate the product lines that will be evaluated as a major product line, so long as there is sufficient volume.

Major product line standard for multifamily loans. Several commenters addressed the agencies' request for feedback regarding the proposed standard for determining when to evaluate multifamily loans as a major product line, particularly in relation to monoline multifamily lenders and lenders predominantly engaged in multifamily lending. A few commenters stated that the agencies should finalize the proposal to use the same major product line standard for multifamily loans as for other product lines. A commenter stated that the agencies should adopt the proposed standard for most multifamily lenders but develop a different standard for monoline multifamily lenders to ensure that the predominant multifamily lender in a geographic area, and particularly in rural markets, is not overlooked.

Several other commenters expressed concerns with the proposed major product line standard for multifamily loans and suggested a different major product line standard for multifamily loans than for other product lines. In general, these commenters warned that very few multifamily loans would be evaluated under the distribution analysis component of the Retail Lending Test using the proposed standard, despite the ongoing affordable housing shortage. To address this issue, a commenter suggested a qualitative approach to determining when to evaluate multifamily lending as a major product line, stating that most banks cannot compete with the very large lenders that dominate the multifamily loan market. Another commenter stated that the agencies should evaluate the geographic and borrower distributions of a bank's multifamily loans under the proposed Retail Lending Test regardless of the predominance of this product type.

Many other commenters did not support evaluating the geographic and borrower distributions of a bank's multifamily lending under the Retail Lending Test, which would eliminate the need to designate a major product line standard for this product line. This feedback is discussed further in the section-by-section analysis of final § ____.22(d) above.

Final Rule

For the reasons discussed below, the agencies are adopting a modified version of the proposed major product line approach. Under final § ____.22(d)(2)(i), closed-end home mortgage loans, small business loans, small farm loans, or automobile loans (if automobile loans are a product line for the bank) are a major product line in a facility-based assessment area or outside retail lending area if the bank's loans in the product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the facility-based assessment area or outside retail lending area over the years of the evaluation period.[915] As specified in paragraph II.b.1 of final appendix A, this 15 percent standard is calculated based on a combination of loan dollars and loan count, as described further in the section-by-section analysis related to § ____.12 (definition of ''combination of loan dollars and loan count''). In addition, under final § ____.22(d)(2)(ii), closed-end home mortgage loans or small business loans are a major product line in a retail lending assessment area in any year in the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage or small business loans, respectively, as determined by the standard in final § ____.17(c) (*i.e.,* closed-end home mortgage loans are a major product line in a retail lending assessment area with at least 150 reported closed-end home mortgage loans in each of the two preceding calendar years, and small business loans are a major product line in a retail lending assessment area with at least 400 reported small business loans in each of the two preceding calendar years).

Exclusion of open-end home mortgage loans and multifamily loans. As discussed in the section-by-section analysis related to final § ____.22(d) above, under the final rule, the geographic and borrower distributions of a bank's open-end home mortgage loans and multifamily loans are not evaluated under the Retail Lending Test. For this reason, the agencies are not adopting a major product line standard for multifamily loans, or an alternative standard for monoline multifamily lenders, as raised in the proposal and recommended by some commenters.

Major product line standard in facility-based assessment areas and outside retail lending areas—single standard. Under the final rule, in a facility-based assessment area or outside retail lending area, a bank's closed-end home mortgage, small business, small farm, or automobile loans (if automobile loans are a product line for the bank) are a major product line if the bank's loans in the product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the geographic area over the years in the evaluation period. In developing this aspect of the final rule, the agencies determined that it was appropriate to establish a major product line threshold, and that the same threshold should apply to all product lines evaluated under the distribution analysis component of the Retail Lending Test in facility-based assessment areas and outside retail lending areas.

First, the agencies believe that a major product line threshold is appropriate. Although under the current rule a large bank is generally evaluated on all home mortgage, small business, and small farm loans, the agencies believe that it is appropriate to focus the evaluation on product lines in a geographic area that meet a materiality standard. In addition, product lines that represent a relatively low percentage of a bank's retail lending in an area and would receive less weight than the bank's more significant product lines when determining the bank's Retail Lending Test conclusion. Specifically, as discussed in the section-by-section analysis related to final § ____.22(f) and section VII of final appendix A, in developing a Retail Lending Test recommended conclusion for a facility-based assessment area or outside retail lending area, the agencies combine the product line scores for the major product lines evaluated in the area. For this purpose, each product line score is weighted by the ratio of the bank's loans in the major product line to its loans in all major product lines in the area, based on a combination of loan dollars and loan count. Because each major product line is weighted based on this share, a major product line that represents only a small percentage of the bank's retail lending relative to other major product lines in a facility-based assessment area or outside retail lending area would have relatively little impact on the bank's Retail Lending Test recommended conclusion in the area. For this reason, the agencies believe

[915] Under the final rule, automobile loans are a product line for the bank if the bank is a majority automobile lender as defined in final § ____.12, or if the bank opts to have its automobile loans evaluated pursuant to final § ____.22.

that, rather than evaluating every product line in every facility-based assessment area or outside retail lending area, only those product lines that cross a threshold of materiality (*i.e.,* the major product line threshold) in a particular area should be evaluated under the distribution analysis of the Retail Lending Test in that area. The agencies also considered that a major product line threshold will help to limit complexity because product lines that do not meet the major product line standard would not be subject to a distribution analysis and associated metrics, benchmarks, and performance ranges. In addition, based on the agencies' supervisory experience, the agencies believe that some major product line standard is appropriate because not all product lines have a sufficient amount of lending to conduct a meaningful distribution analysis.

Second, the agencies believe that a single major product line threshold should apply to all product lines evaluated in facility-based assessment areas and outside retail lending areas. The agencies believe that this approach limits additional complexity associated with monitoring which of a bank's product lines may exceed the major product line standard, because a uniform standard is applied to all product lines. The agencies considered, but are not adopting, an alternative approach of adopting different major product line standards for different product lines. As shown in Table 7, the agencies note that adopting different major product line standards for different product lines could increase the percentage of loans evaluated under the distribution analysis component of the Retail Lending Test in certain product lines, such as small farm loans. However, the agencies believe that, on balance, the benefits of a single approach to the major product line standard in facility-based assessment areas and outside retail lending areas outweigh the increased Retail Lending Test coverage that could result from adopting different major product line standards for different product lines. Regarding small farm lending in particular, the agencies also considered that while the percentage of small farm loans evaluated under the distribution analysis component of the Retail Lending Test is estimated to be lower than other product lines, small farm lending is a relatively small percentage of all retail lending.

Major product line standard in facility-based assessment areas and outside retail lending areas—15 percent threshold. In considering which major product line threshold should apply, the agencies note that the major product line threshold should not exceed 30 percent (*i.e.,* just under one-third or 33 percent) to eliminate the possibility that no product line would be evaluated in a facility-based assessment area or outside retail lending area. For example, a bank (other than a majority automobile lender or a bank that opts to have its automobile lending evaluated) with an equal share of closed-end home mortgage, small business, and small farm lending in a facility-based assessment area, based on a combination of loan dollars and loan count, would have no major product line if the agencies selected a major product line threshold greater than 33 percent.

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Table 7 of § __.22(d)(2): Comparison of Major Product Line Thresholds in Facility-Based Assessment Areas (FBAAs) and Outside Retail Lending Areas (ORLAs)

	Closed-End Home Mortgage		**Small Business**		**Small Farm**	
Potential Major Product Line (MPL) Threshold	Percentage of Lending Evaluated	Number of FBAAs and ORLAs with MPL	Percentage of Lending Evaluated	Number of FBAAs and ORLAs with MPL	Percentage of Lending Evaluated	Number of FBAAs and ORLAs with MPL
10 percent	99.9	7,353	99.4	7,027	52.9	857
15 percent (final rule)	99.6	7,117	98.3	6,857	43.9	609
20 percent	99.3	6,852	96.9	6,604	36.5	473
25 percent	98.8	6,530	93.2	6,225	31.3	377
30 percent	97.6	6,157	87.9	5,699	26.2	297

Note: The columns of Table 7 labeled "Percentage of Lending Evaluated" show the percentage of closed-end home mortgage, small business, and small farm loans originated and purchased across banks from 2018-2020 that would have been evaluated as a major product line on the Retail Lending Test in a facility-based assessment area or outside retail lending area under the final rule approach , using various potential major product line thresholds, based on a combination of loan dollars and loan count. The columns of Table 7 labeled "Number of FBAAs and ORLAs with MPL" shows the aggregate number of facility-based assessment areas and outside retail lending areas in which the product line would have been designated as a major product line under the various potential major product line thresholds. All data was sourced from the CRA Analytics Data Tables for the years 2018-2020. The analysis includes intermediate and large banks that are both HMDA and CRA reporters and does not include automobile lending. Wholesale, limited purpose, and strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or District of Columbia are excluded from the analysis.

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As shown in Table 7, the agencies considered a range of potential major product line thresholds, and the effect that each such threshold would have on (1) the coverage of the Retail Lending Test distribution analysis, measured as the share of the closed-end home mortgage lending, small business lending, and small farm lending across banks that would have been evaluated as a major product line in a facility-based assessment area or outside retail lending area, and (2) the number of facility-based assessment areas and outside retail lending areas in which each product line would have been evaluated as a major product line. Based on the agencies' review of this data, for banks included in the analysis, the agencies determined that adopting a higher major product line threshold (*e.g.,* 25 percent or 30 percent, based on a combination of loan dollars and loan count), would have resulted in a lower share of small farm lending being evaluated as a major product line in facility-based assessment areas and outside retail lending areas. On the other hand, the agencies took into consideration that adopting a lower major product line threshold (*e.g.,* 10 percent, based on a combination of loan dollars and loan count) would result in a larger number of facility-based assessment areas and outside retail lending areas in which each product line would have been evaluated as a major product line.

The agencies believe that, on balance, the final rule major product line threshold of 15 percent captures an adequate share of closed-end home mortgage, small business, and small farm lending, while also limiting the number of product lines evaluated in facility-based assessment areas and outside retail lending areas relative to options with a lower threshold. Specifically, based on historical data, for banks included in the analysis, the 15 percent threshold captured almost all closed-end home mortgage and small business lending, and nearly half of small farm lending in facility-based assessment areas and outside retail lending areas.

Major product line standard in facility-based assessment areas and outside retail lending areas—combination of loan dollars and loan count. Under the final rule, whether a product line meets the 15 percent major product line standard in a facility-based assessment area or outside retail lending area is determined based on a combination of loan dollars and loan count. Specifically, a bank's closed-end home mortgage, small business, small farm, or automobile loans (if automobile loans are a product line for the bank) are a major product line in a facility-based assessment area or outside retail lending area if the average of the following two figures is 15 percent or more for the product line:

- *Loan dollars:* The share of lending that the product line represents across all these product lines in the facility-based assessment area or outside retail lending area, by loan dollars; and
- *Loan count:* The share of lending that the product line represents across all these product lines in the facility-based assessment area or outside retail lending area, by loan count.

The agencies determined that using a combination of loan dollars and loan count to determine whether a product line is designated as a major product in a facility-based assessment area or outside retail lending area is appropriate for all product lines, rather than only automobile loans as proposed, for two reasons. First, using a combination of loan dollars and loan count reflects two different measures of impact—the dollar amount of credit provided in a particular facility-based assessment area or outside retail lending area, and the number of borrowers benefitted in the facility-based assessment area or outside retail lending area—both of which the agencies view as important, and both of which the agencies believe should be accounted for in determining whether a product line is a major product line. Second, the agencies believe that using a combination of loan dollars and loan count better facilitates comparison between product lines with significant differences in the average loan amount, and thus does not overly diminish the importance of small-dollar loans. In particular, several commenters noted that using loan dollars alone would diminish the importance of small business loans due to the generally smaller size of small business loans relative to other product lines, especially closed-end home mortgage. As shown in Table 8, analysis based on historical data shows that, for banks included in the analysis, using a combination of loan dollars and loan count would have resulted in substantially greater coverage of small business loans evaluated as a major product line within facility-based assessment areas and outside retail lending areas in 2018–2020 relative to using loan dollars alone. In this way, the agencies believe that using a combination of loan dollars and loan count accommodates banks with different bank business models (*e.g.,* different mixes of small business and closed-end home mortgage lending), consistent with one of the agencies' goals for CRA modernization.

Table 8 of § __.22(d)(2): Comparison of Potential Calculation Approaches for Major Product Line (MPL) Standard in Facility-Based Assessment Areas (FBAAs) and Outside Retail Lending Areas (ORLAs)

Potential MPL Calculation Approach	Percentage of Closed-End Home Mortgage Lending Evaluated	Percentage of Small Business Lending Evaluated	Percentage of Small Farm Lending Evaluated
15% based on a combination of loan dollars and loan count (final rule)	99.6	98.3	43.9
15% by loan count	97.4	99.4	46.8
15% by loan amount	99.7	72.6	40.8

Note: The columns of Table 8 show the percentage of closed-end home mortgage loans, small business loans, and small farm loans originated and purchased across banks from 2018-2020 that would have been evaluated as a major product line in a facility-based assessment area or outside retail lending area under the final rule approach using different potential methods of calculating the final rule's 15 percent major product line standard. All data was sourced from the CRA Analytics Data Tables for the years 2018-2020. The analysis includes intermediate and large banks that are both HMDA and CRA reporters and does not include automobile lending. Wholesale, limited purpose, and strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or District of Columbia are excluded from the analysis.

Major product line standard in facility-based assessment areas and outside retail lending areas—absence of collected, maintained, or reported loan data. Pursuant to paragraph II.b.1.iii of final appendix A, if a bank has not collected, maintained, or reported loan data on a product line in a facility-based assessment area or outside retail lending area for one or more years of an evaluation period, the product line is a major product line if the agencies determine that the product line is material to the bank's business in the facility-based assessment area or outside retail lending area. The agencies believe this provision is necessary to appropriately evaluate a bank that has conducted lending in a product line but for which, due to a lack of collected, maintained, or reported loan data, the agencies cannot calculate whether the product line meets or exceeds the 15 percent threshold discussed above. In such cases, the agencies would consider any information indicating that the bank's lending in the particular product line is significant enough to be considered a major product line. For example, the agencies may consider estimates provided by the bank of the number and dollar amount of loans in the product line originated and purchased in the area, and could determine based on these estimates whether the product line represents approximately 15 percent of the bank's retail loans in the area. The agencies believe that this approach helps address situations where a bank is not required to collect, maintain or report this data without adding new data collection or reporting requirements.

Uncertainty regarding major product line delineations. The agencies considered comments that the proposed major product line standard would create uncertainty for banks regarding which product lines would be evaluated under the distribution analysis of the Retail Lending Test. The agencies believe that the final rule approach reduces this uncertainty by reducing the maximum number of potential major product lines from six to four, and by establishing a narrower standard for when automobile lending is evaluated on the Retail Lending Test. The final rule approach also narrows the potential major product lines in retail lending assessment areas to closed-end home mortgage loans and small business loans. In addition, the agencies considered that a bank may use its own lending data to estimate which product lines are likely to meet a 15 percent standard in the bank's facility-based assessment areas and outside retail lending area, or to meet the thresholds for delineating a retail lending assessment area. In light of these considerations, the agencies believe that the final major product line standard is appropriate, and reduces potential uncertainty relative to the proposed approach.

Major product line standard in facility-based assessment areas and outside retail lending areas—other alternatives considered. The agencies considered, but are not adopting, several alternatives to the proposed major product line standards in facility-based assessment areas and outside retail lending areas suggested by commenters. These alternatives, and the agencies reasons for not adopting them, are described below.

First, the agencies considered using numerical loan count thresholds to determine whether a product line constitutes a major product line. Under this approach, a product line would be considered a major product line if the number of loans in the product line in the facility-based assessment area or outside retail lending area exceeded a specified number of loans. However, the agencies believe that using a 15 percent standard, based on a combination of loan dollars and loan count, is preferable to using numerical loan counts for the purposes of designating those product lines that are material to the bank's business in a particular geographic area. For example, if the agencies were to adopt a numerical loan count threshold of 50 loans over the evaluation period, then a bank with 51 small business loans in the geographic area during that time period would have its small business loans evaluated as a major product line regardless of how much lending it undertook in other product lines. Under this example, the 51 small business loans could constitute all of a bank's lending in a geographic area, or a small fraction of its overall lending if the bank also originated, for example, over 600 closed-end home mortgage loans over the same time period in the same geographic area. Further, as discussed above, the agencies believe that a major product line standard that uses a combination of loan dollars and loan count is more appropriate than a standard that uses loan count alone because using a combination of loan dollars and loan count reflects two different measures of impact. By contrast, using loan count alone would reflect only the number of borrowers benefitted, without regard for the dollar amount of credit provided. Finally, the agencies believe that using numerical loan count thresholds alone could result in a greater number of major product lines evaluated in specific geographic areas, many of which could have minimal influence on a bank's Retail Lending Test conclusion given the final rule's weighting approach. This is particularly the case if the agencies were to adopt a de minimis loan count threshold, as some commenters suggested. On the other hand, the agencies acknowledge that using loan counts alone could increase the share of small farm lending across banks that would be evaluated as a majority product line.[916] On balance, however, the agencies believe that using a 15 percent standard, based on combination of loan dollars and loan count, is a more appropriate method of determining whether a product line constitutes a major product line than using loan count alone for the reasons stated above.

Relatedly, the agencies have considered that the major product line standard for facility-based assessment areas and outside retail lending areas in the final rule could result in major product lines consisting of a small number of loans. The agencies have addressed this issue in a different part of the final rule. As discussed in the section-by-section analysis related to § ____.22(g)(5), the final rule provides that the agencies would consider as an additional factor whether the Retail Lending Test recommended conclusion does not accurately reflect the bank's performance in a Retail Lending Test Area in which one or more of the bank's major product lines consists of fewer than 30 loans.

Second, the agencies considered, but did not adopt, a market share approach to determining whether a product line constitutes a major product line, as at least one commenter suggested. Under this approach, a product line would be considered a major product line if the bank's loans in the product line in the facility-based assessment area or outside retail lending area represented a certain share of the lending market for the product line in the geographic area. As discussed in the section-by-section analysis related to § ____.17(c), the agencies also considered a market share approach for triggering the retail lending assessment area requirement, at the suggestion of some commenters. However, as in the case of retail lending assessment areas, the agencies believe that using a market share approach to determine whether a product line is a major product line would be complex to administer and would make it more challenging for a bank to determine which of the bank's product lines the agencies will consider a major product line in a particular facility-based assessment area or outside retail lending area. In addition, this alternative approach could result in designating a major product line that constitutes a very small share of the bank's retail lending in an area; in such a case, the agencies considered that the evaluation would not focus on a bank's most significant product lines, and would include a major product line that receives very little weight when determining the bank's Retail Lending Test conclusion in an area. The agencies therefore considered that this alternative would add complexity without a corresponding improvement in the robustness of the bank's evaluation. For these reasons, the agencies declined to adopt a market share approach.

Third, the agencies considered, but did not adopt, an institution-level approach, as suggested by some commenters. Under this approach, a bank's major product lines would be determined at the institution level (*e.g.,* the bank's top two product lines, based on a combination of loan dollars and loan count), and those major product lines would be evaluated in every facility-based assessment and outside retail lending area with a non-zero number of such loans. However, the agencies believe that an institution-level approach to determining a bank's major product lines in a facility-based assessment area could overlook products that do not meet a threshold nationwide but are nonetheless significant in particular markets. For example, a bank for which small farm lending is determined not to be a major product line at the institution level would never have its small farm lending evaluated in specific geographic areas, even in facility-based assessment areas where the bank has made a significant number of small business loans. The agencies believe that the final rule's major product line standard for facility-based assessment areas and outside retail lending areas will capture those product lines that are material to the bank's business in the geographic areas in which the bank is evaluated. For these reasons, the agencies declined to adopt a market share approach.

Major product line standard in retail lending assessment areas. Under the final rule, the 15 percent major product

[916] The agencies analyzed the percentage of closed-end home mortgage loans, small business loans, and small farm loans that would have been evaluated as a major product line in a facility-based assessment area or outside retail lending area under various numerical loan count thresholds, using historical data from CRA and HMDA reporter banks for 2018–2020. For example, using a 50-loan count threshold would have resulted in higher coverage of small farm loans for these banks, almost 90 percent, compared to only around 45 percent under the final rule approach.

line standard applicable in facility-based assessment areas and outside retail lending areas does not apply in retail lending assessment areas. Rather, under the final rule, a large bank's closed-end home mortgage and small business lending in a retail lending assessment area is evaluated under the distribution analysis component of the Retail Lending Test only if such lending surpasses the applicable loan count threshold for triggering the retail lending assessment area requirement in final § ____.17(c). As discussed in the section-by-section related to final § ____.17(d), the agencies determined that applying a separate major product line standard in addition to the loan count thresholds for triggering the retail lending assessment area would be overly complex and may impose additional compliance burden by making it more difficult for large banks to monitor their retail lending performance in retail lending assessment areas. For example, a large bank could have a sufficient number of small business loans in a geographic area to trigger a retail lending assessment area in a particular calendar year, but the large bank's small business lending could represent less than 15 percent of the large bank's retail lending in the retail lending assessment area, in which case, the small business loans that triggered the retail lending assessment area would not be evaluated as a major product line. Conversely, a large bank's small business loans in an MSA or the nonmetropolitan area of a State could represent more than 15 percent of the large bank's retail lending in that geographic area, but the number of small business loans could be insufficient to trigger a retail lending assessment area. The agencies believe that the final rule's retail lending assessment area approach accomplishes the agencies' policy objectives (discussed in the section-by-section analysis related to final § ____.17) without adding this unnecessary complexity.

In addition, the agencies believe that the loan count thresholds for triggering the retail lending assessment area requirement in the final rule are sufficiently high such that, if a large bank makes enough closed-end home mortgage loans or small business loans in an MSA or the nonmetropolitan area of a State to exceed the applicable loan count threshold triggering the retail lending assessment area requirement, the product line is more likely to be material to the bank and to the retail lending assessment area. As such, the agencies believe that it is appropriate to always evaluate the product line as a major product line.

Section ____.22(e) Retail Lending Distribution Analysis

Section ____.22(e)(1) Distribution analysis in general

Overall Retail Lending Distribution Analysis Approach

The Agencies' Proposal

In proposed § ____.22(d), the agencies proposed to use a set of retail lending distribution metrics to measure a bank's performance with respect to each of its major product lines in each of its facility-based assessment areas and retail lending assessment areas, and in its outside retail lending area, as applicable. The proposed geographic distribution metrics would measure the level of bank lending in low-income and moderate-income census tracts in an area. The proposed borrower distribution metrics would measure the level of bank lending to borrowers of different income levels and to small businesses or small farms of varying sizes, measured in gross annual revenues. As a result, each major product line would be evaluated in four categories of lending. For example, for a bank's closed-end home mortgage lending major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area, the agencies would evaluate the following categories, similar to the current evaluation approach: for the geographic distribution analysis, (1) loans in low-income census tracts and (2) loans in moderate-income census tracts; and for the borrower distribution analysis, (3) loans to low-income borrowers and (4) loans to moderate-income borrowers.

After calculating the relevant metrics for each of a bank's major product lines in a facility-based assessment area, retail lending assessment area, or outside retail lending area, the agencies proposed to compare these metrics to a set of benchmarks intended to reflect the extent of local lending opportunities. The proposed benchmarks included both community benchmarks and market benchmarks. The proposed community benchmarks reflect the demographics of an area, such as the percentage of owner-occupied housing 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 revenue levels in an area, which are similar to benchmarks used in current practice. The proposed market benchmarks reflect the aggregate lending to targeted areas or targeted borrowers in an area by all reporting lenders, also similar to benchmarks used in current practice. Under the proposal, a bank's performance (as measured by relevant metrics) relative to relevant benchmarks forms the basis of its Retail Lending Test conclusion in the area.[917]

Comments Received

The agencies received a number of comments regarding the overall retail lending distribution analysis approach proposed by the agencies, with many commenters supporting the proposed approach, and other commenters raising concerns with the proposed approach. Some commenters recommended incorporating consideration of race and ethnicity into the retail lending distribution analysis. Other commenters offered alternatives to the proposed retail lending distribution benchmarks.

Support for overall retail lending distribution analysis approach. Many commenters supported the agencies' proposed metrics-based approach to evaluating the geographic and borrower distributions of a bank's major product lines. Many of these commenters indicated that the retail lending distribution metrics would provide rigor on the proposed Retail Lending Test, address what some commenters referred to as ''grade inflation'' in CRA performance conclusions, and incentivize banks to increase lending to underserved communities. A few commenters also specifically supported the agencies' proposal to evaluate a bank's lending to small businesses and farms under the proposed Retail Lending Test using metrics and benchmarks.

Concerns regarding overall retail lending distribution analysis approach. Conversely, many commenters raised concerns about the proposed metrics-based approach to evaluating the geographic and borrower distributions of a bank's major product lines.

Several commenters raised concerns regarding the complexity of the overall retail lending distribution analysis approach. For example, at least one commenter stated that the agencies' proposed combination of metrics, benchmarks, and the proposed use of performance ranges to develop Retail Lending Test conclusions, was too complex, and perhaps too finely calibrated and sensitive. Some commenters expressed concern

[917] The development of Retail Lending Test conclusions is discussed further in the section-by-section analysis of final § ____.22(f).

regarding the large number of calculations that banks would have to make to monitor performance on the Retail Lending Test across many areas, and the complexity of meeting performance expectations under the proposed approach. For example, a commenter noted that the proposed rule's distribution metrics would require banks to collect, maintain, analyze, and report voluminous amounts of data on deposits, loans, peer data, and market demographic data, much of which is not collected today, greatly adding to the regulatory burden and requiring a substantial increase in staffing. Another commenter indicated that, given the complexity of the proposed distribution analysis, banks will need to conduct pre-examination analysis to support incremental adjustments to ensure they are meeting the credit needs of their communities and within the regulatory thresholds in advance of the finality of an examination. Another commenter stated that the real-life experience of attempting the proposed calculations with real data and real examiners will likely prove daunting, and that the complexity of the proposed distribution metrics and benchmarks would produce no benefit to local communities. The commenter suggested that the agencies conduct a beta test of the proposed Retail Lending Test approach using data from banks across the country, and publish a detailed comparison of the time, costs, new software or tools, and final results of the beta test and existing examination method.

Other commenters raised concerns that the proposed retail lending distribution analysis approach is inflexible and would not give sufficient consideration to performance context. For example, at least one commenter recommended that the agencies allow examiners to modify applicable thresholds based on performance context. A commenter also expressed concern that while the conditions, opportunities, and circumstances vary in assessment areas, the performance thresholds under the proposal would remain largely constant.

Another commenter stated that the proposed retail lending distribution benchmarks rely on a number of assumptions—for example, that the demand for credit between low- and moderate-income and other income areas is substantially similar, or that the potential for wealth building between low- and moderate-income and other income areas is substantially similar—that the agencies should monitor and verify in the long term.

Consideration of race and ethnicity. Many commenters that supported explicit consideration of race and ethnicity in CRA evaluations asserted that the agencies should develop race-based lending metrics and then compare a bank's metrics with demographic benchmarks and peer banks' aggregate performance in the bank's assessment areas. For example, several commenters suggested that the agencies could measure the share of a bank's total loans in an area that are located in census tracts with a relatively high minority share of the population, such as majority-minority census tracts. Under this alternative, if the bank extended a lower share of its retail loans to such census tracts, the bank's evaluation would be adversely impacted. Likewise, a bank's performance evaluation would be positively impacted if the bank extended a higher share of its retail loans to such census tracts. In addition, a commenter suggested that CRA evaluations should take race and ethnicity into consideration by measuring the percentage of a bank's home mortgage loans made to minority families, the percentage of a bank's small business loans made to minority businesses, as well as the percentage of a bank's retail loans made in majority-minority census tracts, and that the agencies should assign performance scores on this basis. This commenter added that the bank's retail lending performance conclusion should be based on a combination of these performance scores and the low- and moderate-income performance scores or, alternatively, that a high performance score on the racial distribution analysis could be evaluated as a factor that improves the performance conclusion for the institution's rating overall. A different commenter similarly suggested that race- and ethnicity-based retail lending metrics could be used only to potentially enhance a bank's retail lending performance conclusion, alongside evaluation of low- and moderate-income retail lending metrics. Another commenter stated generally that there should be a focus on publicly available section 1071 data, which will include information concerning the race and ethnicity of small business loan applicants and borrowers, to ensure equal access to credit for businesses with less than $1 million in revenue and women and minority-owned businesses.

Alternative approaches to retail lending distribution benchmarks. Some commenters recommended alternative approaches to the proposed retail lending distribution benchmarks. For example, a commenter recommended that the agencies develop a complementary benchmark to the proposed benchmarks that would be based on a bank's contributions to the financial health of a community. Other commenters opposed use of community benchmarks to evaluate a bank's retail lending distributions, indicating that only market benchmarks appropriately reflect local demand because they measure the actual loan distribution that results from the aggregate lending in an assessment area.

Final Rule

For the reasons discussed below, the agencies are adopting the general approach of using retail lending distribution metrics and benchmarks to evaluate a bank's performance with respect to its major product lines. As such, final § ____.22(e) provides that the agencies evaluate a bank's Retail Lending Test performance in each of its Retail Lending Test Areas (*i.e.,* facility-based assessment areas, retail lending assessment areas, and outside retail lending area) by considering the geographic and borrower distributions of the bank's loans in its major product lines. Final § ____.22(e)(1)(i) more specifically provides that for closed-end home mortgage loans, small business loans, and small farm loans, respectively, the agencies compare a bank's geographic and borrower distributions to performance ranges based on the applicable market and community benchmarks, as provided in final § ____.22(f) and section VI of final appendix A. Final § ____.22(e)(1)(ii) (regarding the distribution analysis for automobile loans) is discussed further below.

Use of distribution metrics and benchmarks in general. The agencies believe that the final rule approach to geographic and borrower distribution analysis of a bank's retail lending will further the agencies' objectives of evaluating whether a bank has met the retail credit needs of a community in a consistent and transparent manner. Specifically, the distribution analyses examine a bank's percentage of loans to different categories of borrowers and census tracts relative to benchmarks that are based on local data. For example, a bank would be evaluated for its closed-end home mortgage lending to (1) low-income census tracts; (2) moderate-income census tracts; (3) low-income borrowers; and (4) moderate-income borrowers, respectively. The categories of lending that would be evaluated for each major product line are shown in Table 9 below.

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Table 9 of § __.22(e)(1): Categories of Lending Evaluated under the Retail Lending Test Distribution Analysis

Retail Lending Product Line	Geographic Distribution Lending categories evaluated	Borrower Distribution Lending categories evaluated
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Low-Income Borrowers
	Moderate-Income Census Tracts	Moderate-Income Borrowers
Small Business Loans	Low-Income Census Tracts	Businesses with gross annual revenues of $250,000 or less
	Moderate-Income Census Tracts	Businesses with gross annual revenues of greater than $250,000 but less than or equal to $1 million
Small Farm Loans	Low-Income Census Tracts	Farms with gross annual revenues of $250,000 or less
	Moderate-Income Census Tracts	Farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million
Automobile Loans	Low-Income Census Tracts	Low-Income Borrowers
	Moderate-Income Census Tracts	Moderate-Income Borrowers

BILLING CODE 4810–33–C; 6210–01–C

The agencies determined that a distribution analysis is necessary to evaluate a bank's efforts to meet the retail credit needs of a community. Specifically, the metrics in the distribution analysis reflect the extent to which a bank is lending to different categories of borrowers and census tracts, taking into account the bank's overall level of lending in each major product line. The benchmarks for each category of borrowers and census tracts reflect the credit needs and opportunities of those borrowers and census tracts by incorporating demographic data, such as the percentage of low- or moderate-income households in an area, as well as data on the level of lending in the area among all reporting lenders. As discussed further in this section, the distribution benchmarks therefore reflect differences in the credit needs and opportunities across different areas, as well as differences over time in response to changing economic conditions or changes in the local population. As a result, the agencies believe that the use of quantitative benchmarks will account for local performance context and increase the consistency in evaluating performance.

The agencies also considered that analyzing distributions of bank retail lending is consistent with current practice under the lending test.[918] As discussed in the section-by-section analysis of § ____.22(f), the final rule builds upon current practice by establishing performance ranges to increase the clarity and transparency of the distribution analysis. The agencies considered that alternative approaches to a distribution analysis, such as evaluating retail lending qualitatively without the use of metrics, or without

[918] *See* current 12 CFR ____.22(b)(2) and (3).

benchmarks, would result in a less robust analysis and inconsistent application of the performance standards.

Section ____.22(e) of the final rule retains the proposed approach of evaluating both the geographic and borrower distribution of a bank's lending. As discussed in the agencies' proposal, the approach of evaluating both lending to different categories of census tracts, and lending to different categories of borrowers, is consistent with current practice. The agencies believe that a bank's record of providing credit both to borrowers of different income and revenue levels as well as neighborhoods of different income levels are important aspects of its overall record of helping to meet the credit needs of its entire community. For the geographic distribution analysis, 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. For the borrower distribution analysis, the final rule approach similarly recognizes the importance of lending that benefits low-income and moderate-income individuals and smaller farms and businesses, regardless of where they are located.

Section ____.22(e)(3)(ii) and (iii) and (e)(4)(ii) and (iii) of the final rule also retain the proposed approach of establishing both a community benchmark and a market benchmark for each metric for closed-end home mortgage loans, small business loans, and small farm loans, which is also consistent with current practice. The community benchmarks approximately reflect the potential lending opportunities in the area for each corresponding metric. For example, the community benchmark for evaluating a bank's closed-end home mortgage lending to moderate-income borrowers is the percentage of families in the area that are moderate-income. The agencies believe that the community benchmark can provide important information for evaluating a bank's metric. For example, as discussed in the section-by-section analysis of § ____.22(f), if a bank's metric equals the community benchmark, that indicates that the bank's lending to the relevant category of borrowers or census tracts is proportionate to that group's share of the population of the area. Under current practice, as well as under the proposed and final rule, the agencies would consider this a strong indicator that the bank has met the credit needs of the entire community.

The market benchmarks, which are also used in current evaluations, are the aggregate share of originations made to the category of borrowers or census tracts for each metric. For example, the market benchmark for evaluating a bank's closed-end home mortgage lending in an area to moderate-income borrowers is the percentage of all originations of closed-end home mortgage loans in the area made to moderate-income borrowers. The agencies believe that the market benchmark provides important information about the level of credit needs and opportunities in an area that complements the information provided by the community benchmark. For example, in an area that has a very low homeownership rate among moderate-income families due to a shortage of affordable properties available for purchase, the market benchmark may indicate a relatively small percentage of loans made to moderate-income families, even though the community benchmark indicates that these families make up a substantial percentage of the families in the area. In addition, the agencies believe that the market benchmarks are particularly important for taking into account changes in economic conditions. For example, the market benchmark could reflect an increased share of loans made to moderate-income borrowers due to a change in interest rates.

Consistent with the proposed approach, the market benchmarks would include only loan originations, and not loan purchases, as detailed in paragraphs III.b and IV.b of appendix A of the final rule. The agencies believe that excluding loan purchases results in benchmarks that more accurately represent the credit needs and opportunities of an area. Specifically, the agencies considered that including purchased loans would allow a single loan to be counted multiple times in the market benchmark, even though the loan reflects a single borrower.

Objectives in establishing distribution metrics and benchmarks. In response to comments stating that the proposed Retail Lending Test was too complex, the agencies believe that the final rule balances ensuring that CRA evaluations of retail lending are appropriately robust and comprehensive, providing greater consistency and transparency, and reducing overall complexity relative to the proposed approach. The agencies have considered that a metrics-based evaluation approach that captures the multitude of ways that a bank may serve the credit needs of an area necessarily entails a degree of complexity. Specifically, complexity arises from the number of quantitative components of the approach and the detail needed to define and explain each component; data collection, maintenance, and reporting requirements that are necessary to produce the metrics and benchmarks; and the potential need to monitor performance on these metrics over time. However, the agencies believe that each of these aspects offers significant benefits, including accurate measurement of bank metrics; directly incorporating the performance context of an area into the performance standards through the use of thresholds based on local benchmark data; eliminating the use of limited scope assessment areas and comprehensively evaluating a bank's major product lines; appropriately tailoring for different bank business models, geographic footprints, and market conditions; increased standardization and consistency in performance standards and examination procedures; greater transparency regarding how conclusions and ratings are determined; and the ability to monitor performance over time relative to specific performance standards.

Furthermore, as discussed throughout the section-by-section analysis of § ____.22, the agencies have sought to limit the overall complexity of the Retail Lending Test. Relative to the proposed approach, the agencies have reduced the number of product lines evaluated under the Retail Lending Test from six to four, have created a more tailored, higher standard for when an evaluation of automobile lending is required (discussed in more detail in the introduction to the section-by-section analysis of final § ____.22, above), and more narrowly targeted retail lending assessment area delineations, as discussed in the section-by-section analysis of § ____.17, which reduces the overall number of Retail Lending Test Areas relative to the proposed approach. In addition, the agencies have tailored the approach for small and intermediate banks, including by making the Retail Lending Test optional for small banks, as was proposed; making the outside retail lending area component of the evaluation under the Retail Lending Test optional for small and intermediate banks that have less than 50 percent of their retail lending outside of their facility-based assessment areas; and not applying retail lending assessment areas to intermediate banks, or to small banks that opt into the Retail Lending Test. Also, the agencies believe that the metrics and benchmarks finalized in the Retail Lending Test limit complexity by mirroring those used under the current approach, with the addition of specific thresholds corresponding to each conclusion category, such as ''High Satisfactory.'' As a result, the agencies believe that banks and other stakeholders are already familiar with many of the components of the final rule approach. In addition, the agencies will develop data tools that provide banks and the public with recent historical data concerning the retail lending distribution benchmarks. The agencies believe that all of these aspects of the final approach help to limit the overall complexity and burden.

Consideration of race and ethnicity. The agencies are not incorporating race-based lending metrics and benchmarks in the geographic and borrower distribution analysis and are not adopting other commenter suggestions regarding incorporating race and ethnicity into the final rule Retail Lending Test. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Alternatives considered. The agencies considered, but are not adopting, an alternative approach to eliminate the community benchmark, and rely only on the market benchmark. The agencies have considered the commenter sentiment that the community benchmark may not reflect the credit needs and opportunities of an area, because a category of borrowers may have relatively low or relatively high credit demand regardless of their share of the population. However, the agencies determined that the combination of a community benchmark and market benchmark is preferable to relying solely on a market benchmark. In particular, the agencies considered that in an area where the market benchmark is higher than the community benchmark, a bank whose metric is above the community benchmark has achieved strong performance even if its metric is below the market benchmark, because the bank's lending to the category of borrowers or census tracts is proportionate with the population. Using only a market benchmark in this scenario could effectively require a bank to lend disproportionately to the category of borrowers or census tracts relative to other borrowers and census tracts in order to earn a strong conclusion, which the agencies do not believe is consistent with the purpose of CRA.

The agencies also considered, but are not adopting, an alternative approach to create separate market benchmarks for banks of different asset sizes, such as large banks with assets greater than $10 billion. In reaching this determination, the agencies considered that this approach could allow for additional tailoring to different size banks, but that it would result in benchmarks that may not fully reflect the overall credit needs and opportunities in the area, because only a subset of lenders would be included. Relatedly, the agencies also considered that this alternative could lead to more instances in which there is insufficient data to compute a robust market benchmark due to a small number of banks in each asset category.

The agencies are also not adopting a commenter suggestion to develop a benchmark based on a bank's contributions to the financial health of a community. The agencies do not believe that comprehensive data is available to create such a benchmark. The agencies believe that the final performance tests will effectively consider the various ways that a bank may contribute to the financial health of a community, including through retail lending, retail services and products, community development financing, and community development services. In addition, the agencies considered that developing a benchmark based on a bank's contributions to the financial health of a community would increase the complexity of the Retail Lending Test approach.

Construction of Retail Lending Distribution Metrics and Benchmarks

The Agencies' Proposal

In proposed § ____.22(d) and sections III and IV of proposed appendix A, the agencies proposed to calculate bank distribution metrics based on the number of the bank's originated and purchased loans in a major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area. For example, the Borrower Bank Metric to closed-end home mortgage loans would be calculated 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. The agencies stated in the proposal that using the number of loans, rather than the dollar amount of loans, to construct the retail lending distribution metrics would emphasize that smaller-value loans can help meet the credit needs of low- and moderate-income communities.

To evaluate the geographic and borrower distributions of a bank's major product lines, the bank's retail lending distribution metrics would be compared against two types of distribution benchmarks: market benchmarks that reflect the aggregate lending of reporting lenders in the area, and community benchmarks that reflect demographic data. The agencies proposed to calculate the retail lending distribution benchmarks in the same manner for all banks, regardless of the bank's business model or asset size.

In calculating the geographic market benchmarks and borrower market benchmarks, the agencies proposed to include all loan originations in a particular geographic area, including loans made by banks with or without a branch presence, as well as loans made by nonbank lenders. However, the agencies did not propose to include purchased loans in the market benchmarks, stating that the agencies do not consider the aggregate level of loan purchases to reflect the extent of local lending opportunities.

Comments Received

The agencies received a number of comments related to the construction of the retail lending distribution metrics and benchmarks.

Treatment of purchased loans. Commenters provided a range of feedback regarding the proposed inclusion of purchased loans in a bank's retail lending distribution metrics. These comments are discussed further in the introduction to the section-by-section analysis of § ____.22.

At least one commenter supported the agencies' proposal to exclude purchased loans from the retail lending distribution benchmarks, reasoning that the purchases of peer lenders are not reflective on the loan market in which banks are competing and seeking opportunities to serve low- and moderate-income borrowers.

Same market benchmarks for all banks. Some commenters addressed the agencies' proposal to calculate the retail lending market benchmarks in the same manner for all banks. For example, at least one commenter recommended using different market benchmarks for banks of different asset sizes so that banks are assessed relative to similarly sized peers. Alternatively, the commenter suggested that banks should be compared to a benchmark based on the performance of ''near-peer'' banks, for example those within 15 percent of the bank's asset size.

Other commenters stated that banks that are primarily branch-based and those that primarily lend through non-branch channels should not be evaluated using the same market benchmarks. These commenters asserted that it would be inappropriate to evaluate a non-branch-based bank in a retail lending assessment area by comparing its performance to that of banks with a branch presence in the same market. A number of commenters similarly expressed that such comparison would be inappropriate in the case of the market benchmarks used to evaluate the distribution of a bank's lending in its outside retail lending area. In both cases, commenters emphasized that the proposed approach would not appropriately account for a bank's lack of branches in an area where competitors may maintain branches, and that it would be challenging for banks to alter their balance of retail lending in areas where they have no physical presence.

Inclusion of nonbank lenders. Another commenter specifically recommended removing loans made by nonbank lenders from the home mortgage lending distribution benchmarks to ensure that banks are measured against achievable thresholds, noting that nonbank home mortgage lenders outperformed banks in lending to low- and moderate-income borrowers in some geographic areas.

Final Rule

For the reasons discussed below, the agencies are adopting generally the same approach to constructing the retail lending distribution metrics and benchmarks as was proposed. In addition, substantive changes to the approach for evaluating the distribution of a bank's automobile loans are discussed in a subsequent part of this section.

Use of number of loans. The agencies are finalizing their proposal regarding calculating distribution metrics and benchmarks using the number of loans. For example, the numerator of the metric for closed-end home mortgage lending to low-income borrowers in a facility-based assessment area would include the bank's number of purchased and originated closed-end home mortgage loans to low-income borrowers in the area. The denominator would include the bank's total number of purchased and originated closed-end home mortgage loans to all borrowers in the area. For this metric, a closed-end home mortgage loan with a balance of $150,000 made to a low-income borrower and a closed-end home mortgage loan with a balance of $75,000 made to a low-income borrower would each count as one loan, with no differential weighting based on the different loan amounts.

This approach ensures appropriate emphasis in the distribution analysis on relatively small dollar loans, which the agencies believe can play an important role in fulfilling community credit needs in low- and moderate-income census tracts and for low- and moderate-income borrowers. For example, access to relatively small dollar mortgage loans can be particularly important for first-time homebuyers, low-income borrowers, and borrowers in areas where home prices are relatively low. In addition, the agencies considered that this approach is consistent with how retail lending distribution metrics and benchmarks are calculated under the current evaluation approach. In addition, under an alternative approach in which the distribution analysis were based on loan amount, rather than loan count, the agencies believe that a bank may be able to achieve strong performance in the distribution analyses through serving a relatively small number of borrowers with large loan amounts. This may be especially likely on the geographic distribution analysis, which includes loans to borrowers of all income levels, or to all small businesses, in a low- or moderate-income census tract. For example, under the alternative of using loan amount for the distribution metrics, a $500,000 closed-end home mortgage loan made to an upper-income borrower in a moderate-income census tract would count equally as five $100,000 closed-end home mortgage loans made in a moderate-income census tract for the geographic distribution analysis. For these reasons, the agencies believe that the final rule approach appropriately accounts for a bank's retail lending to all borrowers, including those with a need for relatively small loans, rather than giving greater emphasis to borrowers receiving relatively larger loans.

Lending included in market benchmarks. Pursuant to final § ____.22(e)(3)(ii) and (e)(4)(ii) and the corresponding calculations set forth in paragraphs III.b and IV.b of final appendix A, to calculate market benchmarks for the borrower and geographic distribution analysis in a Retail Lending Test Area, the agencies are adopting the proposed approach of using loan originations, but not loan purchases. Further, the agencies use loan originations from all reporting lenders, including nonbank lenders, regardless of whether the reporting lender has a deposit-taking facility in the area. This approach would not be applicable to automobile lending given that there are no data reporting requirements or market benchmarks associated with automobile loans.

The final rule approach applies to the market benchmarks used in all Retail Lending Test Areas, and includes loan originations in the relevant product line from banks with and without deposit-taking facilities in the area and from nonbank lenders. The agencies believe that using loan originations from all reporting lenders in a Retail Lending Test Area when constructing market benchmarks provides a more comprehensive view of local credit needs and opportunities. In addition, regarding the exclusion of purchased loans from these benchmarks, the agencies determined that this approach avoids the possibility of double-counting the same loan in the market benchmark.

In determining that the market benchmarks for the distribution metrics should include all reported loan originations in an area, the agencies considered a number of factors. Specifically, the agencies believe that the total number of reported loan originations in an area reflect the extent of local credit needs, regardless of whether those needs are being met by banks with branches in the area, banks with other business models, or by nonbank lenders, as discussed below. Furthermore, the local credit needs do not depend on the delivery channels that lenders employ in helping to meet those needs. As a result, using an alternative approach in which the market benchmarks for Retail Lending Test Areas are calculated based only on originations by banks that have no branches in the local market would provide a less comprehensive and possibly inaccurate picture of the extent of local credit needs because it would exclude information about credit needs that were satisfied by other lenders. In addition, the agencies believe that excluding certain reporting lenders from the market benchmarks would result in more instances in which the number of lenders included in the market benchmarks in an area is insufficient for a robust distribution analysis, in which case the agencies would rely more heavily on qualitative adjustments to the distribution analysis, pursuant to final § ____.22(g)(3). While the agencies recognize that a bank's business model may influence its opportunities to lend, the agencies have determined that it is preferable, on balance, for the market benchmarks to remain neutral in terms of bank business model and to use all available loan origination data. As part of this determination, the agencies considered that the presence or absence of a branch in a community is just one way that business models may differ between banks, and that establishing separate benchmarks for different bank business models would be complex and would result in inconsistent performance standards. For example, the agencies also considered that this alternative would result in multiple different market benchmarks applying to different banks in the same geographic area for the same category of lending.

As noted above, the final rule also retains the proposed inclusion of both bank and nonbank reported loan originations in the market benchmarks in all Retail Lending Test Areas. As a result, whether nonbank loan originations are included in the market benchmarks is dependent on whether those loan originations are reported. For closed-end home mortgage loans, nonbank loan originations are currently reported and included in HMDA data. By contrast, small business and small farm lending data is currently reported only by banks, which would continue under the final rule, pursuant to § ____.42, until the transition to using section 1071 data. Because the section 1071 data will include small business loans and small farm loans originated by both banks and nonbanks, once the agencies transition to using section 1071 data, the market benchmarks will include nonbank loan originations.

Data Used for Distribution Analysis of Small Business and Small Farm Loans

The Agencies' Proposal

To evaluate the geographic and borrower distributions of a bank's small business loans or small farm loans, the agencies proposed to compare a bank's small business or small farm lending distribution metrics against market benchmarks that reflect the aggregate lending of reporting lenders in the area, and community benchmarks that reflect demographic data. To calculate the small business loan and small farm loan distribution metrics, the agencies proposed to use the small business loan and small farm loan data that is used under the current approach (*i.e.,* small business loan and small farm loan data collected, maintained, and reported by a large bank pursuant to § ____.42, or the bank's own data). To calculate the small business and small farm lending market benchmarks, the agencies proposed to initially use small business loan and small farm loan data that would be collected, maintained, and reported pursuant to § ____.42. During this initial period, ''small business loan'' and ''small farm loan'' would be defined by reference to Call Report instructions. Specifically, ''small business loan'' would include a loan to a business in an amount of $1 million or less that is secured by nonfarm nonresidential properties or categorized as a commercial or industrial loan. ''Small farm loan'' would include a loan to a farm in amount of $500,000 or less that is secured by farmland or categorized as a loan to finance agricultural production or other loan to farmers.

However, as discussed further in the section-by-section analysis of final §§ ____.12, ____.42(a)(1) and (b)(1), and ____.51, the agencies also proposed to transition to using section 1071 data to calculate the small business and small farm lending distribution metrics for banks that are section 1071 reporters, and to calculate the small business and small farm lending market benchmarks. Following this transition, ''small business loan'' would be defined as a loan to a small business (defined by reference to section 1071 definitions), and ''small farm loan'' would be defined as a loan to a small farm (defined by reference to section 1071 definitions).

To calculate the small business and small farm lending community benchmarks—which are based on the number of businesses or farms in a geographic area—the agencies proposed to use data sources comparable to those used in evaluations today.

Comments Received

Use of CRA data and section 1071 data. A number of comments addressed the agencies' proposal to initially use the small business loan and small farm loan data that is used under the current approach to calculate the small business and small farm lending distribution metrics and market benchmarks until as the agencies transition to using section 1071 data. These comments, including input regarding the impact on Retail Lending Test evaluations of transitioning to using section 1071 data, are summarized in the section-by-section analysis of final § ____.42(a)(1) and (b)(1).

Data source for community benchmarks. At least one commenter noted that the proposal did not identify a third-party data provider that would provide the demographic data on small businesses and small farms that the agencies would use to calculate the small business and small farm lending community benchmarks.[919] This commenter stated that disclosing the data provider used is important. Additionally, the commenter noted that in the data collected by one third-party provider, approximately 30 percent of businesses report gross annual revenues as ''not applicable'' or ''not known.''

Final Rule

The agencies are adopting the proposed approach to evaluating the distribution of a bank's small business and small farm lending, including the proposed data sources used to calculate the small business and small farm lending distribution metrics, market benchmarks, and community benchmarks, and corresponding changes to the definitions of ''small business loan'' and ''small farm loan.'' As such, and as described further in the section-by-section analysis of final §§ ____.12 and ____.42(a)(1) and (b)(1), the agencies will initially use the small business and small farm lending data used under the current approach (*i.e.,* small business loan and small farm loan data collected, maintained, and reported by a large bank pursuant to § ____.42, or the bank's own data) to calculate the small business and small farm lending distribution metrics, and will use the small business loan and small farm loan data collected, maintained, and reported pursuant to § ____.42 to calculate the small business and small farm lending market benchmarks. During this period, the Call Report definitions of ''small business loan'' and ''small farm loan'' will apply. As discussed further in the section-by-section analysis of § ____.42(a)(1), the agencies are also adding indicators for: loans to businesses or farms with gross annual revenues of $250,000 or less; loans to businesses or farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million; loans to businesses or farms with gross annual revenues of greater than $1 million; and loans to businesses or farms for which gross annual revenues are not known by the bank.

However, after section 1071 data becomes available, the agencies will publish a notice in the **Federal Register** announcing the effective date of the section 1071-related transition amendments. These transition amendments are included in the final rule but are indefinitely delayed. Once effective, these transition amendments will modify various provisions of the final rule to implement the agencies' transition to using section 1071 data in CRA evaluations.

Following this transition, the agencies will use section 1071 data to calculate the small business and small farm lending distribution metrics for section 1071 reporters, and will use section 1071 data to calculate the market benchmarks. As a result of the section

[919] *See* 87 FR 33884, 33941, Table 6 (June 3, 2022).

1071-related transition amendments, ''small business loan'' will be defined as a loan to a small business (defined by reference to section 1071 definitions), and ''small farm loan'' will be defined as a loan to a small farm (defined by reference to section 1071 definitions).

The agencies emphasize that the transition from using the small business and small farm lending data that is currently used in CRA evaluations (and associated definitions based on the Call Report) to using section 1071 data and associated definitions will impact the calculations of metrics and benchmarks in numerous ways due to differences in the parameters used to define which small business loans and small farm loans are subject to CRA data requirements and required to be reported under section 1071. In particular, small business loans and small farm loans subject to CRA data requirements differ from the small business loans and small farm loans reported under section 1071 in two respects: (1) small business loans and small farm loans subject to CRA data requirements are limited to loans in an amount of $1 million or less and $500,000 or less, respectively, but small business loans and small farm loans reported under section 1071 are not subject to any limitation on loan amount; and (2) small business loans and small farm loans subject to CRA data requirements are not subject to any limitation on the size of the business or farm, but small business loans and small farm loans reported under section 1071 are limited to loans to businesses or farms with gross annual revenues of $5 million or less in the preceding fiscal year.[920] In addition, whereas only banks subject to CRA report small business loans and small farm loans pursuant to § ____.42(b), any entity engaged in any financial activity (including nonbank lenders) must report section 1071 data if the entity exceeds the reporting threshold.[921] The differences will impact the loans included in the small business lending and small farm lending distribution metrics and market benchmarks.

The agencies believe that transitioning to using section 1071 data will offer a number of benefits. First, in contrast to using small business and small farm lending data collected, maintained, and reported pursuant to § ____.42, section 1071 data will allow for consideration of large loans to small businesses or small farms (*i.e.,* those in an amount greater than $1 million or $500,000, respectively), which the agencies believe can help meet the credit needs of a community. Second, the agencies note that because small business loans and small farm loans subject to CRA data requirements are not limited to firms under a certain gross annual revenue threshold, small business loans and small farm loans to large businesses or large farms in low- or moderate-income census tracts initially (and under the current approach) receive positive consideration under the geographic distribution analysis; however, following the transition to using section 1071 data, only loans to small businesses and small farms will be included in the geographic distribution metrics and benchmarks, and loans to businesses with gross annual revenue of greater than $5 million will not be included. Third, as discussed in the section-by-section analysis of final § ____.42(a)(1) and (b)(1), the agencies believe that transitioning to section 1071 data will reduce data collection, maintenance, and reporting requirements, because the agencies will be able to phase out the existing data requirements once the agencies transition to using section 1071 data. Finally, section 1071 data will include data reported by banks as well as nonbank institutions, which will allow for market benchmarks that more comprehensively reflect the small business and small farm credit needs and opportunities of an area.

Data source for community benchmarks. For purposes of calculating the community benchmarks for small business and small farm lending, the agencies intend to continue using the data sources that are used in current evaluations for these calculations. Although the agencies believe that the data used in current evaluations are sufficiently comprehensive and reliable, the agencies are mindful that the availability of this data could change over time, and that more robust data sources could emerge in the future. For this reason, the agencies decline to establish a requirement to continue using a particular data source for the small business and small farm lending community benchmarks.

The agencies have considered that not all businesses or farms make their gross annual revenues known. As such, the community benchmarks for small business and small farm lending—which are based on the number of businesses or farms in a geographic area—could be impacted by incomplete data. However, pursuant to final § ____.22(g)(4), the agencies may consider missing or faulty data as an additional factor when assigning a bank's Retail Lending Test conclusion in a Retail Lending Test Area. For example, if a bank made a significant number of loans to businesses for which gross annual revenue information was unavailable, the agencies might determine, based on information presented by the bank, that some number of those loans were likely made to small businesses. The agencies could then consider whether the number of small business loans with missing gross annual revenue information was sufficient to warrant adjusting the bank's conclusion relative to the recommended conclusion.

Section ____.22(e)(1)(ii) Distribution Analysis for Automobile Loans

The Agencies' Proposal

The agencies proposed to use generally the same approach for evaluating the geographic and borrower distributions of all of a bank's major product lines, including automobile loans. Specifically, the agencies proposed to compare a bank's automobile lending distribution metrics against two types of distribution benchmarks: market benchmarks that reflect the aggregate lending of reporting lenders in the area, and community benchmarks that reflect demographic data. The agencies proposed to develop automobile lending market benchmarks using data collected pursuant to the proposed new automobile lending data requirements applicable to large banks with assets over $10 billion.

Comments Received

Commenters expressed different views about the appropriateness of using market benchmarks to evaluate automobile loans, given that these market benchmarks would be based on data collected only from banks with assets of over $10 billion. A commenter supported the agencies' proposal to evaluate automobile lending for all banks using the proposed market benchmarks and asserted that it was important to establish automobile lending market benchmarks, even if based only on partial market data. However, other commenters opposed

[920] As described further in the section-by-section analysis of § ____.12, following the transition to using section 1071 data, ''small business loan'' will be defined as a loan to a small business, and ''small farm loan'' will be defined as a loan to a small farm, with ''small business'' and ''small farm'' being defined by reference to the ''small business'' definition in the CFPB Section 1071 Final Rule. The CFPB Section 1071 Final Rule currently defines ''small business'' as a small business concern (as defined by the Small Business Act as implemented by the SBA) with gross annual revenues of $5 million or less in its preceding fiscal year. The $5 million gross annual revenue threshold will be adjusted for inflation every five years after January 1, 2025. *See* 12 CFR 1002.106(b).

[921] *See* 12 CFR 1002.105 (defining ''covered financial institution'').

the agencies' proposal to evaluate all banks' automobile lending using market benchmarks developed using data collected only from banks with assets over $10 billion on the grounds that these benchmarks would not be reliable given the amount of automobile market lending data that would not be captured, including due to the prevalence of nonbank automobile lending.

Final Rule

The agencies are adopting a modified approach to evaluating the distribution of a bank's automobile loans when automobile loans are a major product line for a bank. Under the final rule, the agencies compare a bank's automobile lending distribution metrics to community benchmarks, as under the proposal. Unlike under the proposal, however, the final rule does not include comparison of a bank's automobile lending distribution metrics to market benchmarks. Further, and as described further in the section-by-section analysis of § ____.22(f), performance ranges are not used to develop supporting conclusions regarding a bank's automobile lending under the final rule. As such, final § ____.22(e)(1)(ii) provides that for automobile loans, the agencies compare a bank's geographic and borrower distributions to the applicable community benchmarks, as provided in § ____.22(f) and section VI of final appendix A.

Upon consideration of commenter feedback, the agencies believe that using market benchmarks to evaluate a bank's automobile lending geographic and borrower distributions is not feasible given the final rule's automobile lending data requirements, discussed further in the section-by-section analysis of § ____.42, which apply only to large banks that are majority automobile lenders or that opt to have their automobile loans evaluated under the Retail Lending Test, and do not require the reporting of automobile loan data. Further, even if automobile lending data were reported to the agencies under the final rule, the agencies have considered that such data would reflect only the portion of the automobile lending market represented by banks, and would exclude nonbank lenders. For these reasons, the agencies determined that market benchmarks for automobile lending would not be fully reflective of the potential credit needs and opportunities for automobile lending in a facility-based assessment area or retail lending assessment area. In addition to these potential challenges with establishing market benchmarks for automobile loans, the agencies also considered that the final rule approach reduces complexity and data requirements relative to the proposed approach because it does not require reporting of automobile data for any banks. As such, under the final rule, community benchmarks are used to qualitatively evaluate a bank's automobile lending distributions.

Section ____.22(e)(2) Categories of Lending Evaluated

The Agencies' Proposal

As specified in proposed § ____.22(d)(2)(ii), the agencies proposed to evaluate the geographic distribution of a bank's major product lines by separately evaluating the distribution of the bank's loans in (1) low-income census tracts and (2) moderate-income census tracts within the facility-based assessment area, retail lending assessment area, or outside retail lending area.

As specified in § ____.22(d)(2)(iii), the agencies proposed to evaluate the borrower distribution of a bank's major product lines by separately evaluating the distribution of the bank's loans to different categories of borrowers in the facility-based assessment area, retail lending assessment area, or outside retail lending area. Specifically, to evaluate the borrower distribution of a bank's closed-end home mortgage loans, open-end home mortgage loans, or automobile loans, the agencies would separately evaluate the distribution of the bank's loans to (1) low-income borrowers and (2) moderate-income borrowers in the area. To evaluate the borrower distribution of a bank's small business loans, the agencies would separately evaluate the distribution of the bank's loans to (1) small businesses with gross annual revenues of $250,000 or less and (2) small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million. To evaluate the borrower distribution of a bank's small farm loans, the agencies would separately evaluate the distribution of the bank's loans to (1) small farms with gross annual revenues of $250,000 or less and (2) small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.

Comments Received

The agencies received numerous comments related to the proposal to separately evaluate the distribution of a bank's major product lines to low- and moderate-income census tracts and to various categories of borrowers.

Separate evaluation of different income and revenue categories. A number of commenters shared views on the proposal to evaluate low-income and moderate-income retail lending separately when calculating the bank geographic distribution metrics and bank borrower distribution metrics, with some supporting the proposed approach. For example, a commenter conducted empirical analysis showing that separating these income categories would better enable banks, regulators, and communities to understand how banks fulfill their CRA obligations. This commenter asserted that separating these income categories would acknowledge the fundamental differences between low-income and moderate-income consumers and low-income and moderate-income communities in relation to how much they are underserved and their racial composition.

However, other commenters supported combining one or both of the following approaches to reduce the complexity of the proposed Retail Lending Test: (1) combine the distribution metrics for the low- and moderate-income census tracts; or (2) combine the distribution metrics for low- and moderate-income borrowers, and for small businesses and small farms in different gross annual revenue categories, respectively. One commenter stated that combining the low- and moderate-income categories would allow banks to tailor their approach to retail lending in particular assessment areas so as to ensure the overall safety and soundness of their portfolios and to better address needs in each community. Another commenter explained that combining the low- and moderate-income categories could make the retail lending benchmarks more meaningful, particularly in places where the low-income benchmarks lack robustness. Another commenter stated that combining the income and revenue categories would reduce the number of measures that banks must track and seek to achieve, which would reduce overall complexity. Furthermore, the commenter noted that the income and revenue categories are ultimately combined when calculating product line averages and recommended conclusions, making separate categories unnecessary.

Other commenters noted that retail lending to low-income borrowers or in low-income census tracts should be considered as beneficial performance context or the basis for a performance conclusion qualitative upgrade.

Geographic distribution analysis—underserved census tracts. Some commenters recommended that CRA retail lending evaluations should include analysis of a bank's retail lending distributions in underserved neighborhoods, as an alternative or addition to analysis of a bank's retail lending distributions in low- and moderate-income census tracts, respectively. These commenters asserted that underserved neighborhoods could be defined as census tracts with low levels of retail lending based on loans per capita. The commenters stated that such an approach would incentivize retail lending and other banking activities in majority-minority communities.

Borrower distribution analysis—small business and small farm revenue thresholds. Some commenters supported the proposal to separately evaluate a 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 of between $250,000 and $1 million under the Retail Lending Test. For example, a commenter stated that the thresholds would help examiners understand the extent of small business credit needs being served by banks. Another commenter indicated that the gross annual revenue threshold of $250,000 is appropriate.

However, many commenters recommended that the agencies separately calculate a bank's record of lending to small businesses or small farms based on varying revenue categories other than those included in the agencies' proposal. A number of commenters recommended three gross annual revenue categories, specifically: $100,000 or less, between $100,000 and $250,000, and above $250,000. In general, these commenters asserted that small businesses and small farms with gross annual revenues under $100,000 are particularly likely to have unmet credit needs, and that adding a third revenue category would not introduce substantial incremental burden. For example, a commenter recommended evaluation criteria for small businesses with revenues of $100,000 or less and suggested that the agencies share borrower demographic data. This commenter also stated that small business owners and entrepreneurs with disabilities continue to face challenges accessing credit. Another commenter suggested that the threshold should be revised down to $100,000 and that the same figure should be used for the impact review factor relating to community development activities that support smaller businesses and farms. At least one commenter supported an analysis of loans to businesses with gross annual revenues under $250,000 and a category for businesses with gross annual revenues under $100,000 to encourage lending to the smallest businesses and minority-owned businesses.

Several commenters recommended increasing the gross annual revenue thresholds for categorizing different sizes of small businesses relative to the proposed levels. A few commenters recommended raising the proposed $250,000 gross annual revenues threshold to $500,000, with one such commenter suggesting that this revenue threshold would be more representative of main street businesses. A commenter stated that, if the agencies adopt two categories, those categories should be loans to businesses with less than $1 million in gross annual revenue and loans to businesses with between $1 million and $2.5 million in gross annual revenue. This commenter reasoned that although banks understand the importance of helping the smallest category of small businesses, for most banks, that is not often done through traditional small business loans. At least one commenter asked that the threshold for identifying smaller businesses and farms be increased to gross annual revenue of $2 million or less to reflect current market conditions and to adjust for inflation since 1995. Another commenter suggested the agencies combine the two proposed revenue categories—loans to businesses with gross annual revenues less than $250,000 and loans to businesses with gross annual revenues between $250,000 and $1 million—into a single revenue category and consider loans to business with gross annual revenues of less than $250,000 as a positive qualitative factor.

Some commenters recommended that the agencies conduct additional analyses to inform the small business and small farm revenue thresholds. For example, one commenter encouraged the agencies to gather data for businesses at different revenue thresholds before setting a specific threshold. Another commenter stated it was not clear on what criteria the agencies based the proposed $250,000 gross annual revenues threshold. This commenter urged the agencies to determine how to use the same criteria or algorithms used by banks to identify unmet credit needs for purposes of marketing loans, such as credit scores, financial analysis, and other factors that support identifying which consumers would be candidates for a bank's loan products. Another commenter stated that, because section 1071 data has not yet become available, neither the public nor researchers know whether larger small businesses with gross annual revenues closer to $5 million are significantly more successful in accessing loans than their smaller counterparts; therefore, at least in the first few years of having the finalized section 1071 data, the commenter recommended more rather than fewer performance measures to more accurately measure credit availability to different-sized businesses in low- or moderate-income census tracts and to encourage banks to serve businesses with different revenue sizes.

A few commenters suggested alternative ways of evaluating a bank's small business and small farm lending borrower distributions beyond fixed gross annual revenue thresholds. One commenter encouraged examiner discretion and an assessment of qualitative factors to determine appropriate gross annual revenue thresholds given that credit needs vary from market to market, rather than fixed thresholds that apply to all Retail Lending Test Areas. Another commenter suggested that businesses owned by women or historically disadvantaged minorities should be exempt from the gross annual revenue thresholds so that banks could receive positive consideration for loans to these businesses regardless of the size of these businesses.

Final Rule

For the reasons discussed below, the agencies are finalizing the proposal to separately evaluate the distribution of a bank's major product lines to low- and moderate-income census tracts and to various categories of borrowers. As such, final § ____.22(e)(2)(i) provides that for each major product line in each Retail Lending Test Area, the agencies evaluate the geographic distributions separately for low-income census tracts and moderate-income census tracts. Final § ____.22(e)(2)(ii) provides that for each major product line in each Retail Lending Test Area, the agencies evaluate the borrower distributions separately for, as applicable; low-income borrowers, moderate-income borrowers, businesses with gross annual revenues of $250,000 or less, businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million, farms with gross annual revenues of $250,000 or less, and farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.

Separate evaluation of retail lending to different income categories. The final rule maintains the proposed approach of separately evaluating retail lending in low-income and moderate-income categories. The agencies considered that establishing separate metrics for these categories would appropriately evaluate and emphasize bank performance in meeting the credit needs of the entire community, including low-income borrowers and low-income census tracts. For example, the use of separate income categories of metrics would help to identify whether a bank engaged in lending to moderate-income borrowers and census tracts but did not lend to low-income borrowers and census tracts. The agencies believe that even though performance on these separate metrics will ultimately be combined to reach an overall product line score and conclusion for each Retail Lending Test Area, the separate metrics will provide important visibility into and emphasis on meeting the credit needs of the bank's entire community. In addition, in making this determination, the agencies considered comments that low-income borrowers and low-income communities in particular may have significant unmet credit needs and opportunities.

The agencies also considered, but are not adopting, an alternative approach of using a single set of distribution metrics that combine performance for low-income and moderate-income borrowers, respectively. The agencies considered, as some commenters noted, that such an alternative could simplify the Retail Lending Test by reducing the number of metrics, benchmarks, and performance ranges associated with each product line. However, on balance, the agencies believe that the separate distribution analyses for different income categories, while adding additional metrics and steps to the small business and small farm evaluation, leads to a more robust evaluation that provides transparency about lending performance to a bank's entire community.

Separate evaluation of retail lending to different small business and small farm revenue categories. As noted above, under the final rule, the agencies will analyze a bank's borrower distribution of lending to small businesses and to small farms in two separate gross annual revenue categories: businesses and farms with gross annual revenue of $250,000 or less, and businesses and farms with gross annual revenue greater than $250,000 but less than or equal to $1 million. This is in contrast to the current approach, which analyzes a bank's distribution of lending to a single gross annual revenue category of $1 million or less. As discussed in the agencies' proposal, the agencies believe that firms with gross annual revenue of $250,000 or less have significant unmet credit needs and challenges securing financing.[922] Consistent with suggestions by some commenters, the agencies have determined that this additional category will better enable the agencies to understand the extent of small business and small farm credit needs served by banks. Conversely, the agencies believe that an approach with a single revenue category would allow a bank to achieve strong performance through serving only businesses and farms with gross annual revenues of between $250,000 and $1 million, and not meeting the needs of relatively smaller small businesses. Similar to the determination to separate low- and moderate-income categories discussed above, the agencies believe that the additional complexity of separate distribution analyses for different gross annual revenue categories is worth the benefits of a more robust evaluation that provides needed transparency about lending performance to a bank's entire community. Further, the agencies note that the final rule approach of separately evaluating a bank's small business and small farm lending to small businesses and small farms of different revenue categories is no more complex than separately evaluating a bank's closed-end home mortgage and automobile lending to borrowers of different incomes. The section-by-section analysis of final § ____.42(a)(1) discusses the data collection, maintenance, and reporting provisions that will enable the agencies to analyze small business and small farm lending borrower distributions for both of the gross annual revenue categories described above.

Regarding comments that separately evaluating loans to businesses with gross annual revenue of $250,000 or less could raise safety and soundness concerns, the agencies note that CRA does not require a bank to originate or purchase loans that are inconsistent with its safe and sound operation, and consideration of the constraints of safe and sound banking practices will be considered as part of a bank's performance context, pursuant to § ____.21(d)(1), as warranted. As a result, in the event that a bank for which small business lending is a major product line is unable to serve businesses with gross annual revenue of under $250,000 due to safety and soundness considerations, the agencies would take these circumstances into account when evaluating the bank's Retail Lending Test performance. In addition, the agencies believe that the design of the Borrower Market Benchmark helps to ensure that the Retail Lending Test does not encourage lending that is inconsistent with safe and sound banking practices. Specifically, the Borrower Market Benchmark is based on the share of loans made to businesses or farms by other lenders. As a result, a bank's performance expectations in a particular Retail Lending Test Area reflect the credit needs and opportunities associated with firms in that area that received a loan. In addition, the agencies also note that, as discussed in the section-by-section analysis of § ____.22(f), the multiplier for ''Low Satisfactory'' performance based on the market benchmarks would be 80 percent. As a result, banks that are below the Borrower Market Benchmark by as much as 20 percentage points would receive at least a ''Low Satisfactory'' supporting conclusion for their lending to firms with revenue of under $250,000.

Small business and small farm revenue thresholds—alternative thresholds considered. In finalizing the proposed approach of creating separate revenue categories based on gross annual revenue thresholds of $250,000 and $1 million, the agencies also considered, but declined to adopt, alternative gross annual revenue threshold levels suggested by commenters, such as a threshold of $100,000 or $500,000 instead of $250,000, and a threshold of $2 million instead of $1 million.

Regarding the final rule gross annual revenue threshold of $250,000, the agencies considered the potential benefits and tradeoffs of selecting an alternative threshold either higher or lower than the proposed level and believe that the proposed level appropriately balances the agencies' policy objectives. The agencies determined that a lower threshold could emphasize lending to the businesses and farms with the greatest unmet credit needs. According to the *2023 Report on Employer Firms: Findings from the 2022 Small Business Credit Survey,* employer firms with total annual revenues less than $100,000 were substantially more likely to experience difficulties obtaining financing than larger employer firms. However, based on the set of businesses included in the survey data, these businesses are less likely to be employers, which may indicate that a lower threshold could detract focus from small businesses that are employers and that have unmet credit needs. Furthermore, employer firms with total annual revenues less than

[922] *See* 87 FR 33938 (discussing the Federal Reserve's 2022 Small Business Credit Survey).

$250,000 also reported a greater likelihood of experiencing difficulties obtaining financing than larger employer firms, suggesting unmet credit needs among this group as well.[923]

Additionally, the agencies have considered that lending to businesses and farms with revenue of less than $100,000 may not align with some bank business models. For example, as noted by at least one commenter, some banks may serve firms with revenues of less than $100,000 primarily through products that do not qualify as small business loans, such as home equity lines of credit and consumer credit cards. Furthermore, the agencies considered that a gross annual revenue threshold of $100,000 may not be suitable for analysis in higher cost markets where small business revenues are generally higher.

On the other hand, regarding a higher alternative gross annual revenue threshold level, such as $500,000, the agencies considered that this category would reduce the emphasis of the Retail Lending Test on smaller firms, which may be more likely to have unmet credit needs that CRA is intended to help address, as discussed above. On balance, the agencies believe that the $250,000 threshold will emphasize small business credit needs and opportunities while broadly comporting with bank business models and Retail Lending Test Areas.

Regarding commenter suggestions to consider a gross annual revenue threshold of $2 million or $2.5 million rather than $1 million, the agencies believe that the proposed threshold level is appropriate, and that increasing this threshold would reduce the emphasis of evaluations on smaller firms, which the agencies believe may have greater unmet credit needs than relatively larger small businesses and farms, as discussed above. In addition, the agencies considered that the proposed gross annual revenue threshold of $1 million is consistent with current examination procedures, which evaluate a bank's share of loans to businesses and farms with gross annual revenue of less than $1 million.

Alternative approaches to evaluating small business and small farm lending borrower distributions. The agencies considered several alternative approaches, suggested by commenters, to evaluating the borrower distributions of a bank's small business and small farm lending. First, the agencies considered, but decline to adopt, suggestions to make the gross annual revenue threshold levels subject to agency discretion, or to incorporate other factors into the distribution analysis beyond the gross annual revenue of the firms served by a bank. For example, regarding commenter feedback on an option that would allow gross annual revenue threshold levels to vary across Retail Lending Test Areas, subject to agency discretion, the agencies believe this would introduce considerable uncertainty and inconsistency into the evaluation process, and that it is preferable to use consistent categories of small businesses and small farms for all CRA examinations. Consistent gross annual revenue categories also have the benefit of providing a bank with clarity and transparency into how its small business and small farm lending will be evaluated.

Second, the agencies also considered comments suggesting that the agencies establish thresholds based on the same criteria or algorithms used by banks to identify unmet credit needs, such as credit scores, financial analysis, and other factors. However, the agencies believe that gross annual revenue is an appropriate way of categorizing small businesses and small farms, and is consistently available. Furthermore, the agencies note that gross annual revenue is used in CRA evaluations currently, and that use of other criteria such as credit scores or other financial characteristics could require additional data reporting and could result in additional burden of adjusting to a new evaluation approach. In addition, the agencies considered that gross annual revenue information will be included in section 1071 data, and that loans will be reported under section 1071 based on a gross annual revenue threshold.

Third, the agencies considered giving positive consideration in the borrower distribution analysis to business loans or farm loans made to women-owned or minority-owned businesses or farms, regardless of the size of the business or farm (as measured in gross annual revenues). However, the agencies believe that such an approach would be complex to administer, and would be a departure from the current approach. In addition, the agencies note that the statute requires the agencies to assess a bank's record of meeting the credit needs of its entire community, expressly including low- and moderate-income communities.[924]

Finally, the agencies considered, but decline to adopt, a third revenue category of businesses and farms with gross annual revenues less than $100,000. In reaching this determination, the agencies considered the additional complexity that this approach would entail, including metrics, benchmarks, performance ranges, and weights that would apply to the third category. In addition, the agencies believe that a two-category approach affords appropriate flexibility to banks to meet small business and small farm credit needs, while a three-category approach would create more granular and specific performance expectations, including having performance evaluated in a third "middle" revenue category. The agencies believe that a two-category approach appropriately balances limiting complexity while ensuring a robust evaluation of a bank's small business and small farm lending.

Geographic distribution analysis—underserved census tracts. Under the final rule, the agencies evaluate the geographic distribution of a bank's major product lines to low- and moderate-income census tracts, respectively. The agencies considered the alternative or additional approach, suggested by some commenters, of evaluating the geographic distribution of a bank's retail lending in underserved census tracts. However, the agencies determined that evaluating a bank's geographic distributions with respect to low- and moderate-income census tracts leverages the metrics and benchmarks utilized under the current approach. In addition, the agencies note that evaluating a bank's retail lending performance in low- and moderate-income census tracts comports with the statutory requirement that the agencies assess a bank's record of meeting the credit needs of its entire community, *including low- and moderate-income neighborhoods.*[925] In contrast, the agencies believe that for purposes of evaluating lending distributions under § ____.22(e), identifying underserved neighborhoods based on criteria other than income would be a departure from the current approach and would add complexity.

[923] *See* Federal Reserve Banks, "2023 Report on Employer Firms: Findings from the 2022 Small Business Credit Survey" (Mar. 2023), *https://www.fedsmallbusiness.org/survey/2023/report-on-employer-firms.* The cited data points were drawn from the data appendix of the report, available here: *https://www.fedsmallbusiness.org/survey.*

[924] *See* 12 U.S.C. 2903(a)(1); *see also* 12 U.S.C. 2906(a)(1).

[925] *See* 12 U.S.C. 2903(a)(1); *see also* 12 U.S.C. 2906(a)(1).

Section ____.22(e)(3) Geographic Distribution Measures

The Agencies' Proposal

As discussed above, the agencies proposed to evaluate the geographic distributions of a bank's major product lines by using certain metrics and benchmarks. Specifically, the proposed Geographic Bank Metrics compare the number of a bank's loans in a particular major product line that are located in low-income and moderate-income census tracts, respectively, to the total number of the bank's originated and purchased loans in the major product line in the facility-based assessment area, retail lending assessment area, or outside retail lending area. As discussed in greater detail in the section-by-section analysis of final § ____.22(f), the agencies proposed to compare the Geographic Bank Metric for each distribution for each major product line to performance ranges calculated based on two benchmarks: a Geographic Market Benchmark that reflects the aggregate loan originations in low- and moderate-income census tracts across reporting lenders within a facility-based assessment area, retail lending assessment area, or outside retail lending area; and a Geographic Community Benchmark that reflects the potential lending opportunities in low- or moderate-income census tracts within a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Comments Received

The agencies received numerous comments, discussed above, on the use of distribution metrics and benchmarks generally. In addition, the agencies received several comments that specifically addressed the proposed geographic distribution metrics and benchmarks.

Treatment of loans to middle- and upper-income borrowers. The agencies received comments related to the types of loans included in the Geographic Bank Metrics. Some commenters expressed concerns that the geographic distribution analysis as proposed would give positive consideration to home mortgage loans to middle- and upper-income borrowers located in low- and moderate-income census tracts. Commenter recommendations included excluding such loans from consideration to avoid contributing to displacement and gentrification. At least one commenter suggested excluding from consideration retail loans made to non-minority, middle-, and upper-income borrowers to better address displacement and gentrification in low- and moderate-income census tracts.

Use of census tracts. Another commenter stated that, for the home mortgage loan geographic distribution metrics and benchmarks, the agencies should use census block groups instead of census tracts, to avoid overlooking rural census tracts that may include areas of concentrated poverty apparent only at the census block group level.

Final Rule

For the reasons discussed below, the agencies are adopting the geographic distribution metrics and benchmarks generally as proposed.

- Final § ____.22(e)(3)(i) provides that for each major product line, a Geographic Bank Metric is calculated pursuant to paragraph III.a of final appendix A.
- Final § ____.22(e)(3)(ii) provides that for each major product line except automobile loans, a Geographic Market Benchmark is calculated pursuant to, as applicable, paragraph III.b of final appendix A for facility-based assessment areas and retail lending assessment areas, and paragraph III.d of final appendix A for outside retail lending areas.
- Final § ____.22(e)(3)(iii) provides that for each major product line, a Geographic Community Benchmark is calculated pursuant to, as applicable, paragraph III.c of final appendix A for facility-based assessment areas and retail lending assessment areas, and paragraph III.e of final appendix A for outside retail lending areas.

A summary of these calculations for facility-based assessment area and retail lending assessment areas can be found in the following table for each product line. Following a discussion of some preliminary issues, each of these metrics and benchmarks is discussed in more detail below.

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Table 10 of § __.22(e)(3): Summary of Calculations for Geographic Distribution Measures

Retail Lending Product Line	**Geographic Bank Metric** **Percentage of bank loan originations and purchases in the following categories of designated census tracts out of all bank loans in the product line in the Retail Lending Test Area, by loan count**	**Geographic Market Benchmark** **Percentage of all reported loan originations in the following categories of designated census tracts, out of all reported loan originations in the product line in the Retail Lending Test Area, by loan count**	**Geographic Community Benchmark**
Closed-End Home Mortgage Lending	Low-Income Census Tracts	Low-Income Census Tracts	Percentage of owner-occupied housing units in low-income census tracts
	Moderate-Income Census Tracts	Moderate-Income Census Tracts	Percentage of owner-occupied housing units in moderate-income census tracts
Small Business Lending	Low-Income Census Tracts	Low-Income Census Tracts	Percentage of businesses in low-income census tracts
	Moderate-Income Census Tracts	Moderate-Income Census Tracts	Percentage of businesses in moderate-income census tracts
Small Farm Lending	Low-Income Census Tracts	Low-Income Census Tracts	Percentage of farms in low-income census tracts
	Moderate-Income Census Tracts	Moderate-Income Census Tracts	Percentage of farms in moderate-income census tracts

Automobile Lending	Low-Income Census Tracts	Not applicable	Percentage of households in low-income census tracts
	Moderate-Income Census Tracts	Not applicable	Percentage of households in moderate-income census tracts

Note: As discussed further in the section-by-section analysis of § __.22(e)(1), prior to the use of section 1071 data, the bank metrics and market benchmarks for small business lending are based on loans to businesses with a loan amount of less than $1 million, and for small farm lending, are based on loans to farms with a loan amount of less than $500,000. In addition, prior to the use of section 1071 data, the community benchmarks for small business lending and small farm lending are based on percentages of all businesses and all farms, respectively. Once section 1071 data is used for CRA evaluations, the bank metrics and market benchmarks for small business and small farm lending will be based on loans to small businesses or small farms (*i.e.*, those with gross annual revenue of less than $5 million), with no loan amount threshold, and the community benchmarks for small business lending and small farm lending will be based on percentages of small businesses and small farms (*i.e.*, those with gross annual revenue of less than $5 million), respectively.

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Treatment of loans to middle- and upper-income borrowers. The final rule adopts the proposed approach under which the geographic distribution metrics and benchmarks include all originated loans (and, for the geographic distribution metrics, purchased loans) in the major product line, including loans to middle- and upper-income borrowers located in low- and moderate-income census tracts. For example, the numerator of the Geographic Bank Metric for closed-end home mortgage loans in low-income census tracts would include all of a bank's closed-end home mortgages to borrowers of any income level in low-income census tracts in the Retail Lending Test Area, including loans to middle- and upper-income borrowers. Similarly, the denominator would include all of the bank's closed-end home mortgage loans in all census tracts in the Retail Lending Test Area, including loans to middle- and upper-income borrowers.

The agencies considered commenter feedback that by including all loans located in low- and moderate-income census tract regardless of borrower income, the proposed approach would give undue consideration to loans made to middle- and upper-income borrowers and may encourage displacement and gentrification. However, the agencies believe that there are potential benefits to including these loans in the geographic distribution metrics and benchmarks, and that the combination of the geographic distribution and borrower distribution analyses appropriately balances consideration for loans made to low- and moderate-income borrowers with consideration for loans made in low- and moderate-income census tracts. Specifically, the agencies considered that while a loan made to a middle- or upper-income borrower located in a low-income census tract would count in both the numerator and denominator of the Geographic Bank Metric, such a loan would count in only the denominator of the Borrower Bank Metric. In this way, the agencies believe the combination of the geographic distribution analysis with the borrower distribution analysis helps to address commenter concerns that the approach would encourage gentrification and displacement.

In addition, the agencies considered that loans made to borrowers of any income level located in low- and moderate-income census tracts help to meet a credit need in a low- or moderate-income community. The agencies believe that positively considering such loans is consistent with the CRA statute's requirement that the agencies assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. Relatedly, the agencies have considered that a low- or moderate-income census tract where borrowers of all income levels had difficulty obtaining a closed-end home mortgage to purchase or refinance an existing home would indicate that community credit needs are not being met. For example, the agencies have considered that the ability of prospective homebuyers of any income level to obtain a closed-end home mortgage to purchase a home, renovate an existing property, or refinance an existing home mortgage in a low-income census tract can promote home values, help revitalize the existing housing stock, and forestall disinvestment in low-income communities. The agencies have considered commenter feedback that loans to middle- or upper-income households in some low- and moderate-income census tracts could result in gentrification that leads to displacement and significantly decreases affordability over time. While the agencies are sensitive to the potential for gentrification and the accompanying challenges it presents for low- and moderate-income communities, the agencies believe that in conducting evaluations of lending in low- and moderate-income census tracts, the potential risks of gentrification need to be balanced against the potential harms that may come from unmet credit needs in low- and moderate-income communities.

Use of census tracts. The agencies are finalizing the use of census tracts, rather than census blocks or block groups, to construct geographic distribution metrics and benchmarks. Although the agencies considered that using census blocks or block groups could provide greater precision, the agencies believe that the operational challenges and privacy concerns created by this alternative approach outweigh the potential benefits. Specifically, the agencies believe it would not be possible to construct market and community benchmarks for census blocks or block groups, given that certain public data sources necessary to compute these benchmarks are not available at the census block group level. For example, section 1071 data will include census tract information, but will not include address, census block, or census block groups. In addition, the agencies believe that it would be more difficult for banks to target lending to specific census blocks or block groups, which are geographically smaller areas than census tracts, and may consist of a portion of a neighborhood. Furthermore, the agencies considered that this alternative may introduce privacy concerns regarding specific loan recipients as the loan-level data collected for closed-end home mortgages, small business, and small farm loans would have to be reported and collected at the census block or block group level, which would increase the re-identification risk for these data.

Geographic Bank Metrics. As set forth in paragraph III.a of final appendix A, the Geographic Bank Metrics are calculated as the percentage of a bank's loans in a particular major product line that are located in low- and moderate-income census tracts, respectively. This calculation is based on originated and purchased loans in a specific Retail Lending Test Area over the years in the evaluation period. For example, if a bank originated or purchased 25 total closed-end home mortgage loans in a facility-based assessment area over the years in the evaluation period and 5 of those loans were in low-income census tracts, its Geographic Bank Metric for closed-end home mortgage loans in low-income census tracts would be 0.2, or 20 percent.

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

Under the final rule, for each major product line, the agencies separately calculate a Geographic Bank Metric for low-income census tracts and for moderate-income census tracts, as discussed above. The agencies note that calculating the Geographic Bank Metrics in this way is consistent with current practice for evaluating a bank's lending in low- and moderate-income census tracts.

Geographic Market Benchmarks—closed-end home mortgage loans, small business loans, and small farm loans. As set forth in paragraph III.b of final appendix A, the Geographic Market Benchmarks for facility-based assessment areas and retail lending assessment areas is calculated as the percentage of closed-end home mortgage loans, small business loans, or small farm loans that are located in low-income census tracts or moderate-income census tracts, respectively. This calculation is based on originated loans in the facility-based assessment area or retail lending assessment area over the years in the evaluation period reported by all lenders.

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Table 11 of § __.22(e)(3): Summary of Calculations for Geographic Market Benchmarks

Product line and category of lending evaluated	Geographic Market Benchmark Numerator	Geographic Market Benchmark Denominator

Closed-end home mortgage loans, low-income census tracts	Number of reported (HMDA) closed-end home mortgage loan originations in low-income census tracts in an area	Number of all reported (HMDA) closed-end home mortgage loan originations in an area
Closed-end home mortgage loans, moderate-income census tracts	Number of reported (HMDA) closed-end home mortgage loan originations in moderate-income census tracts in an area	Number of all reported (HMDA) closed-end home mortgage loan originations in an area
Small business loans, low-income census tracts, CRA data approach	Number of reported (CRA) loan originations of loan amount < $1 million to businesses in low-income census tracts in an area	Number of all reported (CRA) loan originations of loan amount < $1 million to businesses in an area
Small business loans, moderate-income census tracts, CRA data approach	Number of reported (CRA) loan originations of loan amount < $1 million to businesses in moderate-income census tracts in an area	Number of all reported (CRA) loan originations of loan amount < $1 million to businesses in an area
Small business loans, low-income census tracts, section 1071 approach	Number of reported (section 1071) loan originations to small businesses in low-income census tracts in an area	Number of all reported (section 1071) loan originations to small businesses in an area
Small business loans, moderate-income census tracts, section 1071 approach	Number of reported (section 1071) loan originations to small businesses in moderate-income census tracts in an area	Number of all reported (section 1071) loan originations to small businesses in an area
Small farm loans, low-income census tracts, CRA data approach	Number of reported (CRA) loan originations of loan amount < $500,000 to farms in low-income census tracts in an area	Number of all reported (CRA) loan originations of loan amount < $500,000 to farms in an area
Small farm loans, moderate-income census tracts, CRA data approach	Number of reported (CRA) loan originations of loan amount < $500,000 to farms in moderate-income census tracts in an area	Number of all reported (CRA) loan originations of loan amount < $500,000 to farms in an area

Small farm loans, low-income census tracts, section 1071 approach	Number of reported (section 1071) loan originations to small farms in low-income census tracts in an area	Number of all reported (section 1071) loan originations to small farms in an area
Small farm loans, moderate-income census tracts, section 1071 approach	Number of reported (section 1071) loan originations to small farms in moderate-income census tracts in an area	Number of all reported (section 1071) loan originations to small farms in an area

Note: The transition to using section 1071 data is discussed further in the section-by-section analysis of § __.22(e)(1).

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For the outside retail lending area, the Geographic Market Benchmarks for closed-end home mortgage loans, small business loans, and small farm loans are determined by first calculating the benchmark for each individual MSA and for the nonmetropolitan area of a State that is part of the outside retail lending area (known as the ''component geographic areas,'' pursuant to final § ____.18(b)(2)), and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph III.d of final appendix A, the Geographic Market Benchmarks for outside retail lending areas are established by calculating, for each major product line—other than automobile loans—in each component geographic area of the outside retail lending area, a benchmark in low- or moderate-income census tracts, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Geographic Market Benchmarks for facility-based assessment areas and retail lending assessment areas, as applicable. The benchmarks calculated for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's loans in the major product line originated and purchased in the component geographic area, relative to the number of the bank's loans in the major product line originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposed approach, the Geographic Market Benchmarks are intended to show the overall level of lending for each product line taking place in the Retail Lending Test Area in low- and moderate-income census tracts by all reporting lenders. The agencies note that calculating Geographic Market Benchmarks in this way is consistent with current practice for evaluating a bank's lending in low- and moderate-income census tracts.

Geographic Community Benchmarks—closed-end home mortgage loans. As set forth in paragraphs III.c.1 and III.c.2 of final appendix A, the Geographic Community Benchmarks for closed-end home mortgage loans in facility-based assessment areas and retail lending assessment areas are calculated as the percentage of owned-occupied housing units in low- and moderate-income census tracts, respectively. This calculation is based on owner-occupied housing units in the facility-based assessment area or retail lending assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

Table 12 of § __.22(e)(3): Summary of Calculations for Geographic Community Benchmarks—Closed-end Home Mortgages

Product line and category of lending evaluated	Geographic Community Benchmark Numerator	Geographic Community Benchmark Denominator	Primary data source
Closed-end home mortgage loans, low-income census tracts	Number of owner-occupied housing units in low-income census tracts in an area	Number of all owner-occupied housing units in an area	American Community Survey
Closed-end home mortgage loans, moderate-income census tracts	Number of owner-occupied housing units in moderate-income census tracts in an area	Number of all owner-occupied housing units in an area	American Community Survey

For the outside retail lending area, the Geographic Community Benchmarks for closed-end home mortgage loans are determined by first calculating the benchmark for each component geographic area and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph III.e of final appendix A, the Geographic Community Benchmarks for closed-end home mortgage loans in outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for closed-end home mortgage loans in low- or moderate-income census tracts, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Geographic Community Benchmarks for closed-end home mortgage loans in facility-based assessment areas and retail lending assessment areas. The benchmarks calculated for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's closed-end home mortgage loans originated and purchased in the component geographic area, relative to the number of the bank's closed-end home mortgage loans originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposal, the Geographic Community Benchmarks for closed-end home mortgage loans are based on the share of owner-occupied housing units in the Retail Lending Test Area that are in low- or moderate-income census tracts. Similar to the other Geographic Community Benchmarks, the agencies believe that the share of owner-occupied housing units in low- or moderate-income census tracts is an indicator of the potential lending opportunities for closed-end home mortgage loans in low- or moderate-income census tracts. Further, the agencies note that using the share of owner-occupied housing units in low- or moderate-income census tracts is consistent with current practice for evaluating a bank's closed-end home mortgage lending in low- or moderate-income census tracts.

Geographic Community Benchmarks—small business loans and small farm loans. As set forth in paragraphs III.c.3 through III.c.6 of final appendix A, the Geographic Community Benchmarks for small business loans or small farm loans in facility-based assessment areas and retail lending assessment areas, as applicable, are calculated as the percentage of businesses or farms in low- or moderate-income census tracts, respectively.[926] This calculation is based on businesses or farms in the facility-based assessment area or retail lending assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

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[926] For purposes of the Geographic Community Benchmarks for small business loans, the agencies exclude farms from the calculation of the percentage of businesses in low- or moderate-income census tracts, respectively.

Table 13 of § __.22(e)(3): Summary of Calculations for Geographic Community Benchmarks—Small Business Loans and Small Farm Loans

Product line and category of lending evaluated	Geographic Community Benchmark Numerator	Geographic Community Benchmark Denominator	Primary data source
Small business loans, low-income census tracts, CRA data approach	Number of businesses in low-income census tracts in an area	Number of businesses in an area	Third-party data provider
Small business loans, moderate-income census tracts, CRA data approach	Number of businesses in moderate-income census tracts in an area	Number of businesses in an area	Third-party data provider
Small business loans, low-income census tracts, section 1071 approach	Number of small businesses in low-income census tracts in an area	Number of small businesses in an area	Third-party data provider
Small business loans, moderate-income census tracts, section 1071 approach	Number of small businesses in moderate-income	Number of small businesses in an area	Third-party data provider

	census tracts in an area		
Small farm loans, low-income census tracts, CRA data approach	Number of farms in low-income census tracts in an area	Number of farms in an area	Third-party data provider
Small farm loans, moderate-income census tracts, CRA data approach	Number of farms in moderate-income census tracts in an area	Number of farms in an area	Third-party data provider
Small farm loans, low-income census tracts, section 1071 approach	Number of small farms in low-income census tracts in an area	Number of small farms in an area	Third-party data provider
Small farm loans, moderate-income census tracts, section 1071 approach	Number of small farms in moderate-income census tracts in an area	Number of small farms in an area	Third-party data provider

Note: The transition to using section 1071 data is discussed further in the section-by-section analysis of

§ __.22(e)(1).

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BILLING CODE 6210–01–C
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For the outside retail lending area, the Geographic Community Benchmarks for small business loans and small farm loans are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph III.e of final appendix A, the Geographic Community Benchmarks for small business loans or small farm loans in outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for small business loans or small farm loans in low- or moderate-income census tracts, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Geographic Community Benchmarks for small business loans or small farm loans in facility-based assessment areas and retail lending assessment areas, as applicable. The benchmarks calculated for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's small business loans or small farm loans originated and purchased in the component geographic area, relative to the number of the bank's small business loans or small farm loans originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposal, the Geographic Community Benchmarks for small business loans or small farm loans are based on the share of small businesses or small farms in the Retail Lending Test Area that are in low- or moderate-income census tracts. For example, the Geographic Community Benchmark for small business loans in low-income census tracts in a facility-based assessment area would be the percentage of all businesses in the area that are located in a low-income census tract, based on available data that the agencies intend to disclose in aggregated form on a regular basis. Similar to the other Geographic Community Benchmarks, the agencies believe that the share of small businesses or small farms in low- or moderate-income census tracts is an indicator of the potential lending opportunities for small business loans or small farm loans in low- or moderate-income census tracts. Further, the agencies note that using the share of small businesses or small farms in low- or moderate-income census tracts is consistent with current practice for evaluating a bank's small business or small farm lending in low- or moderate-income census tracts.

Following the transition to using section 1071 data,[927] the agencies would then adjust the methodology used to calculate the Geographic Community Benchmark to reflect changes in what businesses and farms are included in the section 1071 data relative to the existing CRA small business and small farm data. Specifically, prior to the use of section 1071 data, this benchmark would be based on the share of all businesses and farms that are located in each category of designated census tracts. Once section 1071 data is used in CRA evaluations, this benchmark would be the share of small businesses and small farms with gross annual revenue of $5 million or less that are located in each category of designated census tracts. This change reflects that section 1071 data include only loans made to businesses and farms with gross annual revenue of $5 million or less, and ensures that the bank metrics and benchmarks are calculated in a consistent fashion.[928]

Geographic Community Benchmarks—automobile loans. As set forth in paragraphs III.c.7 and III.c.8 of final appendix A, the Geographic Community Benchmarks for automobile loans in facility-based assessment areas are calculated as the percentage of households in low- and moderate-income census tracts, respectively. This calculation is based on households in the facility-based assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

Table 14 of § __.22(e)(3): Summary of Calculations for Geographic Community Benchmarks—Automobile Loans

Product line and category of lending evaluated	Geographic Community Benchmark Numerator	Geographic Community Benchmark Denominator	Primary data source
Automobile loans, low-income census tracts	Number of households in low-income census tracts in an area	Number of households in an area	American Community Survey
Automobile loans, moderate-income census tracts	Number of households in moderate-income census tracts in an area	Number of households in an area	American Community Survey

For the outside retail lending area, the Geographic Community Benchmarks for automobile loans (and all other retail lending benchmarks) are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph III.e of appendix A, the Geographic Community Benchmarks for automobile loans in an outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for automobile loans in low- or moderate-income census tracts, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Geographic Community Benchmarks for automobile loans in facility-based assessment areas. The benchmarks calculated for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's automobile loans originated and purchased in the component geographic area, relative to the number of the bank's automobile loans originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposal, the Geographic Community Benchmarks for automobile loans are based upon the share of households the Retail Lending Test Area that are in in low- or moderate-income census tracts. Similar to the other Geographic Community Benchmarks, the agencies believe that

[927] The transition amendments included in this final rule will, once effective, amend the definitions of ''small business'' and ''small farm'' to instead cross-reference to the definition of ''small business'' in the CFPB Section 1071 Final Rule. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB Section 1071 Final Rule definition of ''small business.'' This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB Section 1071 Final Rule. The agencies will provide the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[928] The agencies acknowledge that proposed appendix A, paragraph III.2.b specified that the Geographic Community Benchmarks for small business loans and small farm loans, prior to the transition to using section 1071 data, would be based on the share of *small* businesses or *small* farms in an area that are located in low- or moderate-income census tracts. However, the final rule specifies that these Geographic Community Benchmarks, prior to the transition to using section 1071 data, are based on the share of businesses or farms in an area that are located in low- or moderate-income census tracts, regardless of the size of these businesses and farms. The final rule approach is intended to ensure that the bank metrics and benchmarks are calculated in a consistent fashion.

the share of households in low- or moderate-income census tracts is an indicator of the potential lending opportunities for automobile loans in low- or moderate-income census tracts. The agencies considered using the share of families in low- or moderate-income census tracts as the Borrower Community Benchmark, but determined that of the two options, the share of households has the benefit of carrying forward the current approach.

Section ____.22(e)(4) Borrower Distribution Measures

The Agencies' Proposal

As discussed above, the agencies proposed to evaluate the borrower distributions of a bank's major product lines by using certain metrics and benchmarks. Specifically, the proposed Borrower Bank Metrics are calculated as the percentage of a bank's loans to borrowers at varying income levels or gross annual revenue thresholds, relative to the total number of the bank's loans in the facility-based assessment area, retail lending assessment area, or outside retail lending area. As discussed in greater detail in the section-by-section analysis of final § ____.22(f), the agencies proposed to compare the Borrower Bank Metric for each distribution for each major product line to performance ranges calculated based on two benchmarks: a Borrower Market Benchmark that reflects the aggregate lending to borrowers at varying income levels or gross annual revenue thresholds across lenders within a facility-based assessment area, retail lending assessment area, or outside retail lending area; and a Borrower Community Benchmark that reflects the potential lending opportunities at varying income levels or gross annual revenue thresholds within a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Comments Received

The agencies received numerous comments, discussed above, on the use of distribution metrics and benchmarks generally. In addition, the agencies received several comments that specifically addressed the proposed borrower distribution metrics and benchmarks.

Treatment of purchased loans. A few commenters sought clarity on the treatment of purchased loans with respect to the borrower distribution metrics and benchmarks when income and revenue information is not reported or not available, such as for certain seasoned government mortgage loans. For example, some commenters recommended including purchased loans in the numerator of the Borrower Bank Metric when the bank has information demonstrating that the borrower is low- or moderate-income or has gross annual revenues of less than $1 million, and excluding purchased loans from the numerator and denominator of the Borrower Bank Metric if the bank does not have borrower income or revenue information.

Borrower Community Benchmark for home mortgage loans. A number of commenters raised concerns about the agencies' proposal to use low- and moderate-income family counts to establish community benchmarks for analyzing the borrower distribution of home mortgage lending. For example, a few commenters suggested that the Borrower Community Benchmark for home mortgage loans should be based on the share of owner-occupied housing units in an area that are occupied by low- and moderate-income households, instead of the share of low- and moderate-income families. These commenters explained that using low- and moderate-income households that are owner-occupants, rather than low- and moderate-income families, would better account for differences in home prices and homeownership opportunities across the country. In addition, at least one commenter stated that the agencies may want to consider a Borrower Community Benchmark for home mortgage loans that is based on the low- and moderate-income share of households, including households that are not owner-occupants, as this would capture unrelated people sharing rental housing units who could become homeowners.

Another commenter generally regarded the proposed borrower distribution analysis favorably, but expressed concern that the Borrower Community Benchmark for closed-end home mortgage lending to low-income borrowers would greatly overestimate credit demand among these borrowers because incomes are too low relative to home prices in many parts of the country. The commenter conducted an analysis indicating that the proposed Borrower Community Benchmark for closed-end home mortgage loans to low-income borrowers was consistently higher than the corresponding Borrower Market Benchmark across 354 MSAs, such that the performance ranges calculated for closed-end home mortgage loans to low-income borrowers would always be based on the market benchmarks in these markets. Accordingly, the commenter suggested that the agencies consider alternative community benchmarks and alternative calibrations of the benchmarks to potentially create a better incentive for banks to improve performance. The commenter also suggested that because the proposed Borrower Community Benchmark for closed-end home mortgage loans overestimates credit demand among low-income borrowers, it also underestimates credit demand among moderate-income borrowers.

Final Rule

For the reasons discussed below, the agencies are adopting the proposed borrower distribution metrics and benchmarks generally as proposed.

- Final § ____.22(e)(4)(i) provides that for each major product line, a Borrower Bank Metric is calculated pursuant to paragraph IV.a of final appendix A.
- Final § ____.22(e)(4)(ii) provides that for each major product line except automobile loans, a Borrower Market Benchmark is calculated pursuant to, as applicable, paragraph IV.b of final appendix A for facility-based assessment areas and retail lending assessment areas, and paragraph IV.d of final appendix A for outside retail lending areas.
- Final § ____.22(e)(4)(iii) provides that for each major product line, a Borrower Community Benchmark is calculated pursuant to, as applicable, paragraph IV.c of appendix A for facility-based assessment areas and retail lending assessment areas, and paragraph IV.e of appendix A for outside retail lending areas.

A summary of these calculations for facility-based assessment area and retail lending assessment areas, as applicable, can be found in the following table for each product line. Following a discussion of some preliminary issues, each of these metrics and benchmarks is discussed in more detail below.

Table 15 to § __.22(e)(4): Summary of Calculations for Borrower Distribution Measures

Retail Lending Product Line	**Borrower Bank Metric** *Percentage of bank loan originations and purchases to the following categories of designated borrowers, out of all bank loans in the product line in the Retail Lending Test Area, by loan count*	**Borrower Market Benchmark** *Percentage of all reported loan originations to the following categories of designated borrowers, out of all reported loan originations in the product line in the Retail Lending Test Area, by loan count*	**Borrower Community Benchmark**
Closed-End Home Mortgage Lending	Low-Income Borrowers	Low-Income Borrowers	Percentage of low-income families
	Moderate-Income Borrowers	Moderate-Income Borrowers	Percentage of moderate-income families

Small Business Lending	Businesses with GAR less than or equal to $250,000	Businesses with GAR less than or equal to $250,000	Percentage of businesses with GAR less than or equal to $250,000
	Businesses with GAR of greater than $250,000 but less than or equal to $1 million	Businesses with GAR of greater than $250,000 but less than or equal to $1 million	Percentage of businesses with GAR of greater than $250,000 but less than or equal to $1 million
Small Farm Lending	Farms with GAR less than or equal to $250,000	Farms with GAR less than or equal to $250,000	Percentage of farms with GAR less than or equal to $250,000
	Farms with GAR of greater than $250,000 but less than or equal to $1 million	Farms with GAR of greater than $250,000 but less than or equal to $1 million	Percentage of farms with GAR of greater than $250,000 but less than or equal to $1 million
Automobile Lending	Low-Income Borrowers	Not applicable	Percentage of low-income households
	Moderate-Income Borrowers	Not applicable	Percentage of moderate-income households

Note: As discussed further in the section-by-section analysis of § __.22(e)(1), prior to the use of section 1071 data, the bank metrics and market benchmarks for small business lending are based on loans to businesses with a loan amount of less than $1 million, and for small farm lending, are based on loans to farms with a loan amount of less than $500,000. In addition, prior to the use of section 1071 data, the community benchmarks for small business lending and small farm lending are based on percentages of all businesses and all farms, respectively. Once section 1071 data is used for CRA evaluations, the bank metrics and market benchmarks for small business and small farm lending will be based on loans to small businesses or small farms (*i.e.*, those with gross annual revenue of less than $5 million), with no loan amount threshold, and the community benchmarks for small business lending and small farm lending will be based on percentages of small businesses and small farms (*i.e.*, those with gross annual revenue of less than $5 million), respectively.

Treatment of purchased loans. Consistent with the agencies' proposal, under the final rule approach, purchased loans for which borrower income or revenue data are unavailable are counted in the denominator of the borrower distribution metrics and benchmarks, and not in the numerator of the borrower distribution metrics and benchmarks. If a bank provides the agencies with information indicating that purchased loans for which borrower income or revenue data are unavailable were in fact made to low- or moderate-income borrowers or borrowers with gross annual revenues below $1 million, the agencies may adjust the bank's recommended conclusion, as discussed in the section-by-section analysis of § ____.22(g)(4). The agencies considered comments suggesting that if borrower income data are unavailable for purchased loans, then the loans should be excluded from the numerator and denominator of the borrower distribution metrics. However, the final rule does not adopt this approach because the agencies believe that such an approach could allow a bank to purchase middle- and upper-income loans for which income information is not available without factoring into the bank's distribution metrics. In addition, the agencies believe that it is preferable to include all of a bank's loans in its distribution metrics, and to consider potential adjustments to the bank's Retail Lending Test conclusions pursuant to §§ ____.22(g)(4) and ____.21(d) as needed, to ensure that the distribution metrics comprehensively account for a bank's retail lending.

The final rule continues the current practice of using borrower income or revenue information at the time of the credit decision for purchased loans. As a result, a loan originated to a low- or moderate-income borrower, if sold to a third-party bank, would receive consideration as a low- or moderate-income loan for the purchasing bank regardless of the borrower's income at the time of purchase. The agencies believe that this approach will help to support liquidity for lenders that lend to low- or moderate-income borrowers and census tracts, in accord with the CRA's objective of encouraging banks to meet the credit needs of their entire communities. Furthermore, the agencies understand that it may not be feasible to obtain updated borrower income information for purchased loans.

Borrower Bank Metrics. As set forth in paragraph IV.a of appendix A, the Borrower Bank Metrics are calculated as the percentage of a bank's loans in a particular major product line to borrowers in each applicable income or revenue category, respectively. This calculation is based on originated and purchased loans in a specific Retail Lending Test Area over the years in the evaluation period. For example, if a bank originated or purchased 100 total closed-end home mortgage loans in a facility-based assessment area over the years in an evaluation period, and 20 of those loans were to low-income borrowers, then its Borrower Bank Metric for closed-end home mortgage loans to low-income borrowers would be 0.2, or 20 percent.

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$$\frac{Bank\ Loans\ to\ Low-Income\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Geographic\ Bank\ Metric\ (20\%)$$

For closed-end home mortgage loans and automobile loans, the agencies separately calculate the Borrower Bank Metric for low-income borrowers and moderate-income borrowers. For small business loans and small farm loans, the agencies separately calculate the Borrower Bank Metric for businesses or farms with gross annual revenues of: (1) $250,000 or less; and (2) greater than $250,000 but less than or equal to $1 million. The agencies note that calculating the Borrower Bank Metrics in this way is generally consistent with the current practice for measuring a bank's lending to borrowers of various income and revenue categories.

Borrower Market Benchmarks—closed-end home mortgage loans, small business loans, and small farm loans. As set forth in paragraph IV.b of final appendix A, the Borrower Market Benchmarks for facility-based assessment areas and retail lending assessment areas are calculated as the percentage of closed-end home mortgage loans, small business loans, or small farm loans to borrowers in each income or revenue category, as applicable. This calculation is based on originated loans in the facility-based assessment area or retail lending assessment area over the years in the evaluation period reported by all lenders.

Table 16 of § __.22(e)(4): Summary of Calculations for Borrower Market Benchmarks

Product line and category of lending evaluated	Borrower Market Benchmark Numerator	Borrower Market Benchmark Denominator

Closed-end home mortgage loans, low-income borrowers	Number of reported (HMDA) closed-end home mortgage loan originations to low-income borrowers in an area	Number of all reported (HMDA) closed-end home mortgage loan originations in an area
Closed-end home mortgage loans, moderate-income borrowers	Number of reported (HMDA) closed-end home mortgage loan originations to moderate-income borrowers in an area	Number of all reported (HMDA) closed-end home mortgage loan originations in an area
Small business loans, GAR less than or equal to $250,000, CRA data approach	Number of reported (CRA) loan originations of loan amount less than or equal to $1 million to businesses with GAR less than or equal to $250,000 in an area	Number of all reported (CRA) loan originations of loan amount less than or equal to $1 million to businesses in an area
Small business loans, GAR $250,000–$1 million, CRA data approach	Number of reported (CRA) loan originations of loan amount less than or equal to $1 million to businesses with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of all reported (CRA) loan originations of loan amount less than or equal to $1 million to businesses in an area
Small business loans, GAR less than or equal to $250,000, section 1071 approach	Number of reported (section 1071) loan originations to small businesses with GAR less than or equal to $250,000 in an area	Number of all reported (section 1071) loan originations to small businesses in an area
Small business loans, GAR $250,000–$1 million, section 1071 approach	Number of reported (section 1071) loan originations to small businesses with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of all reported (section 1071) loan originations to small businesses in an area
Small farm loans, GAR less than or equal to $250,000, CRA data approach	Number of reported (CRA) loan originations of loan amount less than or equal to $500,000 to farms with GAR less than or equal to $250,000 in an area	Number of all reported (CRA) loan originations of loan amount less than or equal to $500,000 to farms in an area
Small farm loans, GAR $250,000–$1 million, CRA data approach	Number of reported (CRA) loan originations of loan amount less than or equal to $500,000 to farms with GAR	Number of all reported (CRA) loan originations of loan amount less than or

	greater than $250,000 but less than or equal to $1 million in an area	equal to $500,000 to farms in an area
Small farm loans, GAR less than or equal to $250,000, section 1071 approach	Number of reported (section 1071) loan originations to small farms with GAR less than or equal to $250,000 in an area	Number of all reported (section 1071) loan originations to small farms in an area
Small farm loans, GAR $250,000–$1 million, section 1071 approach	Number of reported (section 1071) loan originations to small farms with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of all reported (section 1071) loan originations to small farms in an area

Note: The transition to using section 1071 data is discussed further in the section-by-section analysis of

§ __.22(e)(1).

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For the outside retail lending area, the Borrower Market Benchmarks for closed-end home mortgage loans, small business loans, and small farm loans are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph IV.d of final appendix A, the Borrower Market Benchmarks for outside retail lending areas are established by calculating, for each major product line—other than automobile loans—in each component geographic area of the outside retail lending area, a benchmark for each applicable income and revenue category, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Borrower Market Benchmarks for facility-based assessment areas and retail lending assessment areas, as applicable. The benchmarks for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's loans in the major product line originated and purchased in the component geographic area, relative to the number of the bank's loans in the major product line originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposed approach, the Borrower Market Benchmarks are intended to show the overall level of lending for each product line taking place in the Retail Lending Test Area to borrowers of each applicable income and revenue category by all reporting lenders. The agencies note that calculating Borrower Market Benchmarks in this way is consistent with current practice for evaluating a bank's lending to borrowers of various income and revenue categories.

Borrower Community Benchmarks—closed-end home mortgage loans. As set forth in paragraphs IV.c.1 and IV.c.2 of final appendix A, the Borrower Community Benchmarks for closed-end home mortgage loans to low- and moderate-income borrowers, respectively, in facility-based assessment areas and retail lending assessment areas are calculated as the percentage of all families that are low- and moderate-income families, respectively. This calculation is based on families in the facility-based assessment area or retail lending assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

Table 17 of § __.22(e)(4): Summary of Calculations for Borrower Community Benchmarks—Closed-End Home Mortgage Loans

Product line and category of lending evaluated	Borrower Community Benchmark Numerator	Borrower Community Benchmark Denominator	Primary data source
Closed-end home mortgage loans, low-income borrowers	Number of low-income families in an area	Number of families in an area	American Community Survey
Closed-end home mortgage loans, moderate-income borrowers	Number of moderate-income families in an area	Number of families in an area	American Community Survey

For the outside retail lending area, the Borrower Community Benchmarks for closed-end home mortgage loans (and all other retail lending benchmarks) are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph IV.e of final appendix A, the Borrower Community Benchmarks for closed-end home mortgage loans in outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for closed-end home mortgage loans to low- or moderate-income borrowers, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Borrower Community Benchmarks for closed-end home mortgage loans to low- or moderate-income borrowers in facility-based assessment areas and retail lending assessment areas. The benchmarks calculated for each component geographic area are then averaged together, weighting each component geographic area by the share of the bank's closed-end home mortgage loans originated and purchased in the component geographic area, relative to the bank's closed-end home mortgage loans originated and purchased in the outside retail lending area, calculated using loan count. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposal, the Borrower Community Benchmarks for closed-end home mortgage loans are based on the share of families in the Retail Lending Test Area that are low- or moderate-income. Similar to the other Borrower Community Benchmarks, the agencies believe that the share of low- or moderate-income families is an indicator of the potential lending opportunities for closed-end home mortgage loans to low- or moderate-income borrowers. In deciding to define the benchmark as comprising low- or moderate-income families, as opposed to households, the agencies have placed significant weight on the fact that this is consistent with current practice for evaluating a bank's closed-end home mortgage lending to low- or moderate-income borrowers. The agencies believe this will aid in implementation and familiarity with the final rule approach. However, the agencies recognize that this benchmark would, therefore, not include individuals that the American Community Survey defines as comprising households but are not included in its definition of families, such as adults living alone, unmarried couples, and unrelated adults living as roommates.[929] As a result, this benchmark would not capture some households that are mortgage borrowers or will become mortgage borrowers in the future. The agencies considered using the share of low- or moderate-income households as the Borrower Community Benchmark, but determined that of the two options, the share of low- or moderate-income families has the benefit of carrying forward the current approach. The agencies note that there is no distinction or consideration in the distribution analysis of whether a bank's home mortgage loans were made to borrowers that are family households or to borrowers that are non-family households; rather, the bank metrics reflect the bank's percentages of all loans to low- and moderate-income borrowers. Moreover, the agencies note that the decision to use family households to construct these community benchmarks is not intended to convey a preference for lending to family households rather than to non-family households. During and following implementation of the final rule, the agencies will continue to monitor this and other benchmarks to determine whether other indicators would better estimate the potential lending opportunities for each product line.

The agencies considered comments that the Borrower Community Benchmark for closed-end home mortgage loans to low-income borrowers—proposed as being low-income families as noted above—may overestimate potential demand for closed-end home mortgage loans among low-income families. However, the agencies believe that the benchmark adopted in the final rule accords with

[929] According to the Census Glossary, a household includes "the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household." Further information related to how households and families are defined in the American Community Survey can be found in the Census Glossary at *https://www.census.gov/glossary/?term=Household*.

the CRA's emphasis on meeting the credit needs of the bank's entire community, which includes low-income families. For this reason, the agencies determined not to modify the Borrower Community Benchmark for closed-end home mortgage loans to low-income borrowers in a way that universally assumes significantly lower credit needs for these borrowers. In addition, as discussed in the section-by-section analysis for ____.22(f), the agencies determined that the combination of the market and community benchmarks, and final rule multiplier values, result in appropriately calibrated performance ranges, and that Retail Lending Test conclusions of ''Low Satisfactory'' or higher are generally attainable.

Borrower Community Benchmarks—small business loans and small farm loans. As set forth in paragraphs IV.c.3 through IV.c.6 of final appendix A, the Borrower Community Benchmarks for small business loans or small farm loans in facility-based assessment areas and retail lending assessment areas, as applicable, are calculated as the percentage of businesses or farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, and with gross annual revenues of $250,000 or less, respectively.[930] This calculation is based on businesses or farms in the facility-based assessment area or retail lending assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

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Table 18 to § __.22(e)(4): Summary of Calculations for Borrower Community Benchmarks—Small Business Loans and Small Farm Loans

Product line and category of lending evaluated	Borrower Community Benchmark Numerator	Borrower Community Benchmark Denominator	Primary data source

[930] For purposes of the Borrower Community Benchmarks for small business loans, the agencies exclude farms from the calculation of the percentage of businesses in each gross annual revenues category.

Small business loans, GAR less than or equal to $250,000, CRA data approach	Number of businesses with GAR less than or equal to $250,000 in an area	Number of businesses in an area	Third-party data provider
Small business loans, GAR greater than $250,000 but less than or equal to $1 million, CRA data approach	Number of businesses with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of businesses in an area	Third-party data provider
Small business loans, GAR less than or equal to $250,000, section 1071 approach	Number of small businesses with GAR less than or equal to $250,000 in an area	Number of small businesses in an area	Third-party data provider
Small business loans, GAR greater than $250,000 but less than or equal to $1 million, section 1071 approach	Number of small businesses with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of small businesses in an area	Third-party data provider
Small farm loans, GAR less than or equal to $250,000, CRA data approach	Number of farms with GAR less than or equal to $250,000 in an area	Number of farms in an area	Third-party data provider
Small farm loans, GAR greater than $250,000 but less than or equal to $1 million, CRA data approach	Number of farms with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of farms in an area	Third-party data provider
Small farm loans, GAR less than or equal to $250,000, section 1071 approach	Number of small farms with GAR less than or equal to $250,000 in an area	Number of small farms in an area	Third-party data provider
Small farm loans, GAR greater than $250,000 but less than or equal to $1 million, section 1071 approach	Number of small farms with GAR greater than $250,000 but less than or equal to $1 million in an area	Number of small farms in an area	Third-party data provider

Note: The transition to using section 1071 data is discussed further in the section-by-section analysis of

§ __.22(e)(1).

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BILLING CODE 6210–01–C
BILLING CODE 6714–01–C

For the outside retail lending area, the Borrower Community Benchmarks for small business loans and small farm loans (and all other retail lending benchmarks) are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph IV.e of final appendix A, the Borrower Community Benchmarks for small business loans or small farm loans in outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for small business loans or small farm loans to small businesses or small farms of each applicable revenue category, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Borrower Community Benchmarks in facility-based assessment areas and retail lending assessment areas, as applicable. The benchmarks calculated for each component geographic area are then averaged, weighting each component geographic area by the number of the bank's small business loans or small farm loans originated and purchased in the component geographic area, relative to the number of the bank's small business loans or small farms originated and purchased in the outside retail lending area. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

Consistent with the proposal, the Borrower Community Benchmarks for small business loans or small farm loans are based on the share of businesses and farms in the Retail Lending Test area in different revenue categories. For example, the Borrower Community Benchmark for small business loans with gross annual revenue of less than $250,000 in a facility-based assessment area is the share of all businesses in the area with gross annual revenue of less than $250,000. Similar to the other Borrower Community Benchmarks, the agencies believe that the share of businesses or farms of different sizes is an indicator of the potential lending opportunities for small business loans or small farm loans in the Retail Lending Test Area. Further, the agencies note that using the share of businesses or farms of different sizes is generally consistent with current practice for evaluating a bank's small business and small farm lending.

As described above with respect to the Geographic Community Benchmarks, following the transition to using section 1071 data,[931] the agencies will adjust the methodology used to calculate the Borrower Community Benchmark to reflect changes in what businesses and farms are included in the section 1071 data relative to the existing CRA small business and small farm data. Specifically, prior to the use of section 1071 data, this benchmark would be based on the share of all businesses and farms that are designated borrowers. Once section 1071 data is used in CRA evaluations, this benchmark would be the share of small businesses and small farms (*i.e.,* those with gross annual revenue of $5 million or less) that are designated borrowers. This change reflects that section 1071 data include only loans made to small businesses and small farms, and ensures that the bank metrics and benchmarks are calculated in a consistent manner.[932]

Borrower Community Benchmarks—automobile loans. As set forth in paragraphs IV.c.7 and IV.c.8 of final appendix A, the Borrower Community Benchmarks for automobile loans to low- and moderate-income borrowers, respectively, in facility-based assessment areas are calculated as the percentage of low- or moderate-income households, respectively. This calculation is based on households in the facility-based assessment area over the years in the evaluation period. Additional details regarding the calculations of community benchmarks, and an example, are provided below in this section.

Table 19 of § __.22(e)(4): Summary of Calculations for Borrower Community Benchmarks—Automobile Loans

Product line and category of lending evaluated	Borrower Community Benchmark Numerator	Borrower Community Benchmark Denominator	Primary data source
Automobile loans, low-income borrowers	Number of low-income households in an area	Number of households in an area	American Community Survey
Automobile loans, moderate-income borrowers	Number of moderate-income households in an area	Number of households in an area	American Community Survey

[931] The transition amendments included in this final rule will, once effective, amend the definitions of "small business" and "small farm" to instead cross-reference to the definition of "small business" in the CFPB Section 1071 Final Rule. This will allow the CRA regulatory definitions to adjust if the CFPB increases the threshold in the CFPB Section 1071 Final Rule definition of "small business." This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to conform these definitions with the definition in the CFPB Section 1071 Final Rule. The agencies will provide the effective date of these transition amendments in the **Federal Register** after section 1071 data is available.

[932] The agencies acknowledge that proposed appendix A, paragraph IV.2.b, specified that the Borrower Community Benchmarks for small business loans and small farm loans, prior to the transition to using section 1071 data, would be based on the share of businesses or farms of different sizes out of all *small* businesses or *small* farms in an area. However, the final rule specifies that these Borrower Community Benchmarks, prior to the transition to using section 1071 data, are based on the share of businesses or farms of different sizes out of all businesses or farms in an area, regardless of the size of these businesses and farms.

For the outside retail lending area, the Borrower Community Benchmarks for automobile loans (and all other retail lending benchmarks) are determined by first calculating the benchmark for each component geographic area, and then calculating a weighted average of the benchmarks for those areas. Specifically, as set forth in paragraph IV.e of final appendix A, the Borrower Community Benchmarks for automobile loans in outside retail lending areas are established by calculating, in each component geographic area of the outside retail lending area, a benchmark for automobile loans to low- or moderate-income borrowers, respectively. Calculation of these benchmarks for each component geographic area follows the method described above for calculating Borrower Community Benchmarks for automobile loans to low- or moderate-income borrowers in facility-based assessment areas. The benchmarks calculated for each component geographic area are then averaged together, weighting each component geographic area by the share of the bank's automobile loans originated and purchased in the component geographic area, relative to the bank's automobile loans originated and purchased in the outside retail lending area, calculated using loan count. More discussion of the process for creating benchmarks used in the outside retail lending area analysis follows later in this section.

The agencies believe that the share of low- or moderate-income households is an indicator of the potential lending opportunities for automobile loans in low- or moderate-income census tracts. The agencies considered using the share of families, rather than households, but determined that of the two options, the share of households has the benefit of carrying forward the current approach.

Section ____.22(e)(3)(ii) and (iii) and (e)(4)(ii) and (iii) Benchmark Timing

The Agencies' Proposal

In the proposal, the agencies addressed the issues of when the market and community benchmarks should be set for the evaluation period and which years of data to use to calculate the benchmarks. The agencies indicated that they were considering whether to calculate the community benchmarks using the most recent data available as of the first day of a bank's CRA examination. However, the agencies noted that these data may not become available until during or after the evaluation period, and as a result, under this approach, the values of the community benchmarks may not be known at the outset of the evaluation period. The agencies requested feedback on alternative approaches to the timing of when the community benchmarks would be set for a bank's evaluation.

Furthermore, the agencies indicated that they were considering whether to calculate the market benchmarks using all available reported data from the years of a bank's evaluation period, recognizing that some evaluation periods could include a year for which reported data is not yet available at the time of the bank's examination. The agencies also indicated that they were considering an alternative approach, under which the bank distribution metrics would be based on data only from the same years over which the market distribution benchmarks are able to be measured. The agencies noted that 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 would have the disadvantage of, in some circumstances, not fully covering a bank's recent lending.

Comments Received

A number of commenters provided specific feedback on timing issues related to the data used to calculate the proposed retail lending metrics and benchmarks. Some commenters raised concerns about the delayed availability, incompleteness, lack of transparency, or sources of the proposed benchmark data against which bank borrower distribution and geographic distribution metrics would be measured under the agencies' proposal.

Bank metrics and market benchmarks. Several commenters supported the agencies' proposal to base the bank distribution metrics on all of the data from the bank's evaluation period, while the market distribution benchmarks would be based on reported data that is available at the time of the examination. For example, a commenter asserted that all of a bank's reported data for the evaluation period should be used, even if all corresponding market data was not available at the time of the examination. Likewise, another commenter stated that, generally, bank volume and bank distribution metrics should be based on an average of a bank's annual performance over the evaluation period. Another commenter that supported the agencies' proposal stressed the importance of leveraging examiner discretion and performance context to evaluate lending where any bank volume or bank distribution data is unavailable. A commenter suggested that all data should be representative of the community at the time that the loan, investment, or service was originated or provided.

Community benchmarks. Some commenters did not support the option the agencies stated was under consideration to set community benchmarks using the most recent data available as of the first day of a bank's CRA examination. A commenter noted that setting community benchmarks with the most recent data at the time of the bank's examination may contribute to banks clustering CRA qualifying activities around examination time rather than throughout the evaluation period. This commenter and several others instead recommended that benchmarks be set with data from throughout the evaluation period. A commenter suggested that using a five-year average of available data could avoid the effects of sudden, sometimes unpredictable swings in demographic data on community benchmarks. Another commenter stated that the agencies should calculate the community benchmarks based on data that pertains to the years of the evaluation period, and did not support setting the community benchmarks based on data available prior to the evaluation period, or at the time of the bank's examination. Other commenters suggested that the benchmarks could instead be set annually. These commenters suggested that this approach would provide banks with appropriate notice about retail lending performance expectations.

Some commenters recommended making community benchmark data available in advance of evaluation periods. For example, a commenter recommended that a bank's community benchmarks be established at the beginning of each examination cycle and remain consistent throughout the evaluation period. Another commenter stated that as a matter of fairness and due process, banks should know the benchmarks prior to being evaluated, so that they can plan and structure their CRA programs accordingly. A commenter similarly recommended that benchmarks be established based on the year prior to the start of an examination to allow for more consistency and alignment with the bank's metrics. Additionally, this commenter noted that in the event that circumstances have dramatically changed, such as in a global pandemic, an examiner could request more recent data.

Several commenters also suggested that, after being established at the beginning of an evaluation period, community benchmarks should decrease (''float down'') if demographic data collected during the evaluation period would lead to lower benchmarks. These commenters variously noted that economic recessions, natural disasters, pandemics, significant variances in real estate prices, and other events could warrant a downward adjustment to the community benchmarks.

Several commenters expressed concern that certain community benchmark data, including FFIEC data, would not be available at the start of an examination. One of the commenters noted that this lag would result in banks being measured against inaccurate community benchmarks, and that the agencies should clearly explain how they would account for this. Another commenter suggested a transition period during which banks could opt in to being evaluated using the community benchmarks in order to allow the agencies to assess whether the benchmarks adequately reflected economic conditions. Another commenter recommended that the agencies retain the current CRA practices for flexibly establishing and considering community benchmarks (based on data from the time of a bank's evaluation period, but which are not published in advance of the evaluation period) in evaluations given their familiarity to bankers and examiners.[933]

Timing issues affecting both the market and community benchmarks. Several commenters expressed concerns regarding the availability of benchmark information, or lack thereof, prior to a bank's evaluation period. A commenter argued that not having benchmark data upon implementation of the final rule would be contrary to the agencies' stated objectives of clarity and certainty. This commenter and another commenter raised concerns about the ability of banks to collect, track, and analyze CRA performance using the proposed metrics, given the delayed availability of benchmark information, both currently and after the final rule is implemented. Likewise, other commenters stated that not knowing the benchmarks against which a bank's performance would be assessed before the bank's CRA evaluation periods would prevent the bank from engaging in appropriate, necessary planning. A commenter described the benchmarks as moving targets based on dated peer performance that could obscure the full story of a bank's performance. Another commenter expressed concern regarding the number of calculations used to arrive at the metrics and benchmarks, noting the many different data sources used to construct the metrics and benchmarks, and the varying timing of when these data are available. As a result, the commenter stated, the benchmarks will be subjective, as the bank will not know what data sources the examiners will use to establish them.

Some commenters addressed the proposal to establish benchmarks that would cover an entire evaluation period. For example, a commenter warned against aggregating data from a bank's entire evaluation period because a bank's major product lines or MSA delineations could change from one year to the next. This commenter stated that conducting examinations using annual data for metrics and benchmarks, without combining and averaging that annual data, would better ensure that a bank's retail lending performance is measured against appropriate demographic and market data. Another commenter stated that banks can have evaluation periods that are shorter or longer than three years, and that it would be problematic to always set benchmarks only for three-year periods. This commenter also indicated that the agencies' proposed approach was further complicated by the fact that, during an evaluation period, low- and moderate-income census tracts can become middle- and upper-income census tracts, and *vice versa.*

Final Rule

The agencies have considered commenter feedback on this issue and have included provisions in sections V and VI of final appendix A that address the approach to setting, and the data used to calculate, community and market benchmarks. Specifically, the agencies intend to disclose the data used to calculate community benchmarks on an annual basis, in advance of each calendar year of an evaluation period. The agencies will calculate the market benchmarks at the time of the bank's examination using data that corresponds to the years of a bank's evaluation period. For purposes of a bank's evaluation over a full evaluation period, each benchmark would be calculated for the entire evaluation period, rather than calculating separate benchmarks for each individual calendar year of the evaluation period. For both sets of benchmarks, the agencies intend to annually disclose the annual component of the benchmark that corresponds to each calendar year, and that would be used to calculate the benchmark for the entire evaluation period. For the community benchmarks, this disclosure would occur in advance of each calendar year, and for the market benchmarks, the disclosure would occur after a calendar year once reported data for that year is available.

Community benchmarks. Under the final rule approach, the agencies intend to disclose the annual components of the data used to calculate the community benchmarks in advance of each calendar year. At the time of a bank's examination, the agencies will calculate the community benchmarks for the evaluation period, pursuant to the methodology in sections III and IV of final appendix A. For example, for a three-year evaluation period, for each community benchmark, the agencies intend to disclose available annual data in advance of each of the three calendar years of the evaluation period, and at the time of the bank's examination, the agencies would calculate the community benchmarks based on three years of data.

[933] *See, e.g.,* Interagency Large Institution CRA Examination Procedures (April 2014) at 6–8.

Table 20 of § __.22(e): Example of community benchmark approach for a facility-based assessment area or retail lending assessment area—closed-end home mortgage lending to low-income borrowers

	Number of low-income families	Number of families
Data provided prior to calendar year 1	10,000	90,000
Data provided prior to calendar year 2	11,000	100,000
Data provided prior to calendar year 3	13,000	110,000
Sum of years	34,000	300,000
Final community benchmark	34,000/300,000 ≈ 11.3%	

In determining that community benchmark data would be set in advance of each calendar year of the evaluation period, the agencies have considered how to balance the objective of providing certainty to banks regarding performance standards with incorporating the most up-to-date performance context information into the metrics-based approach. The agencies believe this approach will provide appropriate advance notice of benchmarks and performance expectations to banks; each year a bank would have advance notice of the annual component of the community benchmark for that specific year, which a bank can use to monitor performance. As described above, the agencies would use an average of these annual data points to determine each community benchmark for the entire evaluation period. Under this approach, the agencies note that a bank would have access to all of the annual components of the community benchmark by the beginning of the final calendar year of each evaluation period, when the annual component of the benchmark for the final calendar year would be disclosed. Furthermore, as discussed in the section-by-section analysis of final § ____.22(f), applicable performance ranges are based on the lower of the calibrated market benchmark and the calibrated community benchmark. As a result of disclosing the annual components of the community benchmarks, banks would have insight into the maximum level of retail lending to designated borrowers and in designated census tracts necessary to meet the performance ranges for each conclusion category. While the performance ranges used in an examination could be lower than those calculated by the community benchmark, they cannot exceed those based on the community benchmarks.

In addition, as a result of this approach, the agencies have considered that the data used for the community benchmarks approximately reflect the characteristics of the community during the bank's evaluation period. Prior to the beginning of each calendar year, the agencies intend to disclose annual components of the community benchmarks for the coming year of an evaluation period based on data sources that the agencies determine best reflect local conditions at the time, consistent with current practice of calculating community benchmarks based on data provided annually by the FFIEC.

The agencies also considered that the final rule approach will account for potential changes in the delineation of a Retail Lending Test Area during an evaluation period, because the community benchmark data for each calendar year would reflect the geographic composition of the Retail Lending Test Area in that year. For example, the agencies considered an example of a bank whose facility-based assessment area expands from a single county in the first calendar year of the evaluation period to a total of two counties in the second and third calendar years. The community benchmark data for the first calendar year would reflect the single county delineation, and the community benchmark data for the second and third calendar years would reflect the two-county designation. The agencies determined that calculating a multiyear ratio reflecting all years in a bank's performance evaluation will result in a community benchmark that accounts for the changes in the bank's facility-based assessment area delineation without requiring any additional adjustments or weighting. The agencies considered this to be an important benefit of the proposed approach, since the delineations of facility-based assessment areas, retail lending assessment areas, and outside retail lending areas may change on an annual basis due to a variety of factors, such as changes in MSA definitions, or expansion of a bank's service area in a particular MSA.

The agencies also considered, but decline to adopt, an alternative approach of designating the final community benchmark levels in advance of the first year of the evaluation period. Under this alternative, a final community benchmark would be published prior to the bank's evaluation period based on data available at that time. As a result, this alternative approach would not involve calculating a multiyear ratio of annual community benchmark data released over the course of the evaluation period. The agencies considered that this alternative approach could provide additional certainty regarding the level of this benchmark. However, the agencies also considered that such an approach would necessitate using older data to construct the community benchmarks for each year in the bank's evaluation period, as noted by some commenters, which could result in certain performance context information not being incorporated into the community benchmarks. For example, the community benchmark data available at the beginning of the first year of a bank's evaluation period may reflect the composition of the population from two or more calendar years prior. By the beginning of the third calendar year of the bank's evaluation period, the community benchmark data could reflect the composition of the population from four or more calendar years prior. As a result, changes to, for example, the population or to the number of businesses or farms in those intervening years would not be accounted for in the older community benchmark data. In addition, the agencies considered that designating the final community benchmark in advance of a bank's evaluation period would not be possible in instances where MSA definitions change during an evaluation period, a Retail Lending Test Area expands or contracts during the evaluation period, or in which new census tract delineations are published and go into effect during the evaluation period. Consequently, the agencies determined that there would be significant operational challenges with an alternative approach of setting and fixing community benchmarks entirely in advance of the evaluation period.

The agencies also considered, but decline to adopt, an alternative approach of calculating benchmarks at the time of a bank's examination using data available at that time, and not setting the benchmark or providing data used to calculate the benchmark at any point in advance of the bank's examination. The agencies considered that, while this alternative approach would allow the community benchmarks to more closely reflect the composition of the population during the evaluation period, it would also significantly limit the information available to banks and the public regarding Retail Lending Test performance expectations in advance. In contrast, the agencies determined that the final rule approach of providing the annual components of the community benchmarks in advance of each calendar year of the evaluation period will more effectively provide advance notice of benchmark levels.

The agencies considered comments expressing timing concerns about the availability of the data used to compute community benchmarks and the timing of the bank's evaluation period. In adopting their final rule approach, the agencies intend to explore ways of streamlining data availability (such as updating data on a more frequent basis than is currently done) to ensure that timely data is used to construct community benchmarks.

Market benchmarks. Pursuant to the final rule, the agencies will calculate the market benchmarks using the retail lending data from the years of the bank's evaluation period, and not from years prior to the evaluation period. This approach has the advantage of setting performance standards for banks based on contemporaneous data that reflect economic conditions during the period over which an agency is evaluating a bank's performance. The agencies have considered that this approach is consistent with existing practices, under which benchmarks are generally calculated based on data from the time of a bank's evaluation period and are not published in advance of the evaluation period. The agencies further believe that this approach is especially important to maintain in the final rule for the market benchmarks, which are intended to capture aspects of the performance context of an area that may emerge during the evaluation period, such as changes in economic conditions that may affect the demand for credit among low- and moderate-income households. The agencies determined that basing the market benchmarks on data from the evaluation period will appropriately contribute to standardization and transparency regarding evaluations of retail lending performance, because examiners generally would not need to qualitatively consider economic conditions that are already accounted for in the market benchmarks.

The agencies considered, but are not adopting, approaches recommended by some commenters to set the market benchmarks in advance of the evaluation period, or in advance of each calendar year of the evaluation period. The agencies considered that such alternative approaches would provide greater certainty to banks and the public regarding quantitative performance standards. However, the agencies have also considered that these alternative approaches would result in benchmarks that may not account for the performance context of an area in a specific year, because the data used to compute the market benchmarks would precede the bank's evaluation period and would not correspond to the overall lending in a community during a specific time period. As a result, under these alternative approaches, the agencies have considered that the market benchmarks would not provide the same function of incorporating performance context data into the metrics approach and could necessitate more often using qualitative considerations and agency discretion to account for changes in economic conditions or other changes in the market that occur during an evaluation period. The agencies have also considered that greater use of qualitative factors would counteract any potential increase in certainty derived from providing the benchmarks in advance. In addition, consistent with current practice, the agencies note that banks could consider recent market benchmarks for their Retail Lending Test Areas, in concert with census data and their own lending data, as part of their planning prior to and during a CRA evaluation period.

While the agencies' proposal also discussed alternative approaches for specifying in the regulation which years of data would be used to calculate a bank's metrics and market benchmarks in a given examination, the final rule does not specify such alternatives. However, in implementing the final rule, the agencies intend to take the approach described in the proposal of basing the metrics and market benchmarks on the same years of data, rather than allowing the market benchmarks to be based on data from a subset of the years of the evaluation period if data for the last year of an evaluation period is not yet available. In practice, for each major product line, the scope of the Retail Lending Test evaluation would be limited to those years in which the necessary data is available to calculate the relevant metrics and benchmarks. The agencies considered that this approach ensures that the benchmarks reflect the performance context of the evaluation period. The agencies determined that this timing issue is more appropriately resolved in implementation, because a degree of flexibility is warranted to account for future changes in underlying data sources used to construct metrics and benchmarks, such as changes to the timing of when certain data is published.

Alternative to set benchmarks in advance and adjust at time of *examination.* For both the community benchmarks and the market benchmarks, the agencies considered, but are not adopting, an alternative ''float-down'' approach of setting each benchmark. This alternative would entail establishing each benchmark in advance of the evaluation period, recalculating that benchmark at the time of the bank's examination using more current data, and selecting the lower of the two benchmarks for use in the evaluation. The agencies determined that this approach could result in a misalignment between the data used to calculate the metrics and corresponding benchmarks (*e.g.,* if a bank made a loan in a moderate-income census tract that was then reclassified to middle-income during an evaluation period) and would increase uncertainty regarding the ultimate level of the benchmarks. In addition, the agencies considered that this approach would introduce significant operational complexity for banks and the agencies due to the large number of data points that are necessary to construct multiple sets of benchmarks at different points in time for a single examination, and the varied timing of when the data sources are updated. The agencies also considered that under any approach of adjusting the benchmarks at the time of a bank's examination, two banks with the same evaluation period whose examinations occur at different times could potentially have different benchmarks calculated for the same Retail Lending Test Area and evaluation period due to differences in the data available at the time of the two examinations. The agencies believe that these considerations outweigh any potential benefits of advance notice of benchmark levels achieved through this alternative.

The agencies considered, but are not adopting, the alternative approach suggested by some commenters to construct metrics and benchmarks that would apply to each calendar year of an evaluation period, rather than one set of metrics and benchmarks that apply to the entire evaluation period. The agencies determined that this alternative, on balance, would increase complexity. For example, for a three-year evaluation period, this alternative would require approximately three times as many metrics and benchmarks and associated calculations as the final rule approach. Furthermore, the agencies determined that the alternative approach would require an additional weighted average calculation for combining the performance of each individual calendar year into a conclusion for the overall evaluation period. The agencies determined that this alternative approach would therefore be inconsistent with commenter feedback suggesting reducing the complexity of the proposed Retail Lending Test.

The agencies have considered comments that under the proposed approach, the exact data sources used to designate the benchmarks would be unknown prior to a bank's evaluation period. In implementing the final rule, the agencies intend to provide regular updates to banks and the public regarding the data applicable to CRA evaluations, as well as historical data regarding benchmarks in different areas. The agencies decided not to include specific data sources for community benchmarks in the final rule, or specific requirements for which years of data will be used to calculate community benchmarks, because exact data sources and timing may change over time. The agencies believe it is preferable to assess data sources and availability on an ongoing basis, and to regularly update CRA stakeholders, signaling any potential changes with as much advance notice as possible. The agencies believe this approach is consistent with current practice, in that the exact data sources and timing of the various inputs for metrics and benchmarks under the current approach are subject to change.

Distribution Benchmarks in Outside Retail Lending Areas

The Agencies' Proposal

The agencies proposed to evaluate the distribution of a bank's major product lines in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable. The agencies further proposed to use generally the same approach to calculating the proposed distribution metrics and benchmarks in all three types of Retail Lending Test Areas.

However, in evaluating the distribution of a bank's major product lines in its outside retail lending area, the agencies proposed to tailor performance expectations for outside retail lending areas to match the opportunities in the geographic regions in which the bank lends, which may vary considerably across the country. In particular, the agencies proposed to tailor performance expectations by setting bank-specific tailored benchmarks, which would then be used to establish thresholds and performance ranges. These tailored benchmarks would be calculated as the average of local market and community benchmarks across the country, weighted by the respective percentage of the bank's total retail lending, by dollar amount, in each MSA and in the nonmetropolitan portion of each State outside of assessment areas in which the bank engages in each region.

The agencies sought feedback on whether the proposed tailored benchmarks appropriately set performance standards for outside retail lending areas, and on potential alternatives. The agencies discussed an alternative proposal to create nationwide market and community benchmarks that would apply to all banks, regardless of where their lending is concentrated. These nationwide benchmarks could be calculated using all census tracts in the nation as the geographic base. Another alternative on which the agencies invited commenter views was to tailor benchmarks using weights that would be 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. Under this alternative, 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.

Comments Received

Several commenters addressed the agencies' proposal to establish tailored benchmarks for outside retail lending areas that would be based on a bank's level of retail lending in different markets. Some commenters supported the proposed tailored benchmark approach. One of these commenters also indicated that the benchmarks could be more precisely tailored by calculating unique weights for each specific product line rather than calculating one set of weights for all product lines based on a bank's overall dollar volume of retail lending in each market as proposed.

Other commenters expressed a preference for uniform, nationwide benchmarks instead of the proposed tailored benchmarks, noting that tailored benchmarks would be overly complex and could be burdensome for smaller banks evaluated in these areas. Another commenter recommended the agencies consider a separate approach of a nationwide analysis while also designating underserved communities that banks must demonstrate they are serving through their lending. A commenter suggested the agencies provide a separate approach to evaluating outside retail lending areas for internet-based banks akin to the evaluation for limited purpose banks. Several other commenters suggested the agencies permit examiners more discretion to apply performance context when evaluating outside retail lending areas and particularly when developing Retail Lending Test conclusions at the state level.

Final Rule

The agencies are adopting certain technical and substantive changes to the proposed benchmarks for outside retail lending areas.

For clarifying purposes in describing the calculations of metrics and benchmarks, the agencies use the term ‘‘component geographic area’’ in final § ____.18 and appendix A to refer to any MSA or the nonmetropolitan area of any State, or portion thereof included within the outside retail lending area. As discussed in the section-by-section analysis of § ____.18, component geographic areas of a bank's outside retail lending area are the MSAs or the nonmetropolitan areas of any State, excluding: (1) the bank's facility-based assessment areas and retail lending assessment areas; and (2) in a nonmetropolitan area, any county in which the bank did not originate or purchase any closed-end home mortgage loans, small business loans, small farm loans, or automobile loans if automobile loans are a product line for the bank.

Pursuant to paragraphs III.d and e and IV.d and e of appendix A, under the final rule, the agencies determine each benchmark for the outside retail lending area by calculating a weighted average of the benchmarks for each component geographic area. The weights for this calculation are based on the bank's number of loans in each component geographic area in the relevant major product line.

- Following this approach, the agencies calculate benchmarks for the outside retail lending area as follows: The agencies first calculate a benchmark in each component geographic area for the relevant major product line, distribution analysis, and income category following the same method to calculate benchmarks in facility-based assessment areas and retail lending assessment areas. For example, for a bank that has closed-end home mortgage loans as a major product line in its outside retail lending area, a community and a market benchmark would be calculated for closed-end home mortgage loans to low-income borrowers in each component geographic area of the outside retail lending area, and for closed-end home mortgage loans to moderate-income borrowers in each component geographic area of the outside retail lending area.
- The agencies then calculate the percentage of the bank's originated and purchased loans in the outside retail lending area for the relevant major product line, such as closed-end home mortgage loans, that are within each component geographic area by loan count. These percentages serve as the weights applied to the component geographic area.
- Finally, the agencies use these percentages to calculate a weighted average of the component geographic area benchmarks to produce a benchmark applicable to the outside retail lending area for the specific major product line, distribution analysis, and income category, such as the community and market benchmarks for evaluating a bank's closed-end home mortgage loans to moderate-income borrowers.

For example, if a bank engaged in closed-end home mortgage lending in two different MSAs outside of its facility-based assessment areas and retail lending assessment areas, these MSAs are component geographic areas for purposes of constructing benchmarks for the outside retail lending area. In this example, the market benchmark for the closed-end home mortgage moderate-income borrower distribution is 10 percent in the first area, and 8 percent in the second area. Of the bank's closed-end home mortgage loan originations and purchases in the outside retail lending area, 75 percent by loan count are in the first area, and 25 percent are in the second area. The bank's outside retail lending area benchmark is calculated using a weighted average of the component area benchmarks with the weighting based on the bank's percentage of closed-end home mortgage lending in each area by loan count. The bank's outside retail lending area benchmark for closed-end home mortgage lending to moderate-income borrowers is $(0.10 \times 0.75) + (0.08 \times 0.25) = 0.095$, or 9.5 percent. This example is also reflected in Table 21:

Table 21 of § __.22(e): Example of Outside Retail Lending Area Benchmark Calculation

	Component Geographic Areas	
	MSA 1	MSA 2
Market Benchmark for Closed-End Home Mortgage Loans to Moderate-income Borrowers	10 percent	8 percent
Percentage of the Bank's Lending, By Loan Count, in each Component Geographic Area	75 percent	25 percent
Weighted Average Calculation	(0.1 × 0.75) + (0.08 × 0.25) = 0.095, or 9.5 percent	

The agencies determined that weighting by loan count, rather than by loan dollar volume, is appropriate for calculating outside retail lending area benchmarks because this approach would result in better alignment between the metrics and benchmarks than the proposed approach. Specifically, the agencies considered that distribution metrics for the outside retail lending area—as well as for facility-based assessment area and retail lending assessment areas—are calculated based on loan count, as discussed above in this section. The distribution metrics for the outside retail lending area do not incorporate the concept of weighting by loan dollars, or by deposit dollars; because the metrics are based on loan count, the outside retail lending area metrics effectively give greater weight to those component geographic areas in which the bank made a larger number of loans. To ensure consistency between the distribution metrics and benchmarks, the agencies therefore determined that it is preferable to use loan count when weighting the benchmarks of the component geographic areas.

The agencies also considered how to weight each component geographic area when calculating the benchmarks for the outside retail lending area and decided to adopt an alternative approach described in the proposal. Specifically, the agencies will calculate weights for the component geographic areas separately for each of a bank's major product lines in the outside retail lending area, rather than calculating one set of weights that would apply to the benchmarks for all major product lines. As noted by one commenter, the agencies determined that this alternative allows for the benchmarks to be more precise and more tailored for banks with multiple product lines in an outside retail lending area. The agencies believe that constructing the market and community benchmarks by weighting at the individual product line level will more accurately reflect the market conditions the bank actually faces in the geographic areas beyond its facility-based assessment areas and retail lending assessment areas than would benchmarks based on a combination of all of a bank's retail lending. For example, a bank might extend closed-end home mortgage loans nationwide by originating loans through brokers, while its small business and small farm originations might be more closely tied to branch-based delivery channels and thus only extend to geographic areas just beyond the periphery of its facility-based assessment areas and retail lending assessment areas. In this example, constructing benchmarks by weighting at the individual product level allows the benchmarks for small business and small farm lending to reflect market conditions in the geographic areas around the bank's assessment areas, while the benchmarks for closed-end home mortgage lending reflect conditions in a broader national footprint. This distinction more accurately tailors the benchmarks to reflect the opportunities available to the bank than would a benchmark based on a combination of all of its small business, small farm, and closed-end home mortgage lending would.

While this alternative introduces some additional complexity due to the need to calculate a separate set of weights for each major product line, the agencies determined that the added accuracy and tailoring of this alternative outweighs the additional complexity. In addition, the agencies also considered that, for a bank with a single major product line in its outside retail lending area, the alternative approach is generally less complex than the proposed approach. Specifically, under the final rule approach, the agencies would calculate one set of weights for the component geographic areas per product line, based on only the loans in that product line. In contrast, under the proposed approach, the weights for the component geographic areas would be based on all of the bank's product lines. For banks with two major product lines in the outside retail lending area, the agencies considered that the alternative approach would be moderately more complex, because the bank would have two sets of weights for the geographic component areas of its outside retail lending area. For banks with three or four major product lines in the outside retail lending area, the agencies considered that the alternative approach would add to this complexity. However, based on available data for closed-end home mortgage, small business, and small farm lending (automobile lending data is not available to include in this analysis), the agencies believe that a small percentage, approximately 7 percent, of banks would have all three of these product lines that meet the major product line standard in outside retail lending areas.

The agencies considered, but are not adopting, the alternative approach of setting uniform benchmarks for the outside retail lending area for all banks, without tailoring to the specific geographies in which a bank originated or purchased loans within its outside retail lending area. For example, this could include an alternative in which the benchmarks for the outside retail lending area would be calculated at the nationwide level, without averaging together the benchmarks for a bank's specific component geographic areas. The agencies determined that, while this approach would reduce the complexity of the outside retail lending area evaluation, the benchmarks under this alternative would not reflect a bank's actual markets, which may vary substantially in retail credit needs and opportunities. For example, if a large bank's lending in its outside retail lending area is primarily in one component geographic area, the market and community benchmarks for that component geographic area may be substantially different from benchmarks calculated at the nationwide level. In contrast, the tailored benchmark approach adopted by the agencies is intended to set expectations for a bank's outside-assessment area retail lending to match the opportunities in the markets in which it lends. Under this approach, the agencies determined that component geographic areas with more of a bank's lending would appropriately carry greater weight in calculating the agencies' performance expectations for the outside retail lending area as a whole. In addition, markets in which the bank did zero lending would receive zero weight when calculating the outside retail lending area benchmarks, and hence have no influence on the bank's Retail Lending Test evaluation.

The agencies also acknowledge comments that performance context information may be relevant to assessing lending in outside retail lending areas, to the extent it is not already considered as part of the Retail Lending Test. Pursuant to final § ____.21(d), the agencies would consider performance context information when applying the performance tests, including the Retail Lending Test. In addition, pursuant to final § ____.22(g), the agencies would consider the specified additional factors when determining Retail Lending Test conclusions.

The agencies considered, but are not adopting, an alternative of creating a separate approach to the outside retail lending area evaluation for internet banks. The agencies also believe that constructing benchmarks by weighting lending in each individual product line provides sufficient flexibility in representing the market conditions in the geographic areas outside of a bank's assessment areas that a separate and unique approach to constructing benchmarks for internet banks is unnecessary. To the extent that the geographic areas covered by an internet bank's closed-end home mortgage, small business, or small farm lending differs from those of branch-based banks, the product-specific weighting approach used to construct benchmarks for outside retail lending areas will reflect those differences.

Section ____.22(f) Retail Lending Test Recommended Conclusions

Section ____.22(f)(1) In general

Section ____.22(f)(2)(i) Geographic distribution supporting conclusions—geographic distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans

Section ____.22(f)(3)(i) Borrower distribution supporting conclusions—borrower distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans

The Agencies' Proposal

For each of a bank's distribution metrics for each major product line, the agencies proposed to compare a bank's level of lending to specific quantitative standards.[934] These standards would be set by a methodology that uses data for the geographic area matching the relevant distribution metric and maintains some key parts of how examiners currently conduct examinations. In addition, the agencies proposed to standardize and make performance expectations more transparent relative to current CRA examinations. The agencies noted that current CRA guidance and examination procedures do not specify how much lending is necessary to achieve each conclusion.

The agencies proposed that each bank geographic and borrower distribution metric would be compared to a set of performance ranges that correspond to different conclusion categories: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' and ''Substantial Noncompliance.''[935] As provided in the proposal, separate performance ranges would apply to geographic and borrower distribution metrics for each proposed major product line, with the exception of multifamily lending, and for each income level or revenue level, as applicable.[936]

The agencies proposed that the thresholds for these performance range categories would be calculated using community benchmarks and market benchmarks. Specifically, the agencies proposed to use the benchmarks to establish thresholds separating the conclusion categories.[937] The agencies proposed that the benchmarks would be calibrated using multipliers, which are defined percentages for aligning the benchmarks with the agencies' performance expectations for specific supporting conclusions.[938] For each major product line and income category, the agencies proposed the process for determining thresholds illustrated in Table 22:[939]

[934] *See* proposed § ____.22(d)(2)(ii) and (iii) and proposed appendix A, sections II through IV.

[935] *See* proposed appendix A, section V.

[936] *See* proposed § ____.22(d)(2)(ii)(D)(*2*) and proposed appendix A, paragraphs V.2.b and V.2.c (geographic distribution metrics) and proposed § ____.22(d)(2)(iii)(D)(*2*) and proposed appendix A, paragraphs V.2.d and V.2.e (borrower distribution metrics).

[937] *See* proposed appendix A, paragraphs V.2.b (geographic distribution performance) and V.2.d (borrower distribution performance).

[938] *See id.; see also* Table 8 to proposed § ____.22.

[939] *See id.* The agencies explained their justifications for the thresholds. After considering alternatives of 25 percent and 50 percent for the ''Needs to Improve'' threshold, the agencies arrived at the conclusion that performance serving less than 33 percent of the market or community benchmark was an appropriate threshold to distinguish performance low enough to warrant the lowest conclusion category and performance that is not satisfactory but is more appropriately recognized as needing improvement. After considering alternative market benchmark thresholds of 75 percent and 70 percent and an alternative community threshold of 55 percent, the agencies arrived at a market benchmark threshold of 80 percent and the community benchmark threshold of 65 percent for the ''Low Satisfactory'' threshold in the proposal, reflecting performance that is adequate relative to opportunities. The agencies proposed the ''High Satisfactory'' threshold at 110 percent for the market benchmark in order to reserve the conclusion for banks that are not just average, but a meaningful increment above the average of local lenders. Similarly, a community benchmark threshold of 90 percent in the proposal established

Table 22 to § __.22(f): Proposed Thresholds for Specific Supporting Conclusion Categories

	Select the Lesser of the Calibrated Market Benchmark and the Calibrated Community Benchmark to Determine Threshold for Supporting Conclusion Category		
Supporting Conclusion	Calibrated Market Benchmark (Result of multiplying Market Benchmark and Market Multiplier)		Calibrated Community Benchmark (Result of multiplying Community Benchmark and Community Multiplier)
"Outstanding"	125 percent of the Market Benchmark	**OR**	100 percent of the Community Benchmark
"High Satisfactory"	110 percent of the Market Benchmark	**OR**	90 percent of the Community Benchmark
"Low Satisfactory"	80 percent of the Market Benchmark	**OR**	65 percent of the Community Benchmark
"Needs to Improve"	33 percent of the Market Benchmark	**OR**	33 percent of the Community Benchmark

The agencies analyzed historical bank lending data based on the proposed multipliers and estimated the recommended conclusions banks would have received. The agencies asked for feedback on alternatives to the proposed market and community multipliers for each conclusion category.

The agencies also noted in the proposal that the Board developed a search tool, which includes illustrative examples of the thresholds and performance ranges in a given geographic area, using historical lending data.[940] 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.[941]

The agencies proposed to use the lesser of the two calibrated benchmarks (*i.e.,* the calibrated market benchmark and the calibrated community benchmark) to determine the applicable conclusion.[942] In addition, for the ''Outstanding,'' ''High Satisfactory,'' and ''Low Satisfactory'' thresholds, the proposed multiplier for the market benchmark would be higher than the multiplier for the community benchmark. The agencies explained that using the lesser of the two calibrated benchmarks would prevent the thresholds from becoming too stringent in markets with fewer opportunities to lend to lower-income communities or smaller establishments. The agencies also believed that this approach would tend to assign more favorable recommended conclusions in geographic areas where more banks were meeting the credit needs of the community. The agencies requested feedback on whether the proposed approach would 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.

Comments Received

Approach to using the market and community benchmarks. The agencies received a range of comments regarding the proposal to use the lower of the calibrated benchmarks (the calibrated benchmark calculated using the market benchmark and the calibrated benchmark calculated using the community benchmark) when determining performance ranges—with a number of commenters supporting the proposed approach.

In contrast, a commenter indicated that using the lower of the calibrated

a ''High Satisfactory'' conclusion if a bank achieved close to per capita parity in its lending across different income groups. The agencies selected a market benchmark threshold of 125 percent for an ''Outstanding'' conclusion, setting a threshold well in excess of the average of local lenders, while simultaneously maintaining an attainable target for better bank performance. The agencies explained further that a market benchmark threshold of 125 percent ensures that an ''Outstanding'' conclusion is awarded only to banks that have demonstrated an exceptional level of performance. Finally, the agencies explained that setting the community benchmark threshold at 100 percent would be an appropriate aspirational goal for an ''Outstanding'' conclusion because bank metrics and market benchmarks are usually below the community benchmark and this benchmark threshold would represent equal per capita lending to communities of different income levels.

[940] *See* Board, Community Reinvestment Act (CRA), ''Proposed Retail Lending Test Thresholds Search Tool,'' *https://www.federalreserve.gov/consumerscommunities/performance-thresholds-search-tool.htm.*

[941] *See id.*

[942] *See* proposed appendix A, paragraphs V.2.b (proposed geographic distribution performance) and V.2.d (proposed borrower distribution performance).

benchmarks may fail to incentivize banks to provide small-dollar home mortgage loans that would better meet the credit needs of homebuyers in relatively low-cost low- and moderate-income communities. Another commenter indicated that the approach of using the lower of the two calibrated benchmarks would result in performance ranges that do not reflect credit demand in an area, and that it would be preferable to base the performance ranges on only the market benchmark.

A number of commenters offered alternative suggestions for developing the performance ranges, based upon using a weighted average of the calibrated market benchmark and the calibrated community benchmark, instead of using the lower of the two. For example, a commenter suggested that the agencies aggregate all calibrated benchmarks for a total CRA score or use a weighted average and consider all calibrated benchmarks to provide a range of comparators to evaluate how banks are meeting the needs of low- and moderate-income consumers. Another commenter suggested that selecting the lower calibrated benchmark, as proposed, could result in lower thresholds that inflate CRA ratings; for example, in an assessment area where the calibrated market benchmark is considerably lower than the calibrated community benchmark, all banks could be underperforming in making retail loans to low- and moderate-income borrowers and communities. To address this concern, this commenter also recommended that, in cases where the calibrated market benchmark is considerably lower than the calibrated community benchmark and where that gap is not explained by performance context, the agencies should calculate a weighted average of the two benchmarks and reduce the weight of the market benchmark, taking into account how much the benchmarks diverge and whether performance context factors explain part of the discrepancy. Another commenter similarly recommended that when the calibrated market benchmark is lower than the calibrated community benchmark, the threshold should be a weighted average of the two calibrated benchmarks, with 30 percent weight on the market benchmark and 70 percent weight on the community benchmark.

Stringency of performance ranges. The agencies received a number of comments regarding the multipliers and performance ranges in evaluating a bank's retail lending performance. Several commenters generally supported the agencies' proposed multipliers to align the market and community benchmarks with the agencies' performance expectations. For example, one commenter indicated that the agencies' proposed approach would result in conclusions that would meaningfully reflect distinctions in performance and avoid contributing to ratings inflation.

On the other hand, many other commenters stated that the proposed multipliers would set the thresholds for favorable conclusions overly stringently such that they would be unachievable. For example, a commenter opposed the performance ranges on the grounds that there has been no indication that banks' CRA activities and performance have declined in recent years and pointed out that Congress has not authorized the agencies to increase the stringency of CRA performance standards. This commenter suggested that the agencies should ensure that the final rule does not lead to a dramatic downward shift in the proportion of banks that receive ''Outstanding'' or ''Satisfactory'' conclusions and ratings, assuming that banks' underlying CRA retail lending performance remains on par with current levels. The commenter also stated it would be arbitrary and capricious to downgrade the ratings for a broad portion of the industry. Relatedly, another commenter indicated that the agencies should better recognize the amount of effort that banks with favorable CRA conclusions and ratings put in pursuant to the requirements of the current CRA regulations. Another commenter asserted that the performance ranges should be set so as to roughly match the current distribution of retail lending performance conclusions. A number of commenters asserted that the proposed approach would depress banks' overall Retail Lending Test conclusions, and that banks would routinely have to surpass their prior favorable retail lending performance levels, pursuant to the current regulations, to ensure that they would not receive ''Needs to Improve'' or ''Substantial Noncompliance'' conclusions pursuant to the proposed approach. A commenter questioned whether the agencies intentionally proposed multipliers to cause a sharp increase in ''Low Satisfactory'' and ''Needs to Improve'' conclusions, as the commenter asserted was reflected in the analysis presented in appendix A of the proposal.

A number of commenters asserted that the proposed performance ranges would make it mathematically impossible for all banks in a given assessment area to achieve favorable conclusions. A commenter expressed concern that the proposed benchmarks, although based on a consistent formula and set of data points, could create an unachievable target for many banks. This commenter indicated that it would be mathematically impossible for all of the banks in an assessment area to meet the proposed thresholds for ''Outstanding'' and ''High Satisfactory'' conclusions, and the proposal would instead result in a ratings distribution where more than one-third of banks failed. Another commenter stated that the proposal would make it increasingly challenging for banks to meet high thresholds year-over-year as they focus on increasing their retail lending in the same markets. A commenter expressed concern that it would be difficult for a financial institution with a small geographic footprint and no low-income or moderate-income census tracts within its assessment areas to achieve better than ''Low Satisfactory'' conclusions.

Some commenters stated that the performance ranges approach was inappropriate because a bank's metric could be compared to the performance of other banks based on the market benchmark, which these commenters described as equivalent to grading banks on a curve. A commenter noted that banks should be evaluated without regard to how other banks performed, and that all banks should be able to achieve an ''Outstanding'' or a ''Satisfactory'' conclusion.

A few commenters added that, in turn, the proposed performance ranges could incentivize unsafe and unsound risk-taking as banks competed more intensely against competitors in pursuit of favorable performance conclusions. For example, a commenter stated that the agencies should recalibrate the proposed performance ranges to be ratings-neutral for large banks, so that banks would not be incentivized to lower their standards of creditworthiness and potentially experience credit quality issues.

Several commenters suggested alternative multiplier formulations for establishing performance ranges. For example, commenters proposed that the community benchmark multipliers be calibrated differently by product line to reflect how different loan types serve low- and moderate-income consumers and communities differently. A commenter supported the agencies' proposed multipliers but also recommended using the multipliers as a threshold compared to a ''parity ratio'' with the objective of reducing complexity. Under this suggestion, a bank's metric would be calculated as a ratio of the bank's percentage of loans to certain borrowers or census tracts relative to the corresponding benchmark. For example, if 11 percent of the bank's closed-end home mortgage loans were to low-income borrowers, and the corresponding benchmark for this category is 10 percent, the bank's ratio under this approach would be 110 percent. This ratio could be compared directly to the multipliers to determine the bank's conclusion.

Another commenter suggested replacing the market and community benchmarks altogether with an evaluation system based on statistical confidence levels. Rather than evaluate a bank's performance based on the difference between a bank's metric and the market or community benchmark, this commenter suggested that the evaluation be based on the likelihood that the difference between the bank's metric and the market benchmark was the result of random chance. In effect, this would replace the uniform thresholds that the proposed rule would apply to all banks in the same assessment area with ones that vary based upon the number of loans each bank originates or purchases in that assessment area and on the number of loans originated by the market as a whole.

Comments on specific conclusion thresholds and performance ranges. Other commenters expressed that the proposed performance ranges essentially put achieving ''Outstanding'' retail lending performance out of reach and would reduce banks' incentives to increase retail lending to improve their retail lending performance. For example, a commenter noted that the high bar for an ''Outstanding'' conclusion would, contrary to the agencies' goals, discourage banks from striving for ''Outstanding'' performance because they would have little incentive to develop or initiate responsive credit programs beyond those that will produce a ''Satisfactory'' conclusion. Another commenter noted that the benchmark for an ''Outstanding'' conclusion disadvantages banks with substantial market share compared to banks with smaller market share, which could more easily improve their lending distributions. A commenter stated that fewer than two percent of current banking system assets would currently meet or exceed the market benchmark threshold for an ''Outstanding'' conclusion, so most banks would be motivated to seek only a ''Satisfactory.'' Another commenter noted that the proposed Retail Lending Test would account for 75 percent of retail performance, yet the performance ranges for Retail Lending Test are prohibitively high such that lowering them may encourage banks to strive for ''Outstanding'' performance. Another commenter stated that banks would not have a reasonable chance of attaining an ''Outstanding'' conclusion and also asserted that, based on the agencies' own analysis, no bank with assets exceeding $50 billion would achieve an ''Outstanding.''

A number of commenters recommended specific alternative multiplier values for certain performance ranges or suggested adjustments to how the agencies would apply the performance ranges. A commenter suggested lowering multiplier values and, in turn, the thresholds for the performance ranges so that the ''Outstanding'' performance range would correspond to between 90 percent and 100 percent of the market benchmark and the ''High Satisfactory'' performance range would correspond to between 80 percent and 90 percent of the market benchmark. Another commenter recommended adjusting the performance ranges to more reasonably allow for a bank to achieve an ''Outstanding'' rating (and also to ensure that banks that achieve 100 percent of the market benchmark receive more than a ''Low Satisfactory'' conclusion). Another commenter suggested lowering some of the proposed multipliers for the market and community benchmarks. This commenter suggested that, for example, an ''Outstanding'' conclusion should correspond to the lesser of 110 percent or higher of the market benchmark or 100 percent or higher of the community benchmark. Conversely, another commenter suggested raising the ''Needs to Improve'' multiplier for the market benchmarks from 33 percent to 48 percent, so the community benchmark, unchanged at 33 percent, would be binding more often. This commenter also proposed to set the community benchmark for ''Outstanding'' higher than 100 percent to maintain a meaningful distinction between the benchmarks. Another commenter proposed alternative multiplier values to measure, and terminology to describe, retail lending performance. This commenter proposed to use the term ''Adequate'' to correspond to performance between 70 percent to 89 percent of market and community benchmarks, the term ''Good'' to correspond to performance between 90 percent and 109 percent of the two benchmarks, and the term ''Excellent'' to correspond to performance at 110 percent or more of the benchmarks.

Some commenters expressed that the distribution analysis should involve qualitative considerations and not be based solely on the performance ranges. For example, a commenter stated that the agencies should consider calculations with simpler thresholds that can be modified by examiners as informed by performance context. Another commenter further recommended that the agencies issue guidance stating that market benchmarks are not absolute criteria for conclusions.

One commenter stated that the agencies should develop guidance and a new appendix to replace proposed appendix A with more detailed descriptions of how ratings would correlate to how a bank's performance compares against the benchmarks.

Final Rule

Section ____.22(f) Retail Lending Test Recommended Conclusions

Section ____.22(f)(1) In General

Final § ____.22(f)(1) indicates that, with two exceptions, the agencies develop a Retail Lending Test recommended conclusion for each of a bank's Retail Lending Test Areas based on the distribution analysis described in final § ____.22(e) and using performance ranges, supporting conclusions, and product line scores. Consistent with the proposed approach, the agencies will develop a separate supporting conclusion for each category of designated census tracts and designated borrowers described in paragraphs V.a and VI.a of final appendix A. However, as specified in final § ____.22(b)(5)(i) and (c)(3)(iii)(A), the agencies do not develop a Retail Lending Test recommended conclusion if a bank has no major product lines in a Retail Lending Test Area or if a large bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area.

The term ''supporting conclusion'' represents a technical revision from the proposal intended to provide additional clarity regarding the agencies' approach for developing Retail Lending Test recommended conclusions. The agencies believe this term helps to distinguish between: supporting conclusions that are assigned to each product line for each category of designated census tracts and designated borrowers; recommended conclusions that are assigned to each Retail Lending Test Area; and conclusions that are assigned to each Retail Lending Test Area, State, multistate MSA, and to the institution. Additionally, the agencies have employed the terms ''designated census tract'' (*i.e.,* low-income census tracts or moderate-income census tracts, as applicable) and ''designated borrower'' (*i.e.,* low-income borrowers; moderate-income borrowers; businesses with gross annual revenues of $250,000 or less; businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million; farms with gross annual revenues of $250,000 or less; and farms with gross annual revenues of more than $250,000 but less than or equal to $1 million, as applicable) to streamline the regulatory text and increase clarity.

Section ____.22(f)(2)(i) Geographic distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans

Section ____.22(f)(3)(i) Borrower distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans

Overview

As provided in final § ____.22(f)(2)(i) and (f)(3)(i) and section V of final appendix A, the agencies are finalizing the core methodology of their proposal to translate the proposed benchmarks into the four supporting conclusion performance thresholds for three product lines: closed-end home mortgage loans; small business loans; and small farm loans. Upon consideration of commenter input and additional analysis, the final rule includes modifications to several of the proposed multiplier values, and as a result, ''Outstanding,'' ''High Satisfactory,'' and ''Low Satisfactory'' Retail Lending Test conclusions are generally more attainable relative to the proposed approach.[943]

Table 23 compares the proposed multipliers to those adopted in the final rule.

Table 23 to § __.22(f): Comparison of Market Multipliers and Community Multipliers in Proposed Rule and Final Rule

	Market Multipliers		Community Multipliers	
	Proposed Rule	*Final Rule*	*Proposed Rule*	*Final Rule*
Outstanding	125 percent	115 percent	100 percent	100 percent
High Satisfactory	110 percent	105 percent	90 percent	80 percent
Low Satisfactory	80 percent	80 percent	65 percent	60 percent
Needs to Improve	33 percent	33 percent	33 percent	30 percent

Approach to using the market and community benchmarks. Consistent with the agencies' proposal, under the final rule, the performance ranges are set by establishing thresholds for each conclusion category. Each threshold is determined by selecting the lesser of the following:

- The result of multiplying the market benchmark by the market multiplier (*i.e.,* the calibrated market benchmark); and
- The result of multiplying the community benchmark by the community multiplier (*i.e.,* the calibrated community benchmark).

The agencies would compare each metric to the performance ranges, and assign the corresponding supporting conclusion based on the lesser of calibrated community benchmark and the calibrated market benchmark. This approach is reflected in Table 24.

[943] In addition, as discussed in the section-by-section analysis of final § ____.22(d), unlike in the proposal, the agencies will not evaluate open-end home mortgage lending and multifamily lending as major product lines; consequently, the agencies will not employ multipliers and performance ranges with respect to evaluating these loans. As discussed below, although the agencies will evaluate automobile lending as a product line, as applicable, the agencies will not evaluate automobile lending using same methodology as proposed or as applied to other product lines pursuant to final § ____.22(f).

Table 24 to § __.22(f): Thresholds for Defining Performance Ranges

	Select the Lesser of the Two Calibrated Benchmarks		
Supporting Conclusion	Calibrated Market Benchmark		Calibrated Community Benchmark
"Outstanding"	115% of the Market Benchmark	**OR**	100% of the Community Benchmark
"High Satisfactory"	105% of the Market Benchmark	**OR**	80% of the Community Benchmark
"Low Satisfactory"	80% of the Market Benchmark	**OR**	60% of the Community Benchmark
"Needs to Improve"	33% of the Market Benchmark	**OR**	30% of the Community Benchmark

The agencies believe that as a result of the approach of using the lesser of the two calibrated benchmarks, coupled with the comparatively higher market multipliers relative to the community multipliers, ''Low Satisfactory'' and higher conclusions are generally attainable. Furthermore, the agencies believe this approach effectively distinguishes between ''Outstanding, ''High Satisfactory,'' and ''Low Satisfactory'' performance. For example, as discussed below, the agencies believe that a bank metric equal to 100 percent of the community benchmark represents ''Outstanding'' performance because it reflects a level of lending that is proportionate with the potential borrowers in the area. However, the agencies determined that a bank metric equal to 100 percent of the market benchmark does not represent ''Outstanding'' performance if the community benchmark is higher than the market benchmark. In this scenario, the bank's performance is exactly average among lenders in the area, and the bank's lending is not proportionate with the potential borrowers in the area because the relevant metric is lower than the community benchmark. Setting the market multipliers for an ''Outstanding'' supporting conclusion comparatively higher than the corresponding community multipliers therefore recognizes banks that are significantly exceeding, rather than only equaling, the market average in areas where the market benchmark is lower than the community benchmark. Likewise, for other supporting conclusion categories, setting the market multipliers higher than corresponding community multipliers reflects that, depending on market conditions and the performance context of an area, meeting or surpassing market benchmarks may generally be more attainable for a bank than meeting or surpassing community benchmarks.

In finalizing the proposed approach of selecting the lesser of the threshold based on the calibrated market benchmark and the threshold based on the calibrated community benchmark, the agencies also considered alternatives raised by commenters, including the suggestion to calculate an average of the two calibrated benchmarks rather than selecting the lesser of the two. The agencies have considered that calculating the average of the calibrated benchmarks could potentially address a scenario in which the calibrated market benchmark is significantly lower than the calibrated community benchmark due to lenders in the area not meeting the credit needs of the community, which could result in performance ranges that are unduly low. However, the agencies believe that averaging the two calibrated benchmarks could also result in performance ranges that are too stringent, especially in areas where the calibrated market benchmark is lower than the calibrated community benchmark. For example, in an area that lacks housing that is affordable for low-income families, the calibrated market benchmarks for closed-end home mortgage lending may be considerably lower than the corresponding calibrated community benchmarks, and the agencies believe that averaging the two calibrated benchmarks together could result in performance expectations that are set too high. The agencies also recognize that an approach suggested by commenters to average the two benchmarks only when the calibrated market benchmark is significantly lower than the calibrated community benchmark could partially address this concern, but would present other challenges. Specifically, the agencies believe that averaging the two benchmarks only under certain conditions would increase the complexity of the Retail Lending Test and would be counter to the agencies' objectives of increasing the transparency and predictability of evaluations. Moreover, the agencies believe that the scenario of a Retail Lending Test Area in which lenders in the aggregate are not meeting community credit needs can be addressed through the application of the additional factor in final § ____.22(g)(7). As discussed in the section-by-section analysis of final § ____.22(g)(7), this additional factor provides that when determining Retail Lending Test conclusions, the agencies may consider ''information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs.'' As suggested by commenters, the application of this additional factor may take into account the performance context of a Retail Lending Test Area.

Regarding the commenter view that this additional factor could be applied based on the difference between the actual and predicted market benchmarks, the agencies are not adopting this approach in the final rule because further analysis is necessary to develop statistical models that calculate a predicted market benchmark, as discussed in the section-by-section analysis of final § ____.22(g)(7).

Multiplier Values. In the final rule, as provided in section V of final appendix A, the agencies are adjusting downward certain proposed market multipliers and community multipliers applicable to closed-end home mortgage loans, small business loans, and small farm loans. As a result of these changes, the agencies believe that the final rule performance ranges are appropriately aligned with the conclusion categories and that the ''Low Satisfactory'' and higher conclusion categories on the Retail Lending Test are generally attainable. In making these adjustments, the agencies considered the comments discussed above that offered different perspectives on the stringency of the proposed Retail Lending Test. The agencies believe that the adjustments to multiplier values are responsive to comments that ''Outstanding'' and ''High Satisfactory'' conclusions would not be attainable under the proposed approach and that the proposed multiplier values would deter retail lending and raise safety and soundness risk.

Specifically, as informed by additional agency analysis described in the historical analysis section, below, the agencies have determined that ''Outstanding,'' ''High Satisfactory,'' and ''Low Satisfactory'' Retail Lending Test conclusions are generally attainable under the final rule approach. When applying the final rule approach to the 2018–2020 period, the agencies estimated that approximately 90 percent of banks included in the analysis would have achieved an ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' Retail Lending Test conclusion for the institution, and that a ''High Satisfactory'' conclusion would have been the most frequently assigned conclusion. Similarly, when calculating Retail Lending Test recommended conclusions for facility-based assessment areas based on the performance ranges approach, approximately 87 percent of facility-based assessment areas for banks included in the analysis would have received an ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' recommended conclusion, and a ''High Satisfactory'' would have been the most frequently assigned recommended conclusion.[944] The Retail Lending Test recommended conclusions assigned in retail lending assessment areas and outside retail lending areas would have been somewhat lower than in facility-based assessment areas, based on the agencies' estimates; approximately 78 percent of retail lending assessment areas, and 71 percent of outside retail lending areas, for banks included in the analysis, would have received an ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' recommended conclusion. The agencies considered a number of data limitations and other factors when interpreting the results of the analysis of Retail Lending Test performance based on historical data, as discussed in the historical analysis section.

The agencies also considered comments that suggested that Retail Lending Test conclusions under the proposed approach would be significantly lower than those under the current approach, as well as those comments that the agencies should set multiplier values that result in a similar distribution of conclusions to the current approach. The agencies believe that the final rule multiplier values are appropriately aligned with the conclusion categories and that ''Low Satisfactory'' or higher Retail Lending Test conclusions are generally attainable. As also noted by some commenters, the agencies also believe that the performance ranges approach will more effectively distinguish between different levels of performance than the current approach, which lacks specific defined thresholds corresponding to each supporting conclusion category. Additionally, as noted above, the agencies intend to disclose data on the benchmarks and performance ranges that would assist banks in identifying Retail Lending Test Areas in which the bank may be underperforming, such that a bank may improve its performance accordingly.

The agencies also considered comments stating that it would be mathematically impossible for banks to meet the proposed thresholds or to achieve ''Outstanding'' or ''High Satisfactory'' conclusions. The agencies believe that the historical analysis indicates that ''Outstanding,'' ''High Satisfactory,'' and ''Low Satisfactory'' conclusions are generally attainable. Furthermore, the agencies considered that, as a result of the approach of using the lower of the two calibrated benchmarks to set the performance threshold for a given supporting conclusion, a bank surpassing the calibrated community benchmark for a given supporting conclusion will always receive at least that supporting conclusion. For example, a bank whose metric exceeds the calibrated community benchmark for ''High Satisfactory'' will receive a supporting conclusion of either ''Outstanding'' or ''High Satisfactory'' for the associated distribution test, even if the bank metric does not exceed the calibrated market benchmark for a ''High Satisfactory'' supporting conclusion. In addition, the agencies note that the final rule market multiplier for ''Low Satisfactory'' is 80 percent, consistent with the proposal. As a result, banks are never required to exceed the average of all lenders in a Retail Lending Test Area to achieve a ''Low Satisfactory'' supporting conclusion, and it is possible for all banks in a Retail Lending Test Area to exceed the ''Low Satisfactory'' threshold for any distribution. The agencies also determined that the level of the ''Low Satisfactory'' market multiplier reduces the possibility that the market benchmarks will increase over time in a manner that makes the performance ranges unattainable, because banks are not required to exceed the market average to attain a ''Low Satisfactory'' supporting conclusion.

Relatedly, the agencies believe that the final rule approach addresses concerns from some commenters that a bank with significant market share in an area would be unable to exceed the threshold for an ''Outstanding'' or ''High Satisfactory'' supporting conclusion that is based on the calibrated market benchmark. First, the agencies have adjusted the market multiplier for an ''Outstanding'' supporting conclusion from 125 percent to 115 percent. As a result, in a Retail Lending Test Area in which the ''Outstanding'' supporting conclusion performance range is based upon the calibrated market benchmark, a bank must exceed the market benchmark by 15 percent, rather than the proposed margin of 25 percent, to achieve an ''Outstanding'' supporting conclusion. The agencies believe that

[944] The agencies did not estimate recommended conclusions for facility-based assessment areas in which the Bank Volume Metric did not surpass the Retail Lending Volume Threshold, which was approximately 3 percent of facility-based assessment areas in this analysis.

this change helps to make the ''Outstanding'' supporting conclusion more attainable relative to the proposal, particularly in areas where barriers to serving low- and moderate-income borrowers and low- and moderate census tracts make it challenging to surpass the calibrated community benchmark. Second, the agencies believe that the additional factor in final § ____.22(g)(3)—the number of lenders whose reported home mortgage loans, multifamily loans, small business loans, and small farm loans and deposits data are used to establish the applicable Retail Lending Volume Threshold, geographic distribution market benchmarks, and borrower distribution market benchmarks—would allow the agencies to consider the scenario identified by commenters in which, due to a limited number of lenders included in the market benchmark for the area, the bank's own lending comprises a significant share of the loans included in the market benchmark.[945] Finally, as noted above, the agencies determined that the market multipliers do not mathematically limit a bank with a large market share in an area to any particular conclusion level, because surpassing the calibrated community benchmark for a given supporting conclusion ensures that a bank receives a supporting conclusion of at least that level.

Use of thresholds over time. The agencies also considered comments suggesting that the final rule's performance ranges will increase and become unattainable over time as a result of banks attempting to exceed the market benchmarks. However, the agencies determined that the approach of using the lower of the calibrated market benchmark and the calibrated community benchmark addresses this concern. For example, in the event that the market benchmark increases over time, such that 115 percent times the market benchmark (*i.e.,* the calibrated market benchmark) exceeds 100 percent times the community benchmark (*i.e.,* the calibrated community benchmark), then the ''Outstanding'' supporting conclusion threshold would be based on the calibrated community benchmark. Any further increase in the market benchmark would not affect the performance range for an ''Outstanding'' supporting conclusion, since the calibrated market benchmark exceeds the calibrated community benchmark. In addition, as noted above, the market multiplier for a ''Low Satisfactory'' supporting conclusion under the final rule approach is 80 percent. As a result, a bank is never required to exceed the market benchmark in order to earn at least a ''Low Satisfactory'' supporting conclusion, and it is mathematically possible for all banks in a Retail Lending Test Area to earn a ''Low Satisfactory'' or higher supporting conclusion.

Peer comparisons. The final rule retains the proposed approach of using both market benchmarks and community benchmarks to develop performance ranges, and does not adopt suggestions from commenters to remove peer comparisons from the Retail Lending Test evaluation approach to avoid what some commenters described as ''grading on a curve.'' The agencies note that the market and community benchmarks leverage current practice. The agencies' proposal incorporates specific threshold calculations for each supporting conclusion category in order to reduce the potential for inconsistency that can occur without clear performance expectations when comparing a bank's metrics and benchmarks, as well as to increase the transparency of evaluations. In addition, the agencies believe that the market benchmark is an essential component of the Retail Lending Test because it incorporates certain performance context information into the performance ranges in a manner that is consistent and transparent. Specifically, the agencies determined that the market benchmark reflects the credit needs and opportunities of an area, and can adjust to changes in those credit needs and opportunities over time in response to economic circumstances and other factors.

Furthermore, the agencies find that the final rule's use of the lesser of the calibrated market benchmark and the calibrated community benchmark to set performance ranges does not constrain a bank's Retail Lending Test recommended conclusion and does not require a certain percentage of banks to receive any particular recommended conclusion in a Retail Lending Test Area. For example, because the performance threshold for each performance range is based on the lower of the calibrated market benchmark and the calibrated community benchmark, surpassing the calibrated community benchmark for an ''Outstanding'' supporting conclusion always results in an ''Outstanding'' supporting conclusion, regardless of the value of the calibrated market benchmark. In addition, the agencies find that even when all performance ranges are based on the calibrated market benchmarks it is possible for all banks in a Retail Lending Test Area to exceed the ''Low Satisfactory'' supporting conclusion threshold.

Safe and sound lending. The agencies considered comments that the proposed multipliers and performance ranges would potentially encourage banks to lend in an unsafe and unsound manner. However, as discussed above, the agencies believe that ''Low Satisfactory'' and higher conclusions are generally attainable under the final rule approach, and that banks can meet the credit needs of the community without resorting to unsafe and unsound lending. Specifically, the agencies' analysis indicates that applying the final rule approach to historical lending data from 2018–2020 approximately 90 percent of banks included in the analysis would have received an overall Retail Lending Test conclusion of ''Low Satisfactory'' or higher at the institution level, with ''High Satisfactory'' the most frequent conclusion. In addition, final § ____.21(d)(1) provides that the agencies will consider performance context reflecting whether a bank's Retail Lending Test performance was constrained by safety and soundness limitations when assigning conclusions.

Lack of low- and moderate-income census tracts. The agencies considered a comment that in a facility-based assessment area with no low- or moderate-income census tracts a bank would not be able to achieve higher than a ''Low Satisfactory'' conclusion. The agencies note that under the proposed and final rule alike there would be no geographic distribution analysis in a Retail Lending Test Area with no low- and moderate- income census tracts, and the recommended conclusion would be based solely on the borrower distribution analysis. As a result, a lack of low- and moderate-income census tracts does not limit a bank's recommended conclusion to a ''Low Satisfactory.'' In addition, as discussed in the section-by-section analysis of final § ____.22(g), final § ____.22(g)(6) provides that the agencies would consider whether there were very few or no low- and moderate-income census tracts when determining a bank's conclusion in a nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area.

Separate multipliers for each product line. As proposed, the final rule incorporates one community multiplier and one market multiplier in determining each performance range threshold, applicable to all product lines (although market benchmarks and multipliers would not apply in automobile lending evaluations). The agencies considered, but are not

[945] *See also* the section-by-section analysis of final § ____.22(g).

adopting, a commenter suggestion that the agencies develop a separate set of multipliers for each product line. The agencies considered that separate multipliers for each product line might help to account for differences in low- and moderate-income credit needs and opportunities across different types of products. However, the agencies determined that the approach of using a single set of multipliers for all product lines appropriately calibrates performance expectations and that the potential advantages of separate multipliers for each product line would be outweighed by the additional complexity of this approach. Specifically, the agencies considered that the proposed and final rule approaches include a single set of eight multipliers (four community multipliers and four market multipliers) while the alternative approach could include as many as 24 multipliers (eight multipliers each for closed-end home mortgage loans, small business loans, and small farm loans), and that the larger number of multipliers would increase the complexity of the Retail Lending Test.

"Parity ratio" and "statistical confidence" alternatives. The agencies are finalizing the proposed approach of comparing a bank's metric to the performance ranges, and are not adopting the "parity ratio" or "statistical confidence" alternatives suggested by commenters. The agencies believe that it is more transparent and less complex to use bank metrics that reflect the bank's percentage of loans to designated borrowers—rather than to use alternative bank metrics that are: (1) based on the bank's percentage of loans to designated borrowers divided by the market benchmark or the community benchmark; or (2) based on the likelihood that the difference between the bank's metric and the market benchmark was the result of random chance.

The agencies determined that the "parity ratio" alternative approach would reduce the transparency of the performance standards of the Retail Lending Test. The agencies believe that it is more transparent to calculate the metrics, benchmarks, and performance ranges in terms of the percentage of loans to designated census tracts and to designated borrowers. The parity ratio alternative would employ ratios that would need to be recalculated in order to assess what percentage of loans to designated census tracts and to designated borrowers, respectively, is needed in order to meet or surpass each performance range threshold.

The agencies also considered, but are not adopting, the "statistical confidence" approach, in which the performance ranges would be based on the likelihood that the difference between a bank's metric and the market benchmark was the result of random chance. The agencies determined that, in addition to adding complexity, this approach would result in inconsistent performance standards for different banks. For example, in an MSA like the Baltimore-Columbia-Towson MSA, where 8.5 percent of closed-end home mortgage loans were to low-income borrowers, a bank whose metric of 7.0 percent was based on 100 loans would be estimated to receive a "Low Satisfactory" supporting conclusion because the probability that the difference between its metric and the market benchmark is the result of random chance exceeds 10 percent. But other banks with the same metrics that originate or purchase 1,000 or 10,000 closed-end home mortgage loans would receive supporting conclusions of "Needs to Improve" or "Substantial Noncompliance," respectively, because their metrics are less likely to have been caused by random chance on account of their larger loan counts.[946] The agencies instead determined that it is preferable to apply the same benchmarks and performance ranges to all banks in the same Retail Lending Test Area.

Multipliers for "Outstanding" Supporting Conclusion. The agencies' multipliers for the calibrated benchmarks used to determine the "Outstanding" supporting conclusion threshold are shown in Table 25.

Table 25 to § __.22(f): Calibrated Benchmarks for "Outstanding" Supporting Conclusion

	Select the Lesser of the Calibrated Market Benchmark and the Calibrated Community Benchmark		
Supporting Conclusion	Market Multiplier and Market Benchmark		Community Multiplier and Community Benchmark
"Outstanding"	115% of the Market Benchmark	**OR**	100% of the Community Benchmark

As indicated in section V of final appendix A, the agencies are setting the market multiplier at 115 percent for the calibrated market benchmark for an "Outstanding" supporting conclusion, which is 10 percentage points lower than the proposed level of 125 percent. In deciding to decrease the market multiplier for "Outstanding" performance, the agencies considered comments that the proposed level of 125 percent represents performance that is so significantly above average in an area that some banks may determine that it is not attainable, inadvertently discouraging such banks from pursuing an "Outstanding" conclusion. The agencies also considered comments that in a Retail Lending Test Area in which a bank holds significant market share, and in which the bank's own lending is

[946] This example is based on data from the CRA Analytics Tables for the Baltimore-Columbia-Towson MSA. During the 2018–2020 evaluation period, there were 263,261 closed-end mortgages originated of which 22,281 were to low-income borrowers. The probabilities were calculated for the banks using a hypergeometric distribution, as suggested by the commenter. Supporting conclusions were assigned using the suggested thresholds of 1 percent for a "Needs to Improve" supporting conclusion and 10 percent for a "Low Satisfactory" supporting conclusion.

therefore a significant component of the market benchmark, it would be difficult to surpass the proposed level of 125 percent of the market benchmark.

In determining the appropriate level of the final rule's ''Outstanding'' market multiplier, the agencies considered options suggested by commenters that performance greater than or equal to the average of all lenders in the area should receive an ''Outstanding'' supporting conclusion, including in an area in which the market benchmark is less than the community benchmark. However, the agencies generally do not believe that the ''Outstanding'' supporting conclusion should correspond to performance that is merely average among all lenders, unless the bank's metric also surpasses the community benchmark (*i.e.,* unless the market benchmark is close to or greater than the community benchmark, and therefore the threshold for an ''Outstanding'' supporting conclusion is based on the community benchmark). Rather, in cases where the ''Outstanding'' threshold is based on the market benchmark, the agencies believe that an ''Outstanding'' supporting conclusion should correspond to performance that is meaningfully above average. In reaching this determination, the agencies also considered comments that supported the proposed multiplier values as appropriately rigorous. Consequently, the agencies believe that the final rule multiplier value of 115 percent represents an appropriate reduction from the proposed levels that would address the concerns expressed by commenters, while also ensuring the ''Outstanding'' performance range corresponds to performance that is meaningfully above average in an area.

Consistent with the proposed approach, as indicated in section V of final appendix A the agencies are setting community multiplier for an ''Outstanding'' supporting conclusion at 100 percent. The agencies believe that setting this multiplier at 100 percent is appropriate because it represents lending to borrowers and census tracts of different income levels in equal proportion to community benchmarks reflecting the potential lending opportunities for designated borrowers and designated tracts of the same income (or gross annual revenue) levels, which aligns with CRA's emphasis on serving the credit needs of the entire community. For example, if a bank's metric for the moderate-income closed-end home mortgage borrower distribution in a Retail Lending Test Area is 20 percent and the community benchmark (*i.e.,* the percentage of families in the Retail Lending Test Area that are moderate-income families) is also 20 percent, then the bank's share of lending to moderate-income families was proportionate to the share of moderate-income families in the area. A community multiplier greater than 100 percent would represent that a bank's share of lending to designated borrowers and designated census tracts in a Retail Lending Test Area must be disproportionately high relative to the presence of those borrowers and census tracts in the area in order to merit an ''Outstanding'' supporting conclusion, which the agencies do not believe is an appropriate standard.

Multipliers for ''*High Satisfactory*'' *Supporting Conclusion.* The agencies' multipliers for the calibrated benchmarks used to determine the ''High Satisfactory'' supporting conclusion threshold are shown in Table 26.

Table 26 to § __.22(f): Calibrated Benchmarks for "High Satisfactory" Supporting Conclusion

	Select the Lesser of the Calibrated Market Benchmark and the Calibrated Community Benchmark		
Supporting Conclusion	Market Multiplier and Market Benchmark		Community Multiplier and Community Benchmark
"High Satisfactory"	105% of the Market Benchmark	**OR**	80% of the Community Benchmark

As indicated in section V of final appendix A, the agencies are setting the market multiplier for the calibrated market benchmark used to determine a ''High Satisfactory'' supporting conclusion at 105 percent, five percentage points lower than the proposed level of 110 percent. The agencies decided to decrease this multiplier from the proposed level is based on similar reasons as those discussed above with regard to the ''Outstanding'' market multiplier. In addition, the agencies believe that a ''High Satisfactory'' market multiplier at the proposed level of 110 percent would result in a ''High Satisfactory'' performance range that is overly narrow, ranging from 110 percent to 115 percent. The agencies also considered setting this multiplier at 100 percent so that the difference between the ''Outstanding'' and ''High Satisfactory'' market multipliers would be similar to the difference between the ''High Satisfactory'' and ''Low Satisfactory'' market multipliers. However, the agencies determined that the ''High Satisfactory'' market multiplier should result in a calibrated market benchmark that is at least slightly above the market benchmark, rather than equal to the market benchmark. In making this determination, the agencies decided that in an area where the performance ranges are based on the market benchmark, bank performance that is exactly equal to the market average, or only marginally above the market average, should correspond to a ''Low Satisfactory.'' The agencies believe that defining the ''High Satisfactory'' supporting conclusion category in this way will appropriately distinguish higher performance from performance that is average.

Consistent with the proposal, as indicated in section V of final appendix A, the agencies are setting the ''High Satisfactory'' community multiplier at 80 percent. Based on supervisory experience, the agencies believe that this multiplier appropriately represents a level of lending that is somewhat less than proportionate to the share of designated borrowers or designated census tracts in the Retail Lending Test Area, and sufficiently distinguishes a ''High Satisfactory'' supporting conclusion from an ''Outstanding'' supporting conclusion. This determination takes into consideration that opportunities to lend to designated borrowers or designated census tracts may be constrained to a level below the community benchmark. For example, the agencies note that some share of low-income families may not be in the marketplace for closed-end home mortgage loans for reasons beyond any ability of banks or other home mortgage lenders to market or structure loans that might meet their financial situations; accordingly, if 10 percent of families in a Retail Lending Test Area are low-income, for example, then a calibrated community benchmark of 8 percent is appropriate to set the threshold for a ''High Satisfactory'' supporting conclusion. Additionally, the agencies believe that lowering this multiplier below 80 percent would result in an overly broad performance range for a ''High Satisfactory'' supporting conclusion.

Multipliers for ''Low Satisfactory'' Supporting Conclusion. The agencies' multipliers for the calibrated benchmarks used to determine the ''Low Satisfactory'' supporting conclusion threshold are shown in Table 27.

Table 27 to § __.22(f): Calibrated Benchmarks for "Low Satisfactory" Supporting Conclusion

	Select the Lesser of the Calibrated Market Benchmark and the Calibrated Community Benchmark		
Supporting Conclusion	Market Multiplier and Market Benchmark		Community Multiplier and Community Benchmark
"Low Satisfactory"	80% of the Market Benchmark	**OR**	60% of the Community Benchmark

Consistent with the proposed approach, as indicated in section V of final appendix A the agencies are setting the market multiplier for the calibrated market benchmark used to determine a ''Low Satisfactory'' supporting conclusion at 80 percent. The agencies believe that this multiplier value appropriately represents lending to designated borrowers or designated census tracts that is adequate, but that is also below average. The agencies considered alternative market multipliers of 75 percent and 70 percent, but decided that these levels would be too far below average to demonstrate adequately meeting community credit needs. In addition, the agencies considered that decreasing the multiplier would result in a ''Low Satisfactory'' performance range that is overly broad compared to the ''High Satisfactory'' performance range. The agencies also considered thresholds higher than 80 percent, such that ''Low Satisfactory'' supporting conclusions would be reserved for performance that is at least close to average. However, as discussed above, the agencies considered that setting the ''Low Satisfactory'' threshold at or close to the market average might impede the ability of all banks to obtain a ''Low Satisfactory'' or higher supporting conclusion in an area where the performance ranges are based on the market benchmark. Instead, at the final rule market multiplier value of 80 percent, the agencies believe that ''Low Satisfactory'' or higher performance is generally attainable for all banks.

As indicated in section V of final appendix A, the agencies are setting the community multiplier for ''Low Satisfactory'' at 60 percent, five percentage points lower than the proposed level of 65 percent. The agencies believe that a downward adjustment from the proposed level of this multiplier is appropriate to address commenter concerns regarding the stringency of the Retail Lending Test. The agencies also considered a community multiplier of 55 percent for a ''Low Satisfactory'' supporting conclusion, but determined that the multiplier should be meaningfully greater than 50 percent to reflect a bank adequately meeting community credit needs.

As noted above, in determining the market and community multiplier values for ''Low Satisfactory'' performance, the agencies considered that the ''Low Satisfactory'' conclusion reflects that a bank is adequately meeting the credit needs of its community. This is distinct from the ''Needs to Improve'' and ''Substantial Noncompliance'' conclusion categories, both of which reflect that a bank is not adequately meeting the credit needs of its community. The agencies note that both ''High Satisfactory'' and ''Low Satisfactory'' performance correspond to the overall ''Satisfactory'' rating category.

Multipliers for ''Needs to Improve'' Supporting Conclusion. The agencies' multipliers for the calibrated benchmarks used to determine the ''Needs to Improve'' supporting conclusion threshold are shown in Table 28.

Table 28 to § __.22(f): Calibrated Benchmarks for "Needs to Improve" Supporting Conclusion

	Select the Lesser of the Calibrated Market Benchmark and the Calibrated Community Benchmark		
Supporting Conclusion	Market Multiplier and Market Benchmark		Community Multiplier and Community Benchmark
"Needs to Improve"	33% of the Market Benchmark	**OR**	30% of the Community Benchmark

Consistent with the proposed approach, as indicated in section V of final appendix A, the agencies are setting the market multiplier for the calibrated market benchmark used to determine a ''Needs to Improve'' supporting conclusion at 33 percent. The agencies believe that a ''Substantial Noncompliance'' supporting conclusion should be reserved for performance that is extremely inadequate, and determined that approximately one-third of the market benchmark is an appropriate standard. The agencies considered, but are not adopting, a suggested multiplier of 48 percent because the agencies believe that would result in assigning a ''Substantial Noncompliance'' supporting conclusion in cases where a bank's performance is lacking, but is not extremely inadequate.

As indicated in section V of final appendix A, the agencies are setting the community multiplier for a ''Needs to Improve'' supporting conclusion at 30 percent, three percentage points lower than the proposed level of 33 percent. The agencies believe that this adjustment is appropriate because for all of the other supporting conclusion categories the community multiplier is a lower value than the market multiplier, which reflects that the community benchmark is often greater than the market benchmark.

Examples of Performance Ranges Methodology

The following outlines how the performance ranges would be calculated and applied to a geographic distribution for closed-end home mortgage loans in moderate-income census tracts:

Geographic Bank Metric: A bank that originated or purchased 16 closed-end home mortgage loans in moderate-income census tracts out of 100 total closed-end home mortgage loans that the bank originated or purchased overall in the Retail Lending Test Area would have a Geographic Bank Metric of 16 percent.

Example 1a: Geographic Bank Metric

Closed-end home mortgage loans in moderate-income census tracts	Total closed-end home mortgage loans	Geographic Bank Metric
16	100	16 percent

Benchmarks: In a Retail Lending Test Area where 30 percent of owner-occupied housing units and 25 percent of all originated closed-end home mortgage loans were in moderate-income census tracts, the moderate-income Geographic Community Benchmark and Geographic Market Benchmarks for closed-end home mortgage loans would be 30 percent and 25 percent, respectively.

Example 1b: Geographic Community Benchmark and Geographic Market Benchmark

Geographic Community Benchmark: Percent of owner-occupied housing units in moderate-income census tracts	Geographic Market Benchmark: Market percentage of closed-end home mortgage loan originations in moderate-income census tracts
30 percent	25 percent

Performance ranges: The agencies calculate the thresholds for the relevant performance ranges using the corresponding benchmarks and multipliers below:

Example 1c: Calibrated Market Benchmarks

Supporting Conclusion	Market Multiplier	Geographic Market Benchmark	Calibrated Market Benchmarks (Market Multiplier times Geographic Market Benchmark)
"Outstanding"	115 percent	25 percent	28.75 percent
"High Satisfactory"	105 percent	25 percent	26.25 percent
"Low Satisfactory"	80 percent	25 percent	20 percent
"Needs to Improve"	33 percent	25 percent	8.25 percent

Example 1d: Calibrated Community Benchmarks

Supporting Conclusion	Community Multiplier	Geographic Community Benchmark	Calibrated Community Benchmarks (Community Multiplier times Geographic Community Benchmark)
"Outstanding"	100 percent	30 percent	30 percent
"High Satisfactory"	80 percent	30 percent	24 percent
"Low Satisfactory"	60 percent	30 percent	18 percent
"Needs to Improve"	30 percent	30 percent	9 percent

Example 1e: Performance Range Thresholds

Supporting Conclusion	Calibrated Market Benchmark	Calibrated Community Benchmark	Performance Range Threshold (lesser of the calibrated benchmarks)
"Outstanding"	28.75 percent	30 percent	28.75 percent
"High Satisfactory"	26.25 percent	24 percent	24 percent
"Low Satisfactory"	20 percent	18 percent	18 percent
"Needs to Improve"	8.25 percent	9 percent	8.25 percent

In this example, the bank would receive a ''Needs to Improve'' supporting conclusion for closed-end home mortgage lending in moderate-income census tracts because the Geographic Bank Metric (16 percent) falls between the ''Needs to Improve'' supporting conclusion performance range threshold (8.25 percent) and the ''Low Satisfactory'' supporting conclusion performance range threshold (18 percent).

Section ____.22(f)(2)(ii) Geographic Distribution Supporting Conclusions for Automobile Loans

Section ____.22(f)(3)(ii) Borrower Distribution Supporting Conclusions for Automobile Loans

Final § ____.22(f)(2)(ii) and (f)(3)(ii) provide that the agencies will develop supporting conclusions for a bank's automobile lending based on a comparison of its bank metrics to geographic distribution and borrower distribution community benchmarks, as provided in final § ____.22(e)(1)(ii) and section VI of final appendix A. The agencies are not establishing performance ranges for automobile lending in the final rule. The agencies believe that there would not be sufficient bank automobile lending data to construct robust market benchmarks and also that requiring data reporting to facilitate construction of market benchmarks would increase data reporting burden without a corresponding significant increase in the consistency and rigor of CRA evaluations, as is discussed further in the section-by-section analysis for final §§ ____.22 and ____.42. The agencies further believe that it would not be appropriate to develop automobile lending performance ranges based solely on community benchmarks, which do not account for changes in credit needs and opportunities in a Retail Lending Test Area over time in the same way as an approach that also uses market benchmarks. Consequently, under the final rule, the agencies will assign supporting conclusions for automobile lending performance by comparing bank metrics to community benchmarks.

Supporting conclusions for automobile lending will be assigned separately for: (1) lending in low-income census tracts; (2) lending in moderate-income census tracts; (3) lending to low-income borrowers; and (4) lending to moderate-income borrowers. However, unlike for other major product lines, the agencies are not setting specific thresholds distinguishing each supporting conclusion category for automobile lending.

Specifically, the agencies will identify appropriate supporting conclusions based on a comparison of the Geographic Bank Metric for automobile lending in each category of designated census tracts to the corresponding Geographic Community Benchmark. Similarly, the agencies will identify the appropriate supporting conclusion based on a comparison of the Borrower Bank Metric for automobile lending in each category of designated borrowers to the corresponding Borrower Community Benchmark.

This agencies' approach to evaluating automobile lending necessarily involves a greater degree of agency discretion than an approach that uses performance ranges, as is the case for other major product lines. The agencies believe that such discretion is appropriate given the relatively limited data available regarding automobile lending and the importance of performance context to evaluating a bank's automobile lending, such as whether the bank's loans were originated through direct or indirect channels. In addition, this approach is generally consistent with the current evaluation methods when consumer lending is evaluated, in which the agencies analyze the borrower and geographic distributions of a bank's consumer lending using a community benchmark without specific thresholds or performance ranges.[947]

Developing Product Line Scores in Each Retail Lending Test Area

Section ____.22(f)(4) Development of Retail Lending Test Recommended Conclusions

Section ____.22(f)(4)(i) Assignment of Performance Scores

The Agencies' Proposal

The agencies proposed to use a product line average to combine lending performance in the geographic and borrower distribution metrics for each major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable.[948] For

[947] *See, e.g.,* Interagency Large Institution CRA Examination Procedures (April 2014) at 6–8.

[948] *See* proposed appendix A, paragraphs V.2.c (geographic distribution performance) and V.2.e (borrower distribution performance).

example, a bank's closed-end home mortgage product line average in a facility-based assessment area would reflect its lending within four categories: (1) in low-income census tracts; (2) in moderate-income census tracts; (3) to low-income borrowers; and (4) to moderate-income borrowers.[949] Similarly, if a bank had two major product lines in the facility-based assessment area—closed-end home mortgage loans and small business loans—the bank would receive a product line average for its closed-end home mortgage lending and a separate product line average for its small business lending.[950] By calculating lending performance for each major product line in the same facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable, the agencies intended to provide greater transparency and enable stakeholders to better understand a bank's performance for each separate product line. The product line averages would also serve as the basis for determining a bank's recommended conclusion in each such area.

To calculate the product line average, the agencies proposed to first assign a performance score to each supporting conclusion, using a 10-point scale that associates each conclusion level with a score: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). The agencies would then compute a borrower income average and a geographic income average.

The proposal provided that the geographic income average would be a weighted average of the performance scores for the two geographic distribution supporting conclusions (*i.e.,* for low-income census tracts and moderate-income census tracts). The weights for this calculation would be the applicable community benchmark for the product line and income or revenue category to make the weight of the scores proportional to the population of potential borrowers in the assessment area.

- For example, for closed-end home mortgage lending, the weight for the low-income geographic distribution performance score would be:
  - The percentage of owner-occupied housing units in low-income census tracts in the area (*i.e.,* the Geographic Community Benchmark for low-income census tracts) as a percentage of;
  - The sum of the percentage of owner-occupied housing units in low-income census tracts (*i.e.,* the Geographic Community Benchmark for low-income census tracts) and the percentage of owner-occupied housing units in moderate-income census tracts (*i.e.,* the Geographic Community Benchmark for moderate-income census tracts).
- Likewise, for example, for closed-end home mortgage lending the weight for the moderate-income geographic distribution performance score (*i.e.,* the Geographic Community Benchmark for moderate-income census tracts) would be:
- The percentage of owner-occupied housing units in moderate-income census tracts in the area as a percentage of;
- The sum of the percentage of owner-occupied housing units in low-income census tracts (*i.e.,* the Geographic Community Benchmark for low-income census tracts) and the percentage of owner-occupied housing units in moderate-income census tracts (*i.e.,* the Geographic Community Benchmark for moderate-income census tracts).

The proposal provided that the borrower income average would be calculated in the same way, weighting the two income categories included in the borrower distribution analysis (*e.g.,* for closed-end home mortgages, the agencies would weight low-income borrowers and moderate-income borrowers) by the corresponding community benchmarks for each category (*e.g.,* for closed-end home mortgages, these are low-income families and moderate-income families).

The agencies would then calculate the average of the borrower income average and geographic income average to produce the product line average for each major product line in a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable. In calculating each product line average, the agencies requested feedback on whether the borrower and geographic distributions for a specific product line should be weighted equally, or whether borrower distributions should be weighted more heavily than the geographic distributions, either in general or depending on the performance context of the area.

Comments Received

Many commenters offered views on the agencies' Retail Lending Test proposal to develop product line averages based on borrower and geographic distribution conclusions for each of a bank's major product lines in its facility-based assessment areas, retail lending areas, and its outside retail lending area, as applicable. These commenters generally addressed whether the borrower income average and geographic income average for a specific product line should be weighted equally, or whether more weight should be assigned to the borrower income average compared to the geographic income average.

Comments regarding the approach to assigning a score to each supporting conclusion based on the proposed 10-point scale are summarized in the section-by-section analysis of final § ____.21(e).

Comments on calculating borrower income average and geographic income average. A few commenters addressed the proposed approach for weighting the different income or revenue categories when calculating the borrower income average and the geographic income average. One commenter expressed support for the proposed approach of weighting the low- and moderate-income categories based on the community benchmarks, stating that these weights would reflect the demographics of the community. Another commenter instead stated that the agencies should prioritize low-income borrowers and census tracts over moderate-income borrowers and census tracts. Another commenter stated that it is not appropriate to strictly weight based on the percentage of low-income individuals. This commenter noted that many community banks will be more successful targeting activity to low- and moderate-income geographies rather than individuals, as individuals are not pre-screened by income level. Another commenter suggested that the agencies allow excellent performance in one distribution to compensate for less impressive performance in another.

Comments on calculating product line averages. A number of comments addressed the agencies' proposal to calculate each product line average by weighting borrower and geographic distribution scores equally, with some expressing support for the proposed approach.

Other commenters supported the proposed equal weighting generally, but recommended greater emphasis on the borrower distributions in certain circumstances, such as in rural areas and nonmetropolitan areas with few low- and moderate-income census tracts, or based on other performance context information. For example, one commenter suggested that in rural areas, the agencies should weight borrower distributions more heavily than

[949] *See id.*

[950] *See* proposed appendix A, paragraph V.3.

geographic distributions. Another commenter suggested that, in determining the weighting approach, the agencies should consider that many low- and moderate-income individuals cannot afford to purchase homes or automobiles in poor states with very low median incomes, and that in high-cost and high-density urban areas many low- and moderate-income individuals live in rental housing and use public transportation instead of their own automobiles.

Other commenters stated that borrower distributions should generally be given more weight than geographic distributions in determining product line averages. One commenter stated that the borrower distributions should be weighted more heavily than the geographic distributions if the intended outcome is increased access to lending opportunities for low- and moderate-income borrowers regardless of geographic boundaries. Other commenters recommended that the agencies weight the borrower distributions at 60 percent and the geographic distributions at 40 percent. One of these commenters asserted that employing this approach would better reflect the importance of lending to low- and moderate-income consumers as well as to low- and moderate-income communities. Some commenters stated that greater weighting on the borrower distribution would help to limit potential unintended consequences of gentrification and displacement. These commenters expressed that weighting the geographic distributions too heavily would create incentives for lending to higher-income borrowers in low- and moderate-income census tracts, which over time could result in displacement of low- and moderate-income residents. Another commenter noted that applying a greater weight to the borrower distributions would promote integration by emphasizing lending to low- and moderate-income individuals regardless of their location.

Although many commenters supported weighting borrower distributions more heavily, one commenter indicated that the agencies should weight geographic distributions more heavily in rural areas and areas with few low- and moderate-income census tracts, citing the lower demand for credit and other financial services in these areas.

Final Rule

Final § ____.22(f)(4)(i) and sections V, VI, and VII of final appendix A provide that the agencies will calculate a product line score for each major product line in a Retail Lending Test Area in order to combine lending performance based on geographic and borrower distribution supporting conclusions and corresponding performance scores. The use of term ''product line score'' represents a clarifying change from the term in the proposal—''product line average''—in order to provide a more accurate description of what is being calculated, without any change in meaning from the proposal. This approach will serve to differentiate lending performance for each major product line in the same Retail Lending Test Area, providing transparency regarding why a bank received a particular Retail Lending Test recommended conclusion.

Scoring Approach. The agencies are finalizing the proposal that each supporting conclusion will be associated with a performance score with the following point values: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points). This scoring approach is discussed in detail in the section-by-section analysis of final § ____.21(e).

Calculating the geographic distribution average and borrower distribution average. The final rule retains the proposed approach for calculating a geographic distribution average and a borrower distribution average. The use of the terms ''geographic distribution average'' and ''borrower distribution average'' represent clarifying changes from the respective terms in the proposal—''geographic income average'' and ''borrower income average''—in order to provide a more accurate description of what is being averaged without any change in meaning. Each distribution average reflects the result of the geographic distribution analysis and borrower distribution analysis, respectively, and the agencies also note that the borrower distribution analysis does not involve ''income'' for small business loans and small farm loans. Accordingly, the agencies believe it is preferable not to use ''income'' in these terms.

For the geographic distribution average for all product lines, the agencies will calculate a weighted average of the performance scores corresponding to the supporting conclusion for lending in designated census tracts: (1) the supporting conclusion for lending in low-income census tracts; and (2) the supporting conclusion for lending in moderate-income census tracts. This is illustrated in Table 29.

Table 29 to § __.22(f): Components of Geographic Distribution Average

Product line	Geographic Distribution "Low" Supporting Conclusion Category	Geographic Distribution "Moderate" Supporting Conclusion Category
All product lines (Closed-end Home Mortgage Loans, Small Business Loans, Small Farm Loans, Automobile Loans)	Low-income census tracts	Moderate-income census tracts

For the borrower distribution average for closed-end home mortgage loan and automobile loan product lines, the agencies will calculate a weighted average of the performance scores corresponding to lending to relevant categories of designated borrowers: (1) the supporting conclusion for lending to low-income borrowers; and (2) the supporting conclusion for lending to moderate-income borrowers.

For the borrower distribution average for small business loans and small farm loans, the agencies will likewise calculate a weighted average of the performance scores corresponding to lending to relevant categories of designated borrowers: (1) the supporting conclusion for lending to businesses with gross annual revenues of $250,000 or less; (2) the supporting conclusion for lending to businesses with gross annual revenues of greater than $250,000 but less than or equal to $1 million; (3) the supporting conclusion for lending to farms with gross annual revenues of $250,000 or less; and (4) the supporting conclusion for lending to farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million. This is illustrated in Table 30.

Table 30 to § __.22(f): Components of Borrower Distribution Average

Product line	Borrower Distribution "Low" Supporting Conclusion Category	Borrower Distribution "Moderate" Supporting Conclusion Category
Closed-end Home Mortgage Loans	Low-income borrowers	Moderate-income borrowers
Small Business Loans	Businesses with gross annual revenues of $250,000 or less	Businesses with gross annual revenues of greater than $250,000 but less than or equal to $1 million
Small Farm Loans	Farms with gross annual revenues of $250,000 or less	Farms with gross annual revenues of greater than $250,000 but less than or equal to $1 million
Automobile Loans	Low-income borrowers	Moderate-income borrowers

When calculating a weighted average of these two components, the weights for each component would be based on Retail Lending Test Area demographics, a clarifying change in terminology from the proposal's use of ''community benchmarks'' in order to more precisely describe the relevant calculations, as illustrated in Examples A–11 and A–12 in section VII of final appendix A. The agencies believe that the weighted average approach appropriately tailors the weighting approach to the characteristics of the Retail Lending Test Area in determining the weight to assign to each income or revenue category, as one commenter noted. Regarding the suggestion to assign greater weight to the low-income categories rather than the moderate-income categories, the agencies believe this could result in a weighting approach that does not reflect the relative level of credit needs and opportunities among low-income and moderate-income borrowers and census tracts. Regarding the suggestion not to strictly weight in the proposed method, the agencies believe that it is preferable to employ a consistent, quantitative approach to developing product line scores, to increase the predictability and transparency of evaluations and to limit agency discretion where possible. As described below, the agencies have made several non-substantive technical changes to section VII of final appendix A to clarify and add further detail to how the weights are calculated for purposes of computing the geographic distribution average and borrower distribution average.

Combining the geographic distribution average and borrower distribution average to develop a product line score. The final rule retains the proposed approach of combining the geographic distribution average and the borrower distribution average to calculate an overall score for each major product line. The agencies considered comments suggesting that they assign greater weight to the borrower income average than the geographic income average, but continue to believe that both the geographic and borrower distributions are important measures of how a bank is meeting its community's credit needs and that equal weighting ensures that both distributions are important to overall conclusions.

The agencies also considered comments that the weight assigned to the geographic income average and borrower income average should vary depending on the performance context of an area. The agencies determined that the final rule weights for geographic distributions and borrower distributions will provide greater consistency and standardization, and that allowing the weights to vary depending on performance context would necessitate greater agency discretion that could increase complexity and increase uncertainty in evaluations. In addition, the agencies believe the approach of using weighted averages of a bank's performance in different categories of lending to calculate each product line score will appropriately allow somewhat stronger performance in certain categories of lending to compensate for somewhat less strong performance in other categories. The agencies believe this affords appropriate flexibility to banks in meeting the credit needs of their community.

Regarding comments that some nonmetropolitan areas may not have low- or moderate-income census tracts, the agencies note that the additional factor in final § ____.22(g)(6) may be considered when determining the bank's conclusion, as discussed in the section-by-section analysis of final § ____.22(g). In addition, consistent with the agencies' proposal, in Retail Lending Test Areas with no low- and moderate-income census tracts, and hence no geographic distribution scores, the agencies will set the product line score equal to the borrower distribution average.

Using Weighted Average of Product Line Scores for Retail Lending Test Recommended Conclusions

Section ____.22(f)(4)(ii) Combination of Performance Scores

Section ____.22(f)(4)(iii) Retail Lending Test Recommended Conclusions

The Agencies' Proposal

The agencies proposed that the Retail Lending Test recommended conclusion for a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable, would be derived by taking a weighted average of all of the product line averages. The weight for each product line average would be the percentage of the dollar volume of originations and purchases of that product line for the bank in a facility-based assessment area, retail lending assessment area, or outside retail lending area. This percentage would be calculated out of the total dollar volume of originations and purchases from all product lines for the bank in that facility-based assessment area, retail lending assessment area, or outside retail lending area.[951] The agencies believed that this approach would give proportionate weight to a bank's product offerings, with more prominent product lines, as measured in dollars, having more weight on the bank's overall conclusion in an assessment area.[952]

The agencies believed that pursuant to this approach, the Retail Lending Test would be tailored to individual bank business models, as evaluations would be based on the lending a bank specializes in locally. Moreover, the agencies believed that weighting product lines by the dollar volume of lending recognizes the continued importance of home mortgage lending and small business lending to low- and moderate-income communities, which has been a focus of the CRA, while also accounting for the importance of consumer loans to low- and moderate-income individuals. The agencies requested feedback on whether loan count should be used in conjunction with, or in place of, dollar volume in weighting product line conclusions to determine the Retail Lending Test recommended conclusion, and corresponding performance score, in a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Comments Received

A number of commenters addressed the agencies' proposal for combining a bank's product line averages for each major product line to determine its Retail Lending Test recommended conclusion for each facility-based assessment area, retail lending assessment area, or outside retail lending area. Commenters on this topic responded to the agencies' request for feedback on whether the weight assigned to each product line average should be based on the dollar volume of loans in each product line, the number of loans in each product line, or a combination of the two. Nearly all commenters on this topic favored some form of consideration for retail loan counts in weighting product line averages to determine the Retail Lending Test recommended conclusion in a facility-based assessment area, retail lending assessment area, or outside retail lending area.

Concerns with proposed approach. A number of commenters expressed concerns regarding the proposed approach of weighting product line averages solely based on the dollar volume of loans within each product line, with some expressing support for weighting based on the number of loans. One commenter indicated that using dollar volume alone would give less impact to lending activity in rural areas where home values are lower. Other commenters stated that the agencies' proposal would disadvantage banks that are meeting low- and moderate-income credit needs by originating more small-dollar loans. For example, one commenter asserted that the agencies' proposed weighting approach contradicted the CRA's purpose of focusing on low- and moderate-income lending by overemphasizing large-dollar closed-end home mortgage loans. Other commenters expressed a related concern that the proposed approach would underweight small business lending and consumer lending, given that small business loans and consumer loans are generally smaller in dollar value than home mortgage loans.

Alternative of weighting by combination of loan dollars and loan count. A number of commenters recommended basing the weight assigned to each product line average on a combination of the dollar amount and number of loans in each product line. A few commenters suggested that, under such an approach, smaller transactions could receive more weight in the distribution analysis, including small-dollar home mortgage loans. Another commenter stated that this approach would better account for the differences in the impact of a bank's lending across communities. For example, this commenter noted that even a relatively small number of loans could have substantial impact in communities with unmet credit needs. Other commenters emphasized that this approach would recognize bank lending that serves more consumers and businesses, as well as variations across different lending products. Another commenter tentatively supported (citing lack of visibility into the issue) using a combination of dollar volume and loan count because the approach would otherwise assign too much weight to home mortgage lending.

Alternative of weighting solely by loan count. A number of commenters cautioned against an alternative approach of weighting product lines scores solely based on the number of loans in each product line, without considering dollar volume. One commenter stated that this alternative could result in overemphasizing small business loans and credit card loans in the Retail Lending Test evaluation. Another commenter asserted that weighting product line averages by loan counts only would incorrectly discount the potential contribution of larger dollar loans made in areas with few opportunities.

Other alternative weighting approaches. A few commenters offered other alternative weighting methodologies. For example, one commenter indicated that if the agencies retained the proposed dollar volume weighting approach, they should also apply a multiplier to lower dollar value categories, such as automobile lending and other consumer lending, to increase parity among different types of retail lending products. Additionally, a commenter suggested the weighting should provide approximately a 40 percent-40 percent-20 percent weighting to home mortgage lending, small business lending, and consumer lending

[951] *See* proposed appendix A, paragraphs V.c and V.d.

[952] 87 FR 33884, 33947 (June 3, 2022).

respectively, and suggested that the agencies use data to determine if this type of result is best achieved by dollar volume alone or dollar volume in combination with loan count. Further, this commenter expressed that weighting by loan count would equalize loans made to low- and moderate-income borrowers and more affluent borrowers that often have larger dollar home mortgage loans. However, in cases in which a bank has a very high volume of small-dollar consumer loans in combination with sizable numbers of home mortgage loans and small business loans, the commenter suggested that a combination of dollar amount and loan counts may better prioritize home mortgage lending and small business lending.

Final Rule

As provided in final § ____.22(f)(4)(ii) and (iii) and in section VII of final appendix A, with the exception of a facility-based assessment area of a large bank in which it lacked an acceptable basis for not meeting the Retail Lending Volume Threshold,[953] the agencies will develop a Retail Lending Test recommended conclusion for each Retail Lending Test Area by calculating an average of the product line scores that the bank received on each of its major product lines in that Retail Lending Test Area. These product line scores are based on combining the performance scores for each supporting conclusion for each major product line. As noted above, the use of the term ''product line score'' rather than the term used in the proposal—''product line average''—is a clarifying change intended to provide a more accurate description of what is being calculated without any change in meaning.

Based on agency consideration of related comments, the final rule weights each product line score based on a combination of loan dollars and loan count associated with the product line, in contrast to the proposed approach of weighting each product line score solely by dollar amount. For example, if a major product line contained 50 percent of a bank's loans in a Retail Lending Test Area in dollar amount and 30 percent of a bank's loans in that area in loan count then the weight assigned to the product line score would be 40 percent. In reaching this determination, the agencies believe that the final rule approach would appropriately consider both the dollar amount of credit extended as well as the number of borrowers served. The agencies recognize that both dollar amount and loan count are important aspects of how a bank meets the credit needs of a community. The agencies considered comments that such an approach would assign relatively greater weight to product lines with large loan counts and small loan amounts, compared to the proposed approach. Some commenters suggested that this may be especially important for small business lending because small business loans could have smaller loan amounts than closed-end home mortgage loans, on average, depending on a bank's strategy and product offerings. Although use of the combination of loan dollars and loan count involves somewhat more complex calculations than the proposed approach, the agencies believe that the benefits of the final rule, in terms of additional equity among major product lines, merit incorporating that additional complexity.

The weighted average of all product line scores is converted into a Retail Lending Test Area Score. The use of the term ''Retail Lending Test Area Score'' rather than the term in the proposal—''geographic product average''—is both intended to more accurately describe what is being calculated and also to reduce potential confusion with the term ''product line score.''

Consistent with the proposed approach, the agencies will then develop a Retail Lending Test recommended conclusion corresponding with the conclusion category that is nearest to the Retail Lending Test Area Score, as follows: ''Outstanding'' (8.5 or more); ''High Satisfactory'' (6.5 or more but less than 8.5); ''Low Satisfactory'' (4.5 or more but less than 6.5); ''Needs to Improve'' (1.5 or more but less than 4.5); ''Substantial Noncompliance'' (less than 1.5).[954]

Section ____.22(g) Additional Factors Considered When Evaluating Retail Lending Performance

As provided in final § ____.22(g), the agencies are finalizing their proposal, with certain clarifying, substantive, and technical changes, regarding consideration of additional factors when assigning a bank's Retail Lending Test conclusions.[955] The seven additional factors in the final rule account for circumstances in which the prescribed metrics may not accurately or fully reflect a bank's lending distributions or in which the benchmarks may not appropriately represent the credit needs and opportunities in an area. The agencies will consider these additional factors in determining a bank's Retail Lending Test conclusions, in addition to the bank's recommended conclusion and performance context information in final § ____.21(d), as described in final § ____.22(h)(1)(ii) and in paragraph VII.d of final appendix A.

As described further below, final § ____.22(g) adopts the four proposed additional factors, with certain clarifying and technical changes, as well as three other additional factors.

Furthermore, pursuant to final § ____.22(g), certain additional factors will be considered when evaluating a bank's performance in, as applicable, its retail lending assessment areas and its outside retail lending area —and not solely, as proposed, when evaluating the bank's performance in its facility-based assessment areas.

The Agencies' Proposal

The agencies proposed to consider certain additional factors that are indicative of a bank's lending performance or lending opportunities, but which are not captured in the metrics and benchmarks, when reaching Retail Lending Test conclusions for facility-based assessment areas.[956] Specifically, in proposed § ____.22(e), the agencies provided that in addition to considering how a bank performs relative to the Retail Lending Volume Threshold described in proposed § ____.22(c) and the performance ranges described in proposed § ____.22(d), the agencies would evaluate the retail lending performance of a bank in each facility-based assessment area by considering four additional factors. These factors could inform the agencies adjusting upward or downward a Retail Lending Test recommended conclusion in a facility-based assessment area:

- 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;[957]
- The dispersion of retail lending within the facility-based assessment area to determine whether there are gaps in lending not explained by performance context;[958]
- The number of banks whose reported retail lending and deposits data is used to establish the applicable Retail Lending Volume Threshold, geographic

[953] *See* final § ____.22(c)(3)(iii)(A).

[954] *See* also the section-by-section analysis of final § ____.28.

[955] *See supra* note 145.

[956] *See* proposed § ____.22(e).

[957] *See* proposed § ____.22(e)(1).

[958] *See* proposed § ____.22(e)(2).

distribution thresholds, and borrower distribution thresholds;[959] and

- Missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the agencies from calculating a recommended conclusion.[960]

The agencies sought feedback on whether to consider a different or broader set of additional factors than those reflected in proposed § ____.22(e), including 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.

The agencies also sought feedback on whether to engage in ongoing analysis of HMDA data to identify banks that appear to engage in significant churning of home mortgage loans. Additionally, the agencies sought feedback regarding whether evidence of loan churning should be considered as an additional factor in evaluating a bank's retail lending performance.

Additionally, the agencies sought feedback on whether the distribution of retail lending in distressed and underserved census tracts should be considered qualitatively.

The agencies also requested feedback on whether to identify assessment areas where lenders may be underperforming in the aggregate and the credit needs of substantial parts of the community are not being met. The agencies would consider additional information to account for the possibility that the market benchmarks for the area may underestimate the credit needs and opportunities of the area. The agencies suggested that one manner in which they could identify such assessment areas would be by developing statistical models that estimate the level of the market benchmark that would be expected in each assessment area based on its demographics, such as income distributions or household compositions, as well as housing market conditions and economic activity. In seeking feedback on this approach, the agencies also suggested that a model could be constructed using data at the census tract or county level that are collected nationwide, and that an assessment area in which market benchmarks fell significantly below their expected levels could be considered underperforming for the relevant product line, distribution test, and income level.

Finally, the agencies sought feedback on whether to 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. Additionally, the agencies suggested that they could identify underperforming markets using a relative standard or an absolute standard. Finally, the agencies suggested that, rather than designating a specific set of underperforming markets, they could use the difference between the actual and expected market benchmarks as an additional factor to consider in every assessment area.

Comments Received

Comments on proposed § ____.22(e) generally addressed: whether to consider information indicating that a bank has purchased retail loans for the sole or primary purpose of inappropriately influencing its retail lending performance; whether and how markets in which lenders overall are underperforming in meeting community credit needs should be factored into the evaluation of bank performance; and whether the agencies should consider other factors regarding a bank's retail lending performance that were not proposed, such as oral or written comments about the bank's performance and the bank's responses to those comments.

Purchased retail loans for the sole or primary purpose of inappropriately enhancing retail lending performance. The agencies received numerous comments regarding the proposed additional factor allowing for adjustment of a Retail Lending Test recommended conclusion based on ''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.''

As described in the introduction to the section-by-section analysis of final § ____.22, numerous commenters opposed consideration of purchased loans in the retail lending distribution analysis under the Retail Lending Test or recommended limiting consideration of purchased loans to specific types or purchased loans or specific circumstances.

In addition, several commenters expressed that the proposed additional factor was vague and would leave examiners with too much discretion to determine when retail loans were purchased solely or primarily for the purpose of inappropriately influencing the bank's retail lending performance evaluation. A few commenters recommended that the agencies establish a series of presumptions that would enable a bank to establish that its retail loan purchases do not meet the proposed additional factor. For example, a commenter suggested that a bank that sells loans extended to low- and moderate-income borrowers at the same rate that it sells loans extended to middle- and upper-income borrowers, should be presumed to not be engaged in activity that meets the proposed additional factor. Another commenter suggested that the agencies should impose a more stringent standard on large banks to prevent them from repeatedly purchasing and selling retail loans amongst one another to meet their CRA obligations; however, this commenter further stated that the agencies should balance the need for liquidity with the potential for repeated loan purchases by banks.

Several commenters suggested the agencies impose seasoning requirements where a bank must hold a particular loan for a certain time period to receive CRA consideration. Commenters varied on the suggested length of a seasoning period, ranging from 30 days to one year. In contrast, another commenter opposed any seasoning requirements because of the added liquidity and interest rate risk.

Alternatively, some commenters recommended that certain purchased retail loans should not be deemed to be inappropriately influencing a bank's Retail Lending Test performance evaluation. For example, a few commenters stated that the purchase of retail loans from a community organization should never reflect poorly on a bank because these loan purchases effectively double such organizations' lending capacity. Another commenter stated that loans originated then sold to a housing finance agency or similar organization in connection with affordable housing programs should not be considered as inappropriately influencing a bank's Retail Lending Test performance evaluation, as these programs rely on correspondent lenders.

A few commenters opposed inclusion of this proposed additional factor in § ____.22(e)(1), asserting that it would be difficult to discern a bank's motive for purchasing loans, and that, regardless of a bank's purpose, purchased loans can create liquidity and have a positive impact on low- and moderate-income borrowers and communities. A few other commenters recommended that, if

[959] *See* proposed § ____.22(e)(3).

[960] *See* proposed § ____.22(e)(4).

this proposed additional factor is retained in the final rule, the agencies include in the regulatory text an explicit statement that purchased loans would not result in any penalty for banks under the Retail Lending Test absent clear evidence that the purchases met the additional factor.

Lenders overall underperforming in meeting community credit needs of facility-based assessment areas. A few commenters supported the identification of facility-based assessment areas in which lenders in the aggregate are underperforming such that the market benchmarks are too low. These commenters supported the agencies creating a statistical model to identify those underperforming facility-based assessment areas or to calculate the predicted market benchmark.

These commenters also raised points related to how to adopt or implement an additional factor that identifies facility-based assessment areas in which lenders in the aggregate are underperforming in meeting community credit needs. Another commenter suggested that after identifying such facility-based assessment areas with market benchmarks that are significantly lower than predicted by statistical models, the agencies could adjust impact factors to incentivize bank lending in these assessment areas. Another commenter stated that the agencies should consider this information as a factor in favor of adjusting banks' Retail Lending Test conclusions downwards in such facility-based assessment areas. This commenter suggested this approach would incentivize banks to improve their retail lending performance there. A commenter encouraged the agencies to implement a methodology to identify areas in which lenders in the aggregate are underperforming in meeting community credit needs, and recommended adjusting the borrower and geographic performance thresholds upwards in those areas. A different commenter raised concerns about how the agencies would determine that lenders in the aggregate are underperforming in an area. A commenter asserted that it would be difficult to identify these areas by comparing peer lenders alone; instead, the commenter recommended identifying facility-based assessment areas where market benchmarks are significantly lower than the predicted market benchmarks based on statistical models. Relatedly, a commenter encouraged the agencies to conduct further empirical research to identify underperforming markets based on the divergence between actual and predicted market benchmarks. This commenter recommended that, to motivate banks to better meet communities' retail lending needs, the agencies should use the predicted market benchmarks for evaluating banks' retail lending performance in the worst quartile of underperforming markets, and in the second worst quartile they should use a weighted average of the actual market benchmarks and the predicted market benchmarks.

Some commenters recommended specific information that the agencies should consider when identifying underperforming markets. For example, a commenter recommended that the agencies consider similarly sized markets based on population, gross domestic product, and total number of businesses, and other variables that would allow facility-based assessment area comparisons in order to identify underperforming markets. This commenter supported defining an underperforming market as those markets measured at 65 percent or less of the expected value of the market benchmark—the same threshold as the proposed Retail Lending Test community benchmark for ''Low Satisfactory'' performance. Another commenter asserted that when identifying facility-based assessment areas in which lenders may be underperforming in the aggregate the agencies should employ factors not captured in the Retail Lending Test metrics and benchmarks; this commenter indicated that such factors could include consideration of the prevalence of alternative financing in a market, such as land contracts and rent-to-own arrangements, and low levels of small-dollar home mortgage lending in a market. In addition, a commenter asserted that the agencies should work with relevant stakeholders to develop data points to identify and model underperforming markets. This commenter also noted that some underperformance may be driven by a lack of demand for home mortgage lending and small business lending, noting that, for example, low- and moderate-income consumers might elect to rent housing in markets with high home prices.

A few commenters that agreed there is a potential for the market benchmarks to be artificially low as a result of collective underperformance also acknowledged the challenges associated with identifying these markets and developing a solution. For example, a commenter sought clarification on how appropriately identifying underperforming markets could counter the possibility that the market benchmarks might be set too low in some facility-based assessment areas, and others suggested the agencies should propose a solution for public comment.

Oral and written comments about a bank's retail lending performance. Most commenters addressing this issue expressed support for the agencies considering other factors, such as oral and written comments submitted about a bank's retail lending performance and the bank's responses to those comments, in developing Retail Lending Test conclusions. A commenter noted that the agencies currently consider written comments in a bank's public file regarding its retail lending and other CRA performance. In addition to submitted oral and written comments, other commenters suggested that the agencies consider any comments or complaints housed in other Federal repositories, and bank responses to stakeholder questions and comments, into their Retail Lending Test conclusions.

Some commenters addressed the effect that should be given to oral and written comments regarding a bank's retail lending performance. A commenter suggested the agencies should issue draft CRA performance evaluations that identify the weight and consideration given to certain comments versus others. This commenter also said banks should be given the opportunity to review and rebut comments considered by the agencies. Similarly, other commenters emphasized that disclosing whether a Retail Lending Test conclusion was adjusted up or down based on feedback would incentivize stakeholder input and encourage banks' accountability to the public. A commenter suggested that the agencies' community affairs teams should combine any submitted oral and written comments with data, news articles, and other research for examiners to develop Retail Lending Test conclusions. This commenter added that it was imperative that the agencies clearly explain how Retail Lending Test adjustments might be made based upon community affairs teams' input.

On the other hand, a commenter stated that the agencies should only consider written comments required to be included in a bank's CRA public file in developing Retail Lending Test conclusions to limit the potential effect of social media posts and other potentially spurious claims. Although acknowledging the value of community input, the commenter suggested this value must be balanced with the subjectivity of comments and the risk of creating an inaccurate representation of a bank's performance. This commenter highlighted the need for examiner training and suggested that examiners should only consider written comments where a bank has been given a reasonable opportunity to respond.

Evaluation of performance in distressed and underserved middle-income census tracts for banks with few or no low- and moderate-income census tracts. Commenters on this topic generally supported including a quantitative evaluation of the geographic distribution of retail lending in distressed and underserved middle-income census tracts for banks with few or no low- and moderate-income census tracts in their assessment areas. For example, commenters noted the importance of this approach to rural areas and nonmetropolitan areas, where poverty may exist outside of low- and moderate-income census tracts. A commenter noted that, primarily in rural areas, treating distressed and underserved census tracts like low- or moderate-income tracts would be preferable to conducting a qualitative review of these tracts. Another commenter suggested that evaluating bank activities in distressed and underserved middle-income census tracts would better help address gentrification relative to the current CRA regulations. A commenter indicated that the agencies should assess whether in rural areas with few low- and moderate-income census tracts including distressed and underserved middle-income census tracts, would truly increase the number of census tracts in which a bank could receive credit for lending within the geographic distribution analysis. This commenter added that the agencies' proposal regarding delineation of retail lending assessment areas in the nonmetropolitan areas of States might result in an overall sufficient number of low- and moderate-income census tracts in those assessment areas for a geographic distribution analysis. Relatedly, another commenter suggested that in assessment areas containing few or no low- and moderate-income census tracts, examiners could compare the median income in a given census tract to the state median income to determine whether a census tract was distressed or underserved during the evaluation period.

Final Rule

Additional factors, in general. The agencies continue to believe that the Retail Lending Test evaluation should include additional factors for consideration when determining Retail Lending Test conclusions for Retail Lending Test Areas. These additional factors and their application to the Retail Lending Test are provided in final § ____.22(g) and (h)(1)(ii), and in paragraph VII.d of final appendix A.

The agencies have made substantive and technical changes in final § ____.22(g). First, to clarify the role of the additional factors in the Retail Lending Test, the introductory text to final § ____.22(g) states that the additional factors, as appropriate, inform the agencies' determination of a bank's Retail Lending Test conclusion for each Retail Lending Test Area. The agencies intend the included language ''inform the [Agency]'s determination of a bank's Retail Lending Test conclusion'' to be a clarifying change from the proposal that more explicitly links the additional factors to the determination of Retail Lending Test conclusions. In contrast, proposed § ____.22(e) did not specifically refer to the determination of conclusions in the introductory text. Additionally, although the proposed introductory text stated that the additional factors may apply in evaluating a bank's performance in facility-based assessment areas, the final rule does not maintain this limitation. Instead, certain additional factors may apply in, as applicable, a bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as discussed below.

The additional factors included in final § ____.22(g) allow the agencies to account for circumstances in which the prescribed metrics in final § ____.22(e) may not accurately or fully reflect a bank's lending distributions or in which the benchmarks may not appropriately represent the credit needs and opportunities in the area. The agencies believe that it is preferable to state as specifically as possible the circumstances in which the agencies may assign a Retail Lending Test conclusion that is different from the Retail Lending Test recommended conclusion. Specifying these circumstances is intended to increase the consistency and certainty of Retail Lending Test evaluations, compared to an alternative in which such circumstances are unspecified and are left entirely to examiner discretion.

As discussed in the section-by-section analysis of final §§ ____.21(d) and ____.22(h), the agencies will also consider performance context factors when assigning Retail Lending Test conclusions. As in the proposal, pursuant to final § ____.21(d), performance context related to a bank's retail lending performance that is not reflected in the distribution analysis can inform Retail Lending Test conclusions. For example, the agencies could consider a bank's past performance and safety and soundness limitations.

The final rule maintains, with certain clarifying and substantive changes discussed below, the four proposed additional factors. In consideration of comments received and additional agency analysis, the agencies have also added three new additional factors to final § ____.22(g), relating to consideration of: (1) major product lines in retail lending assessment areas and outside retail lending areas with fewer than 30 loans; (2) lending in distressed or underserved nonmetropolitan middle-income census tracts where a bank's facility-based assessment area or retail lending assessment area includes very few or no low- and moderate-income census tracts; and (3) retail lending assessment areas and facility-based assessment areas where lenders in the aggregate are underperforming.

Section ____.22(g)(1)

Pursuant to final § ____.22(g)(1), the agencies may consider information indicating that a bank purchased closed-end home mortgage loans, small business loans, small farm loans, or automobile loans for the sole or primary purpose of inappropriately enhancing its retail lending performance, including, but not limited to, information indicating subsequent resale of such loans or any indication that such loans have been considered in multiple banks' CRA evaluations, in which case the agencies do not consider such loans in the bank's performance evaluation.

The agencies have incorporated clarifying changes into this additional factor. For clarity, the final rule specifies that this factor applies to the distribution analyses of closed-end home mortgage loans, small business loans, small farm loans, and automobile loans—rather than simply ''retail loans,'' as stated in the proposal. For additional clarity and specificity regarding the concept of a bank seeking to purchase loans in order to inappropriately improve its conclusions and ratings, the agencies have also changed the standard from a bank ''inappropriately influencing,'' as provided in the proposal, to a bank ''inappropriately enhancing'' its retail lending performance.

The final rule provides that if the agencies have determined that certain lending meets this additional factor, then the agencies will not consider those loans in a bank's performance evaluation. The agencies believe this provision gives appropriate additional detail regarding how this additional factor will be applied, and is consistent with the discussion in the agencies' proposal that the additional factor would be used to adjust conclusions when there is evidence of inappropriate loan purchasing activity. The agencies believe that exclusion of such loans from the distribution analysis is appropriate because loans that a bank purchases and quickly resells for the sole or primary purpose of inappropriately enhancing the bank's evaluation may distort the distribution analysis and are not responsive to community credit needs.

In determining whether inappropriate purchasing activity has occurred, the agencies may consider a number of factors, including: (1) the bank's business strategy; (2) the timing of the purchases; (3) the timing of the resale of these loans relative to the purchases; and (4) the materiality of the purchases to the bank's Retail Lending Test recommended conclusion.

Additionally, the final rule does not limit application of this additional factor to a bank's facility-based assessment areas, as was proposed. Rather, the additional factor may also be considered in, as applicable, a bank's retail lending assessment areas and its outside retail lending area. The agencies believe that this flexibility is appropriate because inappropriate purchasing activity is not necessarily restricted to a bank's facility-based assessment areas.

In determining to include an additional factor addressing certain purchased loans that may inappropriately enhance a bank's recommended conclusion, the agencies considered commenter feedback regarding the potential benefits and tradeoffs of such a factor, including concerns from some commenters about the potential for multiple banks to receive CRA consideration for the same loans. The agencies believe that the additional factor in final § ____.22(g)(1) will help to account for certain loan purchase activity that is not responsive to community credit needs, and will support a robust distribution analysis without removing purchased loans from the distribution analysis.

The agencies also considered comments that this additional factor may create uncertainty due to a lack of clear standards regarding when purchased loans would be deemed to be inappropriately enhancing a bank's evaluation. The agencies believe that it is appropriate to define this factor with sufficient flexibility to apply to different ways that a bank could potentially purchase loans to inappropriately enhance its evaluation. However, as discussed above, the agencies expect that this factor will be applied rarely. At the same time, the agencies believe that this factor is important for ensuring a robust distribution analysis in the rare instances in which it would be applied.

The agencies also believe that inclusion of this factor will not deter banks from purchasing loans for other reasons. The agencies will not apply this additional factor in instances where a bank has a business strategy of purchasing loans, for example, as a way of providing liquidity to originating lenders that lack secondary market access or purchasing distressed closed-end home mortgage loans from Ginnie Mae servicers. However, the agencies may, for example, consider this factor in the case of a bank that purchases 100 small business loans that it sells immediately or shortly after the close of the evaluation period, if the bank otherwise routinely purchases one or two small business loans each month during an evaluation period.

Regarding whether to analyze HMDA data to identify banks and Retail Lending Test Areas that have suspicious purchase activity, the agencies believe that such an analysis could facilitate targeted consideration in support of the additional factor in final § ____.22(g)(1). If this analysis identified any bank Retail Lending Test Areas with suspicious purchase activity, the agencies would review those purchases more closely.

Regarding the suggestion that the agencies establish a series of presumptions that would enable a bank to establish that its retail loan purchases do not reflect inappropriate loan purchasing activity, the agencies believe that the evaluation of retail loan purchases and whether they reflect inappropriate loan purchasing activity are best handled on a case-by-case basis, given the flexibility of final § ____.22(g)(1) as a qualitative additional factor.

Relatedly, the agencies decline to adopt in the final rule a minimum holding period after which a purchased loan would no longer be considered an inappropriately purchased loan. The agencies are sensitive to the possibility that imposing a minimum holding period (*e.g.,* from 30 days to one year, as suggested by commenters) may increase liquidity and interest rate risk. In addition, the agencies believe that not satisfying a minimum holding period does not necessarily indicate that a loan was purchased to inappropriately enhance a bank's performance evaluation. For example, a bank may purchase a loan from an originating lender that lacks secondary market access and then relatively shortly thereafter sell that loan to a government-sponsored enterprise, providing liquidity for the originating lender to make further loans, which would not constitute inappropriate loan purchasing activity. Finally, the agencies note that they face data limitations that would prevent consistent application of a minimum holding period, since this information is not consistently available to the agencies.

For the reasons stated above, the agencies believe that final § ____.22(g)(1) appropriately addresses concerns about inappropriate loan purchasing activity in a manner that will serve to discourage intentional manipulation of a bank's CRA evaluation through loan purchases while more generally including loan purchases in the Retail Lending Test analysis.

Section ____.22(g)(2)

Final § ____.22(g)(2) includes a provision that the agencies may consider the dispersion of a bank's closed-end home mortgage, small business, small farm, or automobile lending within a facility-based assessment area to determine whether there are gaps in lending that are not explained by performance context. For example, under this additional factor, a Retail Lending Test recommended conclusion may be lowered where geographic lending patterns exhibit gaps in low- or moderate-income census tracts that cannot be explained by performance context.

The agencies believe that this factor is necessary because the geographic distribution analysis in facility-based assessment areas is conducted on an aggregate basis across an entire facility-based assessment area, and does not consider whether there are gaps in a bank's lending in certain census tracts. For example, this factor may be considered if a bank has a substantial number of loans in all census tracts within a facility-based assessment area except for several contiguous low- and moderate-income census tracts in the center of the facility-based assessment area in which the bank made zero loans, despite there being credit needs and opportunities in those census tracts as demonstrated by loans made by other lenders.

This additional factor is consistent with the current CRA regulations,[961] in which the agencies may evaluate the extent to which a bank is serving geographies in each income category

[961] *See, e.g.,* current 12 CFR ____.22(b).

and whether there are conspicuous gaps unexplained by performance context. Consistent with current practice, the agencies note that banks are not required to lend in every census tract in a facility-based assessment area, and that performance context may explain why a bank was not able to serve one or more census tracts.

Consistent with the proposal, the agencies will apply this factor only in facility-based assessment areas. The agencies have determined that this additional factor is best applied to facility-based assessment areas because the dispersion analysis can take into account where the bank's deposit-taking facilities are located.

The final rule includes a conforming change to precisely reference applicable loan categories, specifying that this additional factor applies to reviews of closed-end home mortgage, small business, small farm, and automobile lending—rather than simply to reviews of ''retail loans,'' as provided in the proposal. The agencies note that these products are the potential Retail Lending Test major product lines that may be included in a distribution analysis, and that open-end home mortgage loans and multifamily loans will not be evaluated using a distribution analysis pursuant to the Retail Lending Test, as discussed further in the section-by-section analysis of final § ____.22(d).

Section ____.22(g)(3)

Consistent with the proposal, final § ____.22(g)(3) provides, with some technical edits, that the agencies may consider the number of lenders whose reported home mortgage loans, multifamily loans, small business loans, and small farm loans and deposits data are used to establish the applicable Retail Lending Volume Threshold, geographic distribution market benchmarks, and borrower distribution market benchmarks. Specifically, the agencies believe that where there are very few banks reporting lending and deposits data, or where one bank has an outsized market share, the benchmarks may not provide an accurate measure of local opportunities. For example, in a facility-based assessment area where a bank's closed-end home mortgage loans are a major product line and no other lenders have a meaningful number of closed-end home mortgage loans it may be nearly impossible for the bank to meaningfully exceed the market benchmark, because the market benchmark in this instance would be almost entirely based on the bank's own lending. In such a scenario, the agencies may consider, for example, the bank's performance relative to the community benchmark as well as performance context factors to determine the bank's conclusion.

The agencies made a conforming change to replace ''retail lending'' with the more specific lending that would be included: home mortgage lending (*i.e.,* closed-end home mortgage lending and open-end home mortgage lending), multifamily lending, small business lending, and small farm lending—rather than simply ''retail lending,'' as provided in the proposal.

The agencies are also clarifying that this additional factor relates to geographic distribution benchmarks and borrower distribution benchmarks—rather than ''geographic distribution, and borrower distribution thresholds,'' as provided in the proposal. The agencies made this change because both the proposed and final rule Retail Lending Test approach includes geographic and borrower distribution ''benchmarks,'' and does not use the term ''thresholds'' to refer to these evaluation criteria.

Additionally, the final rule provides that this additional factor is based on the number of ''lenders'' rather than the number of ''banks'' whose data is used in the Retail Lending Test calculations. The geographic distribution and borrower distribution market benchmarks include all lenders in an area, and may not be limited to banks, depending on the specific data sources used for these analyses. The agencies believe that considering all reporting lenders as part of this additional factor is appropriate because it is possible that an area may have a sufficient number of lenders to calculate reliable market benchmarks even if only one or two of those lenders are banks.

Final § ____.22(g)(3) expands the application of this additional factor from solely a bank's facility-based assessment areas, as proposed, to also include, as applicable, its retail lending assessment areas and its outside retail lending area. This change accounts for potential circumstances in which a bank has a retail lending assessment area or outside retail lending area in which there are few or no other lenders, which may make the geographic and borrower distribution benchmarks less robust. For example, the hypothetical provided above for a facility-based assessment area could also occur in a retail lending assessment area in which a bank is the only lender that originated loans in a certain product line during the evaluation period.

Section ____.22(g)(4)

Consistent with the proposal, final § ____.22(g)(4) provides that the agencies may consider missing or faulty data that would be necessary to calculate the relevant metrics and benchmarks or any other factors that prevent the agencies from calculating a Retail Lending Test recommended conclusion. In such a case, the final rule provides that if unable to calculate a Retail Lending Test recommended conclusion, the agencies assign a Retail Lending Test conclusion based on consideration of the relevant available data. For example, a Retail Lending Test Area with a small number of owner-occupied housing units in low-income census tracts could be reported in the American Community Survey as having zero such units if none of those owner-occupied housing units were randomly selected to be part of the sample that received a survey. In such cases, it will not be possible to conduct a geographic distribution analysis using the otherwise prescribed approach for low-income census tracts even when the bank originated or purchased closed-end home mortgage loans in those low-income census tracts.

The agencies believe that this additional factor addresses commenter concerns regarding the evaluation of closed-end home mortgage loans in which borrower income is missing or unavailable. The agencies have considered commenter feedback that a bank may have a large volume of such loans, depending on the bank's business model and strategy. For example, banks that specialize in non-owner-occupied closed-end home mortgage loans, or that originate a large number of streamlined closed-end home mortgage refinancings, may have many loans for which borrower income is not available. As noted by some commenters, the borrower distribution metrics would count loans with missing or unavailable income information in the denominator, and not in the numerator, of the metric, which may result in the bank receiving a lower recommended conclusion than if these loans were excluded from the analysis or were, in fact, made to low- or moderate-income borrowers and had the requisite income information. For this additional factor, if the agencies have reason to believe that certain loans with missing or unavailable borrower income information were made to low- or moderate-income borrowers, then the agencies may consider this fact pattern when determining the Retail Lending Test conclusion. For example, this may include the situation raised by some commenters where a bank has purchased a portfolio of distressed Ginnie Mae closed-end home mortgage loans from a loan servicer. In this situation, based on available information, the agencies may determine that because a significant number of the loans for which borrower income was unavailable were likely made to low- or moderate-income borrowers, it is therefore appropriate to assign a higher conclusion than the bank's recommended conclusion. The use of this additional factor may also include a bank that purchased a large number of non-owner-occupied closed-end home mortgage loans with missing or unavailable income information, if the bank is able to provide information to the agencies that some of the loans in question were made to low- or moderate-income borrowers.

Additionally, pursuant to the final rule, the agencies will apply this factor in a bank's facility-based assessment areas, as proposed—and, as applicable, its retail lending assessment areas and its outside retail lending area. The agencies believe that it is appropriate and necessary to account for any missing and faulty data that could impact the calculation of the Retail Lending Test metrics and benchmarks in any Retail Lending Test Area to ensure a robust evaluation.

For additional clarity, the agencies have changed two proposed references from ''recommended conclusion'' to ''Retail Lending Test recommended conclusion.''

Section ____.22(g)(5)

Newly added final § ____.22(g)(5) provides that the agencies may consider whether the Retail Lending Test recommended conclusion does not accurately reflect the bank's performance in a Retail Lending Test Area in which one or more of the bank's major product lines consists of fewer than 30 loans.

Inclusion of this additional factor provides flexibility for instances in which a small number of loans constitutes a major product line. Because the major product line threshold approach in facility-based assessment areas and outside retail lending areas is based on the percentage of a bank's loans in a certain product line, a bank may have a small number of loans that constitute a major product line. For example, if a bank originated 20 small business loans in a facility-based assessment area, and had no other retail loans there, then small business loans would constitute a major product line in that facility-based assessment area and would be evaluated pursuant to the distribution analysis.

Based on supervisory experience and statistical analysis, the agencies believe that it is appropriate to consider additional information when interpreting and drawing conclusions from a distribution analysis of a very small number of loans. The agencies note that it is conceivable that a single loan origination or purchase could change a bank's recommended conclusion by multiple levels if the bank's total number of loans is very small, depending on the applicable performance ranges. For instance, the agencies considered the example of a bank with 20 loans in its small business loan major product line, in which one loan represents 5 percent of the bank's lending by loan count. As part of this example, the agencies assumed that the borrower distribution performance ranges for lending to businesses with gross annual revenues of $250,000 or less include a ''Low Satisfactory'' threshold of 11 percent and a ''High Satisfactory'' threshold of 14 percent. In this example, the bank would fall into the ''Needs to Improve'' recommended conclusion category if two of its small business loans were to businesses with gross annual revenues of $250,000 or less and into the ''High Satisfactory'' recommended conclusion category if three of its loans were to businesses with gross annual revenues of $250,000 or less. The agencies believe that the change in the example bank's recommended conclusion based on only a single loan warrants consideration of other available information and potentially assigning a different conclusion than the recommended conclusion.

The agencies considered supervisory experience and simulated examples such as the hypothetical described above in determining that 30 loans is an appropriate threshold for when this additional factor should apply. The agencies note that 30 units is a common minimum guideline for a sample to be considered ''large'' for statistical testing purposes.[962] The agencies emphasize that application of this additional factor does not mean that distribution results for major product lines consisting of fewer than 30 loans would be disregarded; rather, for Retail Lending Test Areas with major product lines consisting of fewer than 30 loans, the additional factor in final § ____.22(g)(5) allows for additional discretion in determining the Retail Lending Test conclusion.

Section ____.22(g)(6)

Newly added final § ____.22(g)(6) specifies that the agencies may consider a bank's closed-end home mortgage, small business, small farm, or automobile lending in distressed and underserved nonmetropolitan middle-income census tracts where a bank's nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area includes very few or no low- and moderate-income census tracts.

In deciding to include this additional factor in the final rule, the agencies considered that certain facility-based assessment areas and retail lending assessment areas, particularly in nonmetropolitan areas, may have very few or no low- and moderate-income census tracts within their boundaries. In such circumstances, the agencies believe that considering lending in distressed and underserved nonmetropolitan census tracts may provide for a more fulsome evaluation of the bank's retail lending. The agencies narrowly tailored this additional factor to instances in which there are very few or no low- and moderate-income census tracts to ensure that the geographic distribution analysis emphasizes low- and moderate-income census tracts and so that banks do not lend in distressed and underserved nonmetropolitan middle-income census tracts at the expense of lending in low- and moderate-income census tracts. The agencies considered specifying an exact number of low- and moderate-income census tracts at which this additional factor may be considered, but determined that a standard of ''very few or no'' will more appropriately allow for consideration of the performance context of an area, such as the percentage of census tracts in the area that are low- and moderate-income census tracts, the presence of lending opportunities in those census tracts, and the proximity of those census tracts to the bank's facilities, if any. The agencies therefore believe that the ''very few or no'' standard provides appropriate flexibility while also narrowly tailoring application of this standard.

Final § ____.22(g)(6) considers closed-end home mortgage lending, small business lending, small farm lending, and automobile lending in distressed and underserved nonmetropolitan middle-income census tracts as an

[962] Although the number of observations necessary for a statistical analysis can vary with the context and the statistical method being used, a common rule of thumb is that 30 observations is necessary for a large sample because the mean of 30 randomly drawn values will have a distribution that is approximately normal. *See* Sheldon M. Ross, *Introductory Statistics, Fourth Edition* 398 (Academic Press, 2017) and Robert V. Hogg, Elliot A. Tanis, and Dale L. Zimmerman, *Probability and Statistical Inference, Ninth Edition* 303 (Pearson Education, 2015).

additional factor rather than as a quantitative component of the geographic distribution analysis. The agencies believe that qualitative consideration is appropriate because the amount of emphasis given to a bank's lending in distressed and underserved nonmetropolitan middle-income census tracts will depend on the performance context of the facility-based assessment area or retail lending assessment area, such as the lending needs and opportunities in any low- and moderate-income census tracts and the capacity of the bank to serve borrowers in any low- and moderate-income census tracts.

Final § ____.22(g)(6) applies in nonmetropolitan facility-based assessment areas and nonmetropolitan retail lending assessment areas in which there are very few or no low- and moderate-income census tracts. The agencies do not believe that this additional factor should be considered in an outside retail lending area because outside retail lending areas are defined as the entire nationwide area outside of a bank's facility-based assessment areas and retail lending assessment areas, and as a result will generally contain multiple low- and moderate-income census tracts.

Section ____.22(g)(7)

Overall. Final § ____.22(g)(7) provides that the agencies will consider information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs. The agencies believe that information indicating that the credit needs of a particular facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate could be sourced from, for example, research publications, other data sources accessible to the agencies, community contacts, and other performance context information pertaining to a facility-based assessment area or retail lending assessment area. In such facility-based assessment areas and retail lending assessment areas, the agencies may determine that the market benchmark is not an accurate measure of the credit needs and opportunities of low- and moderate-income borrowers, small businesses, or small farms, because lenders as a whole are not meeting their obligations to meet the credit needs of the entire community. Under this additional factor, the agencies will apply additional qualitative review of retail lending in areas where credit needs are identified as not being met by lenders in the aggregate, and the results of this additional qualitative review could inform Retail Lending Test conclusions.

In deciding to include this additional factor, the agencies considered the design of the retail lending distribution analysis and the results of such distribution analysis in a market where lenders may be underperforming in the aggregate and the credit needs of substantial parts of the community are not being met. As discussed in the section-by-section analysis of final § ____.22(f), the agencies note that the performance ranges used to develop recommended conclusions under the final rule are based on the lower of the calibrated market benchmark and calibrated community benchmark. Moreover, the market benchmark is calculated from originated or purchased closed-end home mortgage loans, small business loans, and small farm loans in a facility-based assessment area that are reported by all lenders. As a result, in an area that is broadly underserved and where the calibrated market benchmark is lower than the calibrated community benchmark, the market benchmark may significantly underestimate the credit needs and opportunities in the area but would nonetheless be the basis for the performance ranges. This additional factor reflects that, in such an instance, the distribution analysis may not appropriately assess whether a bank has met the credit needs of the community, and the recommended conclusion may warrant adjustment based on consideration of performance context and other available information that speaks to credit needs and opportunities in the facility-based assessment area or retail lending assessment area.

The final rule provides that this additional factor may apply in facility-based assessment areas and in retail lending assessment areas, but not in an outside retail lending area. The agencies do not believe that it is necessary, or feasible, to consider this factor in an outside retail lending area because the lending in these areas is generally dispersed across multiple metropolitan and nonmetropolitan areas.

Statistical model. The final rule does not include a statistical model to identify underperforming areas in the final rule. However, the agencies intend to develop statistical models that would be designed to predict the level of the market benchmarks that would be expected in each facility-based assessment area and retail lending assessment area if it had adequately been served by lenders in general. The agencies acknowledge commenter feedback about the potential benefits and challenges of developing such a model. A statistical model could be used to determine whether the market benchmarks for a facility-based assessment area or retail lending assessment area were significantly below levels that would otherwise be expected 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). Market benchmarks that were found to be significantly lower than their expected levels would indicate that those market benchmarks could be underestimating the credit needs in that facility-based assessment area or retail lending assessment area. The agencies could use this information to help determine whether lenders as a whole were underperforming in a specific assessment area, which could inform the agencies' determination of a bank's Retail Lending Test conclusion. The agencies are considering how to develop an appropriate statistical model and would solicit additional feedback from the public in developing such a model.

Oral and written comments. The agencies have considered, but decline to adopt, commenter suggestions supporting inclusion of oral or written comments about a bank's retail lending performance as an additional factor as part of final § ____.22(g) to inform Retail Lending Test conclusions. The agencies determined that oral or written comments about a bank's performance are appropriately accounted for under final § ____.21(d). Specifically, final § ____.21(d)(6) maintains the proposed performance context factor for ''[t]he bank's public file, as provided in § ____.43, including any written comments about the bank's CRA performance submitted to the bank or the [Agency] and the bank's responses to those comments.'' Including written public comments as a consideration in final § ____.21(d)(6) allows the agencies the ability to consider public comments in light of a bank's overall performance context and to apply consideration of those comments to the appropriate performance test or tests—including the Retail Lending Test—and to the appropriate geographic level or levels. Additionally, final § ____.21(d)(4) indicates that the agencies may consider oral and written comments about retail banking and community development needs and opportunities provided by the bank or other relevant sources, including, but not limited to, members of the community and community organizations. The agencies believe that it is preferable to consider public comments as part of a bank's overall performance context rather than specifically within final § ____.22(g), which applies only to Retail Lending Test recommended conclusions for, as applicable, facility-based assessment areas, retail lending assessment areas, and outside retail lending areas, because public comments could relate to one or more performance tests as well as to a state, multistate MSA, or institution-level conclusion.

The agencies considered comments that the agencies should draft CRA performance evaluations that identify the weight and consideration given to certain comments versus others. Pursuant to final § ____.21(d), the agencies will consider public comments as part of a bank's overall performance context in applying the performance tests and determining conclusions. In addition, the agencies note that CRA performance evaluations must include the facts and data informing a bank's conclusions and ratings; therefore, if information gleaned from public comments is part of the basis of a bank's conclusions, the agencies would include that information in performance evaluations.

Regarding the commenter suggestion that banks should be given the opportunity to review and rebut comments considered by the agencies, the final rule does not adopt this as part of the regulatory text for the applicable provision. However, the agencies believe that, at the time of a bank's examination, banks have the opportunity to provide the agencies with additional data and information related to any aspect of the bank's evaluation, including topics raised in public comments.

The agencies also considered the commenter suggestion that the agencies' community affairs teams should combine any submitted oral and written comments with data, news articles, and other research for examiners to develop Retail Lending Test conclusions. The agencies believe that final § ____.21(d)(6) will allow the agencies to consider oral and written comments in conjunction with other data, news articles, and research as part of a bank's performance context.

The agencies also considered a commenter suggestion that the agencies should only consider written comments required to be included in a bank's CRA public file in developing Retail Lending Test conclusions, to limit the potential effect of social media posts and other potentially spurious claims. Pursuant to the public file requirements in final § ____.43, submitted written comments, whether submitted directly to a bank or to an agency, will be available both for consideration and response by a bank and for public review. The agencies note that it may often not be feasible or appropriate to consider social media posts as information included as part of a bank's performance context; in additional to practical challenges, the agencies believe it could be challenging to determine whether remarks made by members of the public on social media were intended or appropriate for the agencies to consider in the bank's CRA evaluation. However, the agencies have discretion pursuant to final § ____.21(d)(4) and (7) to consider oral and written comments, including those made to the agencies as part of the community contacts process; data made available through social media posts, if relevant to a bank's evaluation, could also be considered as performance context information as determined to be appropriate. As discussed further in the section-by-section analysis of final § ____.46, the agencies note that they encourage the public to submit comments on bank performance either to the agency or to the bank so it can be included in the bank's public file as noted above.

Section ____.22(h) Retail Lending Test Performance Conclusions and Ratings

In final § ____.22(h) and section VIII of final appendix A, the agencies are adopting, with certain substantive, clarifying, and technical edits: the proposed approach for assigning performance scores to a bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable, based on the bank's retail lending performance in those Retail Lending Test Areas; and calculating a weighted average of those performance scores to determine Retail Lending Test conclusions at the State, multistate MSA, and institution levels.

The Agencies' Proposal

Section ____.22(h)(1) Conclusions

With reference to proposed § ____.28 and proposed appendix C, proposed § ____.22(f)(1) provided that the agencies would assign Retail Lending Test conclusions for a bank's performance in its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable. As described in section VI of proposed appendix A and proposed appendix C, conclusions assigned for a bank's performance in facility-based assessment areas and retail lending assessment areas, as applicable, would form the basis for State, multistate MSA, and institution Retail Lending Test conclusions. Conclusions in a bank's outside retail lending area would also factor into the institution Retail Lending Test conclusion.[963]

As also described in section VI of proposed appendix A, the agencies intended to combine the performance scores for a bank's facility-based assessment areas, retail lending assessment areas, and its outside retail lending area, as applicable, using a standardized weighted average approach, to develop State, multistate MSA, and institution conclusions. The proposed approach aimed to ensure that the bank's retail lending performance in every one of its markets would influence conclusions at the State, multistate MSA, and institution levels, as appropriate.

In addition, the agencies proposed that the weights for State and multistate MSA conclusions would be calculated by averaging together the performance in each facility-based assessment area and retail lending assessment area, as applicable. In doing so, the bank's performance in each assessment area (facility-based assessment area or retail lending assessment area, as applicable) would be weighted by calculating the simple average of:

- The dollars of deposits that the bank sourced from a facility-based assessment area or retail lending assessment area, as a percentage of all of the bank's deposits sourced from facility-based assessment areas or retail lending assessment areas, as applicable, in the State or multistate MSA; and
- The dollars of the bank's retail lending in a facility-based assessment area or retail lending assessment area, as a percentage of all of the bank's retail loans in facility-based assessment areas and retail lending assessment areas, as applicable, in the State or multistate MSA.[964]

When evaluating retail lending performance for the institution, the agencies proposed considering performance in a bank's outside retail lending area, as applicable, in addition to performance in a bank's facility-based assessment areas and retail lending assessment areas, as applicable. Specifically, the agencies proposed that the weights assigned to each geographic area for purposes of calculating institution conclusions would be the simple average of:

[963] *See* proposed § ____.22(a) and proposed appendix C.

[964] *See* proposed appendix A, section VI.

• The percentage reflecting the dollars of deposits that the bank sourced from each area (a facility-based assessment area, retail lending assessment area, or outside retail lending area) relative to all of the bank's deposits; and

• The percentage reflecting the dollars of the bank's retail lending in each area (a facility-based assessment area, retail lending assessment area, or its outside retail lending area) relative to all of a bank's retail lending.[965]

For Retail Lending Test conclusions in a State and multistate MSA, as applicable, and for the institution, the agencies proposed to tailor the approach for deposits data used for these weights, as discussed further in the section-by-section analyses of §§ ____.12 and ____.42(a)(7) and (b)(3). For deposits data, the agencies proposed to use the annual average amount of a bank's deposits collected from each area averaged over the years of the relevant evaluation period, if the bank collected and maintained this data.[966] For any banks evaluated under the Retail Lending Test that did not collect deposits data, the agencies proposed to use the deposits assigned to the banks' branches in each area, as reported in the FDIC's Summary of Deposits data, averaged over the years of the relevant evaluation period.[967]

Section ____.22(h)(2) Ratings

With reference to proposed § ____.28 and proposed appendix D, proposed § ____.22(f)(2) provided that the agencies would incorporate a bank's Retail Lending Test conclusions into a bank's State, multistate MSA, and institution ratings.

Comments Received

Commenters that addressed proposed § ____.22(f) and section VI of proposed appendix A generally focused on the proposed weights assigned to facility-based assessment area, retail lending assessment area, and outside retail lending area conclusions, as applicable.

Several commenters supported the proposal to calculate weights for a bank's facility-based assessment area, retail lending assessment area, and outside retail lending area conclusions, as applicable, based on the average of a bank's combined share of deposits and retail loans within each area. For example, a commenter representing rural areas indicated that the weighting approach is reasonable as it reflects a bank's service area as measured by deposits and loans, notwithstanding that rural areas might not often receive a large weight. Another commenter expressed support for the agencies' approach, including displaying a bank's Retail Lending Test performance score as it would add transparency and reveal further distinction into a bank's performance.

However, other commenters expressed concerns with the agencies' proposed approach, including that it would result in outside retail lending areas receiving too much weight or that it was overly complex. Some commenters recommended that the agencies consider emphasizing facility-based assessment areas by assigning them greater weight than retail lending assessment areas. In addition, a commenter indicated that the agencies' proposed approach involving ''rounding'' of raw performance scores as part of developing State, multistate MSA, and institution conclusions could cause a bank's institution Retail Lending Test conclusion to deviate significantly from the bank's actual performance. This commenter noted a hypothetical scenario in which a bank's Retail Lending Test Area performance score of 4.49 would be rounded to 4.5 and, in turn, rounded up to a 6 (''Low Satisfactory'' conclusion) whereas a similar Retail Lending Test Area performance score of 4.44 would be rounded down to 4.4 and, in turn, rounded down to a 3 (''Needs to Improve'' conclusion)—and indicated that if the second rounding dynamic occurred across multiple Retail Lending Test Areas (or even in a single heavily-weighted Retail Lending Test Area) the effect on the bank's Retail Lending Test conclusions and overall rating could potentially be significant.

Some commenters suggested alternatives, including: simplifying the calculations to allow banks to better understand their performance and course correct as needed; weighting facility-based assessment area performance based upon the relative share of bank deposits or the amount of retail lending, by loan count, and separately evaluating non-facility-based assessment area lending at the institution level; and basing weighting of different areas on examiners' assessment of banks' retail lending patterns and their judgment regarding how much weight to assign outside retail lending area lending.

Final Rule

Overview of § ____.22(h) and Section VIII of Appendix A

In final § ____.22(h)(1), the agencies are adopting the proposed approach to assigning conclusions for a bank's Retail Lending Test performance, with edits to reflect final rule revisions to other Retail Lending Test sections. Final § ____.22(h)(1) includes references to final § ____.28, section VIII of final appendix A, and final appendix C. In final § ____.22(h) and section VIII of final appendix A, the agencies modified the final rule approach for calculating a bank's percentage of retail lending in each Retail Lending Test Area for purposes of determining these weights and also made minor wording changes to improve readability and increase consistency with other performance test conclusions and ratings provisions throughout the final rule.

The final rule provides, in section VIII of final appendix A, the following:

• *Performance scores for Retail Lending Test Areas.* The agencies translate the Retail Lending Test conclusion for each Retail Lending Test Area (facility-based assessment areas, retail lending assessment areas, and an outside retail lending area, as applicable) into a numerical performance score.

• *Performance scores for States and multistate MSAs.* The agencies take a weighted average of performance scores across facility-based assessment areas and retail lending assessment areas, as applicable, to calculate a performance score for each state and multistate MSA.

• *Performance score for the institution.* The agencies take a weighted average of performance scores across all applicable Retail Lending Test Areas to calculate a performance score for the institution.

Conclusions for states, multistate MSAs, and the institution: The agencies develop a conclusion corresponding with the conclusion category that is nearest to the Retail Lending Test performance score for each state, multistate MSA, and for the institution. As discussed further below, the weighted average of each Retail Lending Test Area is calculated using the following: (1) percentage of deposits in the specific geographic area out of all the deposits in Retail Lending Test Areas in the State, Multistate MSA, or institution, as applicable; and (2) percentage of lending in the specific geographic area out of all the lending in product lines in Retail Lending Test

[965] *See id.*

[966] *See id.*

[967] *See id.*

Areas in the State, Multistate MSA, or institution.[968]

Use of performance scores. As noted, the final rule approach retains a system of assigning performance scores to a bank's facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable, based on the bank's retail lending performance in those Retail Lending Test Areas. Under the final rule, the agencies then calculate a weighted average of those performance scores to determine Retail Lending Test conclusions at the State and multistate MSA levels and for the institution.

With respect to commenter perspectives that the agencies' proposed approach required an excessive number of calculations and was overly complex, the agencies believe that the methodology adopted in the final rule is appropriate for transparently, comprehensively, and consistently assessing a bank's retail lending performance when assigning conclusions. In particular, the agencies believe that the use of a standardized quantitative approach to weighting Retail Lending Test Areas is preferable to the current evaluation approach, which does not assign a specific weight to assessment area conclusions in a standardized manner, including in limited-scope assessment areas.

The final rule retains the proposed approach of assigning a performance score to each Retail Lending Test Area based on the conclusion assigned for the bank's retail lending performance in that area, as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points).[969] The agencies have considered concerns from some commenters regarding the use of these five performance score values corresponding to each conclusion category. However, the agencies believe that it is appropriate to use these performance scores when determining a bank's conclusions at the State, multistate MSA, and institution levels, rather than to use the Retail Lending Test Area Score (which could be, for example, 6.5 or 8) that is calculated pursuant to final § ____.22(f) (*i.e.,* after combining all of a bank's product line scores in a Retail Lending Test Area for purposes of determining Retail Lending Test recommended conclusions). The agencies note that the Retail Lending Test Area Score does not take into account the additional factors provided in final § ____.22(g), which would be considered when assigning the Retail Lending Test Area conclusion. In addition, pursuant to final § ____.21(d), the agencies may consider performance context information before assigning a conclusion. As a result, the agencies believe that it is appropriate to use the performance score associated with the bank's conclusion, rather than the bank's Retail Lending Test Area Score, to determine State, multistate MSA, and institution conclusions. Consequently, although Retail Lending Test Area Scores will play a significant role when the agencies assign conclusions, the agencies will also take qualitative considerations into account, and these considerations may, where appropriate, lead to adjustments of the conclusions that the agencies would otherwise have assigned.

Using both deposits and retail lending to weight Retail Lending Test performance in different Retail Lending Test Areas. The final rule retains the proposed approach of weighting each Retail Lending Test Area in a standardized, quantitative manner, and does not adopt alternatives suggested by commenters to qualitatively adjust these weights or to assign greater weights to certain areas based on factors other than the bank's deposits and retail lending. As discussed further below, the agencies modified the final rule approach for calculating a bank's percentage of retail lending in each Retail Lending Test Area for purposes of determining these weights.

The agencies believe that the final rule approach reflects that a bank's presence in a particular Retail Lending Test Area—and hence the importance of its performance in that Retail Lending Test Area in an overall evaluation of its retail lending—is grounded in its customer bases for both deposits and retail loans. Accordingly, the agencies have determined that both a bank's deposit customer base and its retail lending customer base in a particular Retail Lending Test Area should inform the weight assigned to the performance score for that area when determining conclusions at the State, multistate MSA, and institution levels.

The agencies believe that the final rule approach provides greater consistency, predictability, and transparency than some suggested alternatives, which would introduce a certain amount of inconsistency due to the increased role of agency discretion in assigning weights to Retail Lending Test Area conclusions. The agencies also considered, but decline to adopt, an alternative to base Retail Lending Test Area weights purely on deposits, rather than on a combination of deposits and retail lending. In making this determination, the agencies considered that basing Retail Lending Test Area weights purely on deposits would mean that, if a bank did a very large amount of its retail lending in a market from which it drew few deposits, its lending performance there would only have a small influence on its overall Retail Lending Test conclusion. Alternatively, basing weights purely on retail lending could result in a bank's record of serving the credit needs of the communities from which it draws only a small amount of deposits having little bearing on its overall conclusion. For example, under a retail lending-only weighting alternative, if a bank performed poorly in a facility-based assessment area due to making fewer retail loans than necessary to meet the Retail Lending Volume Threshold that low level of lending would mean that the resulting facility-based assessment area conclusion would carry little weight in the corresponding State, multistate MSA, or institution conclusions, even if the bank draws a significant proportion of its deposits from that facility-based assessment area.

Pursuant to the section VIII of final appendix A, the agencies will determine the percentage of a bank's deposits in a specific Retail Lending Test Area as follows: (1) for a bank that collects, maintains, and reports deposits data as provided in final § ____.42, the calculation is determined using the bank's annual average daily balance of deposits reported by the bank in counties in the Retail Lending Test Area; and (2) for a bank that does not collect, maintain, and report deposits data as provided in final § ____.42, this calculation is determined using the deposits assigned to facilities reported by the bank in the Retail Lending Test Area in the FDIC's Summary of Deposits data.[970]

Because the FDIC's Summary of Deposits data assigns all deposits to facility locations, and all facilities will be located in a facility-based assessment area, the deposits assigned to retail lending assessment area and outside retail lending area performance scores for banks that do not collect and maintain deposits data will always be zero. The weight of the retail lending assessment area and outside retail lending area performance score for such a bank will, therefore, be one-half of the percentage of retail lending the bank conducted in a given retail lending

[968] *See* final appendix A, section VIII.

[969] *See* the section-by-section analysis of final § ____.21(f) for a more detailed discussion of the specific scoring for each conclusion category.

[970] *See* final appendix A, paragraphs VIII.a.1 and VIII.b.1.

assessment area. As a result, for a bank not required to collect deposits data that obtains deposits from outside of its facility-based assessment areas, electing to collect deposits data for use in the bank's evaluation may increase the weight placed on the bank's performance in its retail lending assessment areas and outside retail lending area and decrease the weight placed on its facility-based assessment areas, as the concentration of deposits attributed there may be reduced to some degree. The agencies determined that this approach allows appropriate flexibility to banks with assets less than or equal to $10 billion to decide whether to collect deposits data for the purposes of CRA evaluations. Such a bank may take into consideration the areas from which the bank sources deposits, and the potential burden and complexity associated with additional data collection, maintenance, and reporting for the bank. Such a bank may also take into consideration the broader definition of deposits (including U.S., State, and local government deposits and deposits from foreign entities) that are included in the FDIC's Summary of Deposits data, as compared to the narrower definition of deposits data used for banks that collect, maintain, and report deposits data.

Pursuant to section VIII of final appendix A, the agencies will determine the percentage of a bank's retail lending in a specific Retail Lending Test Area using not only a bank's dollar amount of retail lending but, rather—as discussed in the section-by-section analysis of final § ____.12—a combination of loan dollars and loan count. Specifically, the agencies will use the average of: (1) the ratio calculated using loans measured in dollar amount; and (2) the ratio calculated using loans measured in number of loans, to determine the percentage of a bank's originated and purchased closed-end home mortgage loans, small business loans, small farm loans, and automobile loans (if automobile loans are a product line for the bank) in a facility-based assessment area, retail lending assessment area, or outside retail lending area, as applicable.

As explained in the section-by-section analysis of final § ____.12, adopting a combination of loan dollars and loan count-based approach for weighting conclusions better tailors the Retail Lending Test to accommodate individual bank business models, insofar as the agencies have determined that use of this combination helps to account for differences across product lines, bank strategies, and geographic areas, relative to an approach that uses only loan dollars or only loan count. Additionally, the agencies believe that both loan dollars and loan count reflect different aspects of how a bank has served the credit needs of a community, with loan dollars representing the total amount of credit provided and loan count representing the number of borrowers served.

Section ____.22(h)(1)(i) In General

Section ____.22(h)(1)(ii) Retail Lending Test Area Conclusions

Retail Lending Test Conclusions for States and Multistate MSAs

With some modifications relative to the proposal, section VIII of final appendix A describes the agencies' methodology for assigning a bank's Retail Lending Test conclusions for the State and multistate MSA levels. Specifically, the agencies will develop a bank's Retail Lending Test conclusions for States and multistate MSAs based on Retail Lending Test conclusions for its facility-based assessment areas and retail lending assessment areas, as applicable, in those States and multistate MSAs. In addition to incorporating the combination of loan dollars and loan count definition, the agencies have made certain clarifying and technical changes to the proposal to streamline the description of the methodology and improve readability.

As provided in paragraph VIII.b of final appendix A, the agencies will calculate a bank's Retail Lending Test performance score based on a weighted average of performance scores from facility-based assessment areas and retail lending assessment areas, as applicable, within each respective State or multistate MSA. Specifically, the weights for each facility-based assessment area and retail lending assessment area in this calculation will be the simple average of the following two percentages, calculated over the years in the evaluation period:

- The percentage of deposits that the bank draws from the area, out of all of the dollars of deposits in the bank drawn from facility-based assessment areas and retail lending assessment areas in the respective State or multistate MSA, pursuant to final § ____.28(c); and
- Based on a combination of loan dollars and loan count, the percentage of the bank's loans in the area, as a percentage of all of the bank's loans in facility-based assessment areas and retail lending assessment areas in the respective State or multistate MSA, pursuant to final § ____.28(c). The loans included in this calculation will be originations and purchases of closed-end home mortgage loans, small business loans, small farm loans, and automobile loans (if automobile loans are a product line for the bank).

As proposed and as provided in paragraph VIII.c of final appendix A, based on this performance score, the agencies will develop a Retail Lending Test conclusion corresponding with the conclusion category that is nearest to the Retail Lending Test performance score for each State or multistate MSA, as illustrated in Table 31 below. The agencies will then consider relevant performance context factors provided in final § ____.21(d) before assigning a Retail Lending Test conclusion for the State or multistate MSA.

Table 31 to § __.22(h): Performance Scores and Conclusions

Range	Conclusion
8.5 or more	"Outstanding"
6.5 or more, but less than 8.5	"High Satisfactory"
4.5 or more, but less than 6.5	"Low Satisfactory"
1.5 or more, but less than 4.5	"Needs to Improve"
Less than 1.5	"Substantial Noncompliance"

Institution Retail Lending Test Conclusions

With some modifications relative to the proposal, paragraphs VIII.b through VIII.d of final appendix A describes the agencies' methodology for assigning a bank's Retail Lending Test conclusions for the institution. Paragraphs VIII.b and VIII.c of final appendix A provide that the agencies will develop a bank's Retail Lending Test conclusion for the institution based on its Retail Lending Test conclusions for its facility-based assessment areas, retail lending assessment areas, and outside retail lending area, as applicable. The agencies made certain changes to the proposal to incorporate the combination of loan dollars and loan count definition and streamline the description of the methodology and improve readability.

As provided in paragraph VIII.c of final appendix A, the agencies will calculate a bank's Retail Lending Test performance score for the institution based on a weighted average of performance scores from all applicable Retail Lending Test Areas. Specifically, the weights for each Retail Lending Test Area in this calculation will be the simple average of the following two percentages, calculated over the years in the evaluation period:

- The percentage of deposits the bank draws from each Retail Lending Test Area out of all of the dollars of deposits in all of the bank's Retail Lending Test Areas; and
- Based on a combination of loan dollars and loan count, the percentage of the bank's loans in each Retail Lending Test Area, as a percentage of all of the bank's loans in all of the bank's Retail Lending Test Areas. The loans included in this calculation will be originations and purchases of closed-end home mortgage loans, small business loans, small farm loans, and automobile loans (if automobile loans are a product line for the bank).

As proposed and as provided in paragraphs VIII.c and VIII.d of final appendix A, based on this performance score, the agencies will develop a Retail Lending Test conclusion corresponding with the conclusion category that is nearest to the Retail Lending Test performance score for the institution, as illustrated in Table 31 above. The agencies will then consider relevant performance context factors provided in final § ____.21(d) before assigning a Retail Lending Test conclusion for the institution.

Examples A–16 and A–17 in section VIII of appendix A illustrates how facility-based assessment area, retail lending assessment area, and outside retail lending area conclusions, as applicable, will be weighted in order to develop institution conclusions.

Section ____.22(h)(1)(ii)(A) and (B) Exceptions

Section ____.22(h)(1)(ii)(A) Facility-based Assessment Areas With no Major Product Line

Section ____.22(h)(1)(ii)(B) Facility-based Assessment Areas in Which a Bank Lacks an Acceptable Basis for not Meeting the Retail Lending Volume Threshold

Final § ____.22(h)(1)(ii)(A) and (B) provide for two exceptions to the general Retail Lending Test conclusions methodology described in final § ____.22(h)(1)(i).

First, final § ____.22(h)(1)(ii)(A) provides that the agencies will assign a bank a Retail Lending Test conclusion for a facility-based assessment area in which it has no major product line—and, consequently, the agencies are not able to apply the distribution analysis in final § ____.22(d) through (f)—based upon its performance on the Retail Lending Volume Screen, the performance context factors information in final § ____.21(d), and the additional factors in § ____.22(g).

Second, final § ____.22(h)(1)(ii)(B) provides that the agencies will assign a bank a Retail Lending Test conclusion for a facility-based assessment area in which the bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold pursuant to final § ____.22(c)(3)(iii).[971]

Section ____.22(h)(2) Ratings

With reference to final § ____.28 and final appendix D, final § ____.22(h)(2) adopts the agencies' proposal to incorporate a bank's Retail Lending Test conclusions for, as applicable, the State, multistate MSA, and institution levels into, as applicable, its State, multistate MSA, and institution ratings.

Analysis of the Final Rule Using Historical Data

The agencies analyzed historical bank lending performance under the final rule Retail Lending Test approach, including final rule provisions for the Retail Lending Volume Screen and the performance ranges as applied to the distribution metrics, using historical data on bank retail lending and other information in the CRA Analytics Data Tables. The analysis used data from

[971] *See* the section-by-section analysis of final § ____.22(c) for additional information regarding how the agencies assign facility-based assessment area conclusions for large banks and, separately, for intermediate banks and small banks that opt to be evaluated under the Retail Lending Test where these banks lack an acceptable basis for not meeting the Retail Lending Volume Threshold.

2018–2020 to calculate bank metrics, benchmarks, and weights, except where otherwise noted. Using this historic data, the agencies:

- Estimated recommended conclusions for Retail Lending Test Areas;
- Estimated Retail Lending Test conclusions at the institution level;
- Compared bank performance based on the proposed multiplier values to performance based on the final rule multiplier values; and
- Compared performance across different bank asset size categories, metropolitan and nonmetropolitan areas, and time periods.

The analysis informed the agencies' decisions regarding the Retail Lending Test approach in various ways. Specifically, the analysis informed the agencies' determination that the final rule multiplier values produce performance ranges that are generally attainable for ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' performance. As described further below, a large majority of banks included in this historical analysis are estimated to have performed at a level consistent with an institution-level conclusion of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' based on the final rule provisions. In addition, the analysis informed the agencies' determination that the performance ranges for a ''Low Satisfactory'' or higher conclusion are generally attainable across a variety of circumstances, such as different Retail Lending Test Areas, bank asset-size categories, metropolitan and nonmetropolitan areas, and time periods.

Description of analysis. The agencies considered a number of factors in interpreting the results of this analysis, including certain data limitations that result in the analysis diverging from the final rule approach to calculating metrics and benchmarks.

First, the agencies considered that the analysis is retrospective and, therefore, not a prediction of future evaluation results. In this regard, the agencies believe that the analysis estimates how banks would have performed in recent years under the final rule but does not necessarily describe how banks will perform in future years. For example, the agencies considered that, once the final rule is implemented, the increased consistency and transparency of the CRA examination process under the final rule may result in banks altering their behavior in ways that cause their metrics and the market benchmarks to deviate from the patterns observed historically. In addition, the agencies considered that macroeconomic conditions and banking practices in the future may differ from those in the historical periods that are examined here.

Second, the agencies considered that the set of banks included in this analysis differ from the full group of banks that will be evaluated under the Retail Lending Test. Specifically, the analysis is limited to intermediate and large banks (based on the asset-size categories in the final rule) that reported both CRA small business and small farm loan data and HMDA data and does not include unreported loans in any bank metrics calculated in the analysis. The agencies do not have data to evaluate unreported loans, and therefore determined not to estimate the recommended conclusions and overall conclusions of banks that may have unreported closed-end home mortgage, small business, or small farm lending. Most large banks are reporters for both CRA small business and small farm loan data and HMDA data, but most intermediate banks are non-reporters of either CRA small business and small farm loan data, HMDA data, or both.[972] As a result, the set of banks included in the analysis is not necessarily representative of all banks that will be evaluated under the Retail Lending Test, in particular intermediate banks that may be underrepresented because they are less likely to report both CRA and HMDA data. The set of banks analyzed also does not include banks that were, during the timeframe of the analysis, designated as wholesale or limited purpose banks—because these banks will generally not be evaluated under the Retail Lending Test—or banks evaluated under an approved strategic plan.

Third, the agencies could not analyze loans to businesses and farms with gross annual revenues of $250,000 or less, because existing data does not include an indicator identifying loans to small businesses and small farms at this gross annual revenue level. Instead, the analysis estimates performance using a single designated borrower category for loans made to businesses or farms with gross annual revenues of $1 million or less. Furthermore, the agencies note that the analysis does not take into account the potential impact of transitioning to section 1071 data, which, as described in the section-by-section analysis of final §§ ____.22(e) and ____.51, would result in changes to the population of small business and small farm loans considered in the metric and benchmark calculations.

Fourth, because the deposits data that will be collected for large banks with assets greater than $10 billion is not yet available, this analysis used the FDIC's Summary of Deposits data as the sole source of deposits data for all banks, since this data is available both for each bank as a whole and also reflects bank deposits assigned to branch locations. As a result, the analysis likely overestimates the deposits of the largest banks because the FDIC's Summary of Deposits data uses a broader definition of deposits, in that it includes deposits from governments and foreign entities, than the data collected under the final rule for large banks with assets greater than $10 billion. In addition, because the FDIC's Summary of Deposits does not report deposits data based on a depositor's location, the analysis assigned all bank deposits to facility-based assessment areas, even when the deposits might have been collected from depositors in retail lending assessment areas or outside retail lending areas. As a result, because deposits data is used as part of the final rule approach to weighting different Retail Lending Test Area performance, the analysis likely assigns less weight to performance in retail lending assessment areas and outside retail lending areas than will be assigned under the final rule for banks that are required to report deposits data pursuant to final § ____.42(b)(3) or that opt to report this data.

Fifth, because the HMDA data collected prior to the 2018 calendar year do not distinguish originated or purchased home mortgage loans that were closed-end from those that were open-end, all home mortgage loans reported in HMDA for years prior to 2018 were assumed to be closed-end home mortgage loans.[973]

Sixth, the analysis does not incorporate the final rule's requirement that large banks delineate facility-based assessment areas that consist of at least one or more whole counties, as discussed in the section-by-section analysis of final § ____.16. In contrast, the current regulations allow large banks to delineate partial-county assessment areas. Rather than make assumptions regarding how facility-based assessment area delineations might change under the final rule

[972] *See* current 12 CFR ____.42(b)(1). *See also, e.g.,* 12 CFR 1003.3.

[973] While home mortgage lenders were not required to report open-end home mortgage loans in HMDA prior to 2018, they had the option of doing so. Consequently, some of the reported loans may have been open-end home mortgage loans, though it is not possible to ascertain for certain how many of the reported loans were open-end home mortgage loans.

relative to current practice, the analysis uses the actual assessment areas designated by both large and intermediate banks at the time to delineate each bank's facility-based assessment areas, including when a large bank's assessment area delineation includes a partial county.

Seventh, the analysis does not incorporate any evaluation of automobile lending, due to the unavailability of automobile lending data necessary to include in the analysis. This limitation impacts any bank that would have been designated as a majority automobile lender during the analysis period pursuant to the final rule standard and any bank that might have opted to have its automobile lending evaluated during the analysis period.

Finally, this analysis does not take into account aspects of the final rule that would involve agency discretion, such as the Retail Lending Volume Screen acceptable basis factors provided in final § ____.22(c)(3)(i), the additional factors provided in final § ____.22(g), and performance context information provided in final § ____.21(d).

As a result of the factors, including data limitations, discussed above, the agencies consider the results of this analysis to be estimates, and the results described here should be understood to only approximate how banks included in these analyses would have performed under the final rule Retail Lending Test.

Final Rule Multipliers. As discussed in more detail in the section-by-section analysis of final § ____.22(f), the final rule uses lower values for some of the Retail Lending Test multipliers relative to those proposed in the NPR. The analysis of the changes to the multipliers are provided in Table 32, which shows a higher estimated distribution of institution-level conclusions on the Retail Lending Test during the 2018–2020 time period using the multipliers for the final rule compared to those proposed in the NPR. Specifically, using the final rule multipliers, more banks included in the analysis received ''Outstanding'' or ''High Satisfactory'' estimated conclusions and fewer banks received ''Low Satisfactory'' or ''Needs to Improve'' estimated conclusions. As noted in the section-by-section analysis of final § ____.22(f), the agencies consider ''Low Satisfactory'' performance to represent that a bank is adequately meeting the credit needs of its community and consider ''High Satisfactory'' and ''Low Satisfactory'' conclusions to both correspond to the overall rating category of ''Satisfactory.'' Aside from the different multiplier values, the Retail Lending Test approach was applied as described in the final rule—both as applied to the NPR multipliers and the final rule multipliers—subject to the limitations listed above. To better focus on the impact of changing the multipliers on the estimated recommended conclusions assigned for each bank's loan distributions, the Retail Lending Volume Screen was not applied in this part of the analysis.

Table 32 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2018-20

	Final Rule Approach with NPR Multipliers		Final Rule Approach with Final Rule Multipliers	
	Frequency	Percent	Frequency	Percent
Institution-Level Conclusion				
"Outstanding"	39	7.2	57	10.5
"High Satisfactory"	236	43.3	257	47.2
"Low Satisfactory"	209	38.3	181	33.2
"Needs to Improve"	60	11.0	49	9.0
"Substantial Noncompliance"	1	0.2	1	0.2

Note: Table 32 shows the estimated distribution of institution-level conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the multipliers proposed in the NPR (left columns) and adopted in the final rule (right columns). Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. The Retail Lending Volume Screen was not applied in this analysis.

Table 33 shows the results of the same analysis when the Retail Lending Volume Screen was applied to facility-based assessment areas of large banks included in the analysis; under this analysis, a ''Needs to Improve'' conclusion was assigned to those banks' facility-based assessment areas that do not meet the Retail Lending Volume Threshold and that would have otherwise received a conclusion of ''Low Satisfactory'' or higher based on the distribution analysis. Specifically, this part of the analysis shows that fewer banks would have received conclusions of ''Outstanding'' or ''High Satisfactory,'' and more banks would have received ''Needs to Improve'' conclusions, compared to the analysis that did not incorporate the Retail Lending Volume Screen, regardless of whether the multipliers used are from the NPR or the final rule. Table 33 also shows that the multipliers from the final rule resulted in more banks receiving conclusions of ''High Satisfactory'' or ''Outstanding'' and fewer receiving conclusions of ''Needs to Improve'' than using the NPR multipliers, even when the Retail Lending Volume Screen was applied.

The agencies note that this part of the analysis does not take into account the acceptable basis factors in final § ____.22(c)(3)(i), and therefore may overestimate the frequency at which a bank would have been assigned a ''Needs to Improve'' conclusion in facility-based assessment areas where the Bank Volume Metric was lower than the Retail Lending Volume Threshold.[974] The analysis does not incorporate the Retail Lending Volume Screen for intermediate banks, because, under the final rule, facility-based assessment areas of intermediate banks in which the Bank Volume Metric is below the Retail Lending Volume Threshold are assigned a recommended conclusion that more directly includes consideration of the lending distribution analysis.[975]

[974] The agencies also note that if a bank would have received a ''Substantial Noncompliance'' conclusion based on the distribution analysis then the agencies have assigned it a ''Substantial Noncompliance'' conclusion for purposes of this analysis. Otherwise, for purposes of this analysis as noted above, a bank that did not meet the Retail Lending Volume Threshold was assigned a ''Needs to Improve'' conclusion.

[975] *See* final § ____.22(c)(3)(iii)(B) and the accompanying section-by-section analysis.

Table 33 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2018-2020, with Retail Lending Volume Screen Applied

	Final Rule Approach with NPR Multipliers		Final Rule Approach with Final Rule Multipliers	
	Frequency	Percent	Frequency	Percent
Institution-Level Conclusion				
"Outstanding"	36	6.6	51	9.4
"High Satisfactory"	227	41.7	252	46.2
"Low Satisfactory"	214	39.3	186	34.1
"Needs to Improve"	67	12.3	55	10.1
"Substantial Noncompliance"	1	0.2	1	0.2

Note: Table 33 shows the estimated distribution of institution-level conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the multipliers proposed in the NPR (left columns) and adopted in the final rule (right columns). Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. For facility-based assessment areas of large banks in which the Bank Volume Metric was below the Retail Lending Volume Threshold, this analysis assigned a conclusion of "Needs to Improve" to the facility-based assessment area.

Bank Asset Size. Consistent with the agencies' proposal, in the final rule, the Retail Lending Test will apply to large and intermediate banks, and to small banks that elect to be evaluated under this performance test. Accordingly, the agencies' have considered estimates for the Retail Lending Test conclusions at the institution level for banks of different asset sizes.

Specifically, Table 34 shows the results of an analysis of performance under the Retail Lending Test approach in the final rule for banks included in the analysis in three different asset-size categories: intermediate banks; large banks with assets less than or equal to $10 billion; and large banks with assets greater than $10 billion. As with Tables 32 and 33, the results in Table 34 reflect performance on the Retail Lending Test at the institution level. The Retail Lending Volume Screen is not applied in this institution-level analysis.

As shown in Table 34, estimated performance was similar across the asset-size groups, with the majority of banks in each group receiving either a "High Satisfactory" or "Low Satisfactory" estimated conclusion, with "High Satisfactory" being somewhat more common than "Low Satisfactory." Intermediate banks more frequently received estimated conclusions of "Outstanding" or "Needs to Improve" than large banks, and one intermediate bank was the only bank in the set of banks analyzed to receive an estimated conclusion of "Substantial Noncompliance." The share of intermediate banks included in the analysis receiving a "Needs to Improve" or "Substantial Noncompliance" estimated conclusion is somewhat higher than for large banks. Approximately 88 percent of intermediate banks, 92 percent of large banks with assets less than or equal to $10 billion, and 95 percent of large banks with assets greater than $10 billion received an estimated conclusion "Outstanding," "High Satisfactory," or "Low Satisfactory." Over 60 percent of intermediate banks, 51 percent of large banks with assets less than or equal to $10 billion, and 67 percent of large banks with assets greater than $10 billion received an estimated conclusion of ''Outstanding'' or ''High Satisfactory.'' The agencies have determined, based on this data, that the final rule performance ranges for estimated conclusions of ''Low Satisfactory'' or higher are generally attainable for intermediate and large banks. In addition, as noted above, this analysis does not reflect the performance context considerations in final § ____.21(d) or the additional factors in final § ____.22(g), which will inform conclusions under the final rule.

Table 34 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2018-2020, with Final Rule Multipliers (Percentage of Banks)

	Bank Asset Size			
	Intermediate	Large, Assets <$10B	Large, Assets $10B+	Total
Number of banks	203	237	105	545
Institution-Level Conclusion				
"Outstanding"	14.4	7.6	9.4	10.5
"High Satisfactory"	46.0	43.5	57.5	47.2
"Low Satisfactory"	27.2	40.5	28.3	33.2
"Needs to Improve"	11.9	8.4	4.7	9.0
"Substantial Non-compliance"	0.5	0.0	0.0	0.2

Note: Table 34 shows the estimated distribution of institution-level conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the final rule multipliers. Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. The Retail Lending Volume Screen was not applied in this analysis.

Table 35 shows the same analysis broken out by different bank asset-size categories—intermediate banks, large banks with assets less than or equal to $10 billion, and large banks with greater than $10 billion in assets—using the NPR multipliers. The impact of the change to the multipliers in the final rule relative to the proposed multipliers was generally consistent across bank sizes. As demonstrated by comparing Tables 34 and 35, across all three asset-size groups, the final rule multipliers increased the estimated share of banks receiving an ''Outstanding'' conclusion between 2.5 to 4 percentage points and reduced the estimated share of banks receiving a ''Needs to Improve'' conclusion by 1 to 3 percentage points.

Table 35 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2018-2020, with NPR Multipliers (Percentage of Banks)

	Bank Asset Size			
	Intermediate	Large Assets <$10B	Large Assets $10B+	Total
Number of banks	203	237	105	545
Institution-Level Conclusion				
"Outstanding"	10.4	5.1	5.7	7.2
"High Satisfactory"	41.6	40.1	53.8	43.3
"Low Satisfactory"	34.7	43.5	34.0	38.3
"Needs to Improve"	12.9	11.4	6.6	11.0
"Substantial Non-compliance"	0.5	0.0	0.0	0.2

Note: Table 35 shows the estimated distribution of institution-level conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the proposed multipliers. Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. The Retail Lending Volume Screen was not applied in this analysis.

Retail Lending Assessment Areas and Outside Retail Lending Areas. As discussed in more detail in the section-by-section analysis of final § ____.17 and throughout the section-by-section analysis of final § ____.22, under the final rule the agencies will evaluate the retail lending performance of certain large banks in retail lending assessment areas. The agencies will also evaluate the retail lending of large banks (as well as that of certain intermediate and small banks) in their outside retail lending area. To understand how banks may have performed in 2018–2020 in these areas under the final rule approach, Table 34 shows the estimated distribution of Retail Lending Test recommended conclusions that banks included in the analysis would have received in facility-based assessment areas, retail lending assessment areas, and outside retail lending areas. Specifically, the analysis shows that at least two-thirds of these banks are estimated to receive an ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' recommended conclusion, with banks receiving a higher proportion of ''Needs to Improve'' conclusions in outside retail lending areas (28 percent) and in retail lending assessment areas 20.6 percent) when compared to facility-based assessment areas (8.8 percent).

The agencies considered several aspects of these results. First, the agencies considered that, while performance under the final rule provisions are lower in retail lending assessment areas and outside retail lending areas, a significant majority of banks included in the analysis received conclusions of ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory in these areas. The agencies believe that this is an indication that the final rule performance ranges are generally attainable, because historical bank performance is relatively strong when applying the final rule evaluation standards.

The agencies also considered that estimated bank conclusions at the institution level reflect strong overall performance, with approximately 90 percent of banks in the data set receiving an '' ''Outstanding,'' ''High Satisfactory,'' or ''Low Satisfactory'' estimated conclusion at the institution level as shown above in Table 32. This reflects the final rule Retail Lending Test approach that allows for stronger performance in some geographic areas to potentially compensate for weaker performance in other geographic areas. This can take place because the institution-level Retail Lending Test conclusion is based on a weighted average of a bank's performance in each facility-based assessment area, each retail lending assessment area, and the outside retail lending area, as applicable. As a result, for a bank with multiple Retail Lending Test Areas, receiving a ''Needs to Improve'' conclusion in one or more areas may, depending on the weight of each area, be compensated for by strong performance in other geographic areas. The agencies also note that the requirement that a large bank receive at least a ''Low Satisfactory'' conclusion in 60 percent of its facility-based assessment areas and retail lending assessment areas in order to receive a ''Satisfactory'' institution-level rating can impact whether stronger performance in some areas may compensate for weaker performance in other areas. As shown in Table 36, the agencies note that at an aggregate level for all banks included in this analysis, 74 percent of bank lending by dollar volume was in facility-based assessment areas, 18 percent was in outside retail lending areas, and 8 percent was in retail lending assessment areas.

The agencies also note that, under the current approach, banks are generally not evaluated for retail lending performance outside of areas where they maintain deposit-taking facilities. As a result, the analysis does not include any changes that could have resulted in bank performance under this approach.

Table 36 to § __.22: Estimated Retail Lending Test Area Recommended Conclusions with Final Rule Multipliers, 2018-2020

	Retail Lending Test Area Type					
	Facility-Based Assessment Areas		Outside Retail Lending Areas		Retail Lending Assessment Areas	
Percent of all bank lending	74%		18%		8%	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Recommended Conclusion						
"Outstanding"	1,460	21.1	14	4.0	130	18.0
"High Satisfactory"	2,742	39.5	85	24.1	218	30.1
"Low Satisfactory"	1,827	26.4	152	43.1	214	29.6
"Needs to Improve"	613	8.8	99	28.0	149	20.6
"Substantial Noncompliance"	52	0.8	3	0.8	13	1.8
Below Retail Lending Volume Threshold	239	3.4	--	--	--	--

Note: Table 36 shows the estimated distribution of Retail Lending Test Area recommended conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the final rule multipliers. Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. Facility-based assessment areas of large banks in which the Bank Volume Metric was below the Retail Lending Volume Threshold are presented in the row labeled "Below Retail Lending Volume Threshold," and are not included in any conclusion category, because these banks' retail lending would be subject to a qualitative review and would not automatically receive a recommended conclusion. The "Percent of all bank lending" was calculated using all closed-end home mortgage loans, small business loans, and small farm loans, based on a combination of loan dollars and loan count.

Table 37 shows the same analysis broken out by different Retail Lending Test Areas—facility-based assessment areas, retail lending assessment areas, and outside retail lending areas—using the NPR multipliers. Similar patterns are observed when the analysis is conducted using the multipliers proposed in the NPR (Table 37). The analysis shown in Table 37, as with the other analyses described above, indicates that the multipliers included in the final rule produce a higher estimated distribution of recommended conclusions than the multipliers proposed in the NPR.

Table 37 to § __.22: Estimated Retail Lending Test Area Recommended Conclusions with NPR Multipliers, 2018-2020

	Retail Lending Test Area Type					
	Facility-Based Assessment Areas		Outside Retail Lending Areas		Retail Lending Assessment Areas	
Percent of all bank lending	74%		18%		8%	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Recommended Conclusion						
"Outstanding"	1,082	15.6	12	3.4	95	13.1
"High Satisfactory"	2,762	39.8	65	18.4	240	33.1
"Low Satisfactory"	2,076	29.9	161	45.6	207	28.6
"Needs to Improve"	717	10.3	112	31.7	168	23.2
"Substantial Noncompliance"	57	0.8	3	0.8	14	1.9
Below Retail Lending Volume Threshold	239	3.4	--	--	--	--

Note: Table 37 shows the estimated distribution of Retail Lending Test Area recommended conclusions on the Retail Lending Test over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the proposed multipliers in the NPR. Bank asset size was determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. Facility-based assessment areas of large banks in which the Bank Volume Metric was below the Retail Lending Volume Threshold are presented in the row labeled "Below Retail Lending Volume Threshold," and are not included in any conclusion category, because these banks' retail lending would be subject to a qualitative review and would not automatically receive a recommended conclusion. The "Percent of all bank lending" was calculated using all closed-end home mortgage loans, small business loans, and small farm loans, based on a combination of loan dollars and loan count.

Facility-Based Assessment Area Location. Under the final rule, the agencies will apply the Retail Lending Test metrics, benchmarks, and performance ranges across different metropolitan and nonmetropolitan geographic areas, and the approach is intended to adjust for differences in credit needs and opportunities in different areas. Table 38 compares the estimated distribution of recommended Retail Lending Test conclusions for facility-based assessment areas located in MSAs and those located in the nonmetropolitan portion of States for banks included in the analysis. Specifically, the analysis shows that the distributions in MSAs and nonmetropolitan areas are similar overall. This analysis informed the agencies' determination that the performance ranges are generally attainable in both metropolitan and nonmetropolitan areas.

Table 38 to § __.22: Estimated Facility-Based Assessment Area Recommended Conclusions for Metropolitan and Nonmetropolitan Areas, 2018-2020

	Nonmetropolitan		MSA	
	Frequency	Percent	Frequency	Percent
Recommended Conclusion				
"Outstanding"	472	25.6	988	19.4
"High Satisfactory"	685	37.2	2,057	40.4
"Low Satisfactory"	447	24.3	1,381	27.1
"Needs to Improve"	159	8.6	454	8.9
"Substantial Noncompliance"	19	1.0	33	0.6
Below Retail Lending Volume Threshold	61	3.3	178	3.5

Note: Table 38 shows the estimated distribution of facility-based assessment area recommended conclusions on the Retail Lending Test in nonmetropolitan and metropolitan areas over the 2018-2020 period for a set of intermediate and large banks that were both CRA and HMDA reporters, using the final rule multipliers. Bank asset size is determined using 2019 and 2020 year-end assets data. Wholesale banks, limited purpose banks, strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas that were not delineated in 2020 were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. Facility-based assessment areas of large banks in which the Bank Volume Metric was below the Retail Lending Volume Threshold are presented in the row labeled "Below Retail Lending Volume Threshold," and are not included in any conclusion category, because these banks' retail lending would be subject to a qualitative review and would not automatically receive a recommended conclusion.

Time Period. Table 39 shows the distribution of estimated institution-level conclusions on the Retail Lending Test for banks included in the analysis for five three-year time periods: 2006–2008; 2009–2011; 2012–2014; 2015–2017; and 2018–2020. For this analysis, the agencies applied the final rule approach for calculating the metrics, performance ranges, and weights to all five periods, to gain further insight into historical bank performance over different time periods under this approach. Because the benchmarks are based on community and market data from each evaluation period, the resulting performance ranges applied to a specific Retail Lending Test Area vary across evaluation periods. As discussed in the section-by-section analysis of final § ____.22(e), the agencies believe that this approach to setting benchmarks allows the performance ranges to reflect changes in credit needs and opportunities over time.

As shown in Table 39, the share of banks included in the analysis that would have received institution-level conclusions of ''High Satisfactory'' is estimated to have remained relatively stable over time at around 48 percent on average (ranging from 42.6 percent to 53.2 percent). In addition, the analysis shows a trend of declining ''Outstanding'' estimated conclusions and increasing ''Low Satisfactory'' and ''Needs to Improve'' estimated conclusions at the institution level over this time period.

Supplementary analyses conducted by the agencies suggest that the decline in ''Outstanding'' estimated conclusions over time is associated with changing small business lending patterns. As shown in Table 40, between the 2006–2008 and 2018–2020 time periods, the share of Retail Lending Test Areas where the estimated product line score for small business lending was consistent with an ''Outstanding'' conclusion (*i.e.,* the product line score is 8.5 or higher) declined by 22 percentage points from 56.9 percent to 33.9 percent. In contrast, as shown in Table 41, for closed-end home mortgage loans, the estimated product line scores consistent with an ''Outstanding'' conclusion were comparatively flat (increasing slightly from 22.3 percent in 2006–2008 to 24.4 percent in 2018–2020.

Table 39 to § __.22: Estimated Institution-Level Retail Lending Test Conclusions, 2006-2020 (Percentage of Banks)

	Evaluation Period				
	2006-2008	2009-2011	2012-2014	2015-2017	2018-2020
Institution-Level Conclusion					
"Outstanding"	38.4	32.7	19.3	15.5	10.5
"High Satisfactory"	47.6	42.6	49.8	53.2	47.2
"Low Satisfactory"	11.8	20.9	24.0	25.8	33.2
"Needs to Improve"	1.8	3.9	6.7	5.5	9.0
"Substantial Noncompliance"	0.4	0.0	0.2	0.0	0.2

Note: Table 39 shows the estimated distribution of institution-level conclusions on the Retail Lending Test over five three-year periods for a set of intermediate and large banks that were both CRA and HMDA reporters, using the final rule multipliers. The numbers shown are the percentage of banks in each conclusion category within each period. Bank asset size was determined using assets data from the last two years of the period. Wholesale banks, limited purpose banks, strategic plan banks, and banks that did not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas of large banks that were not delineated in the final year of the period were also excluded. The analysis used home mortgage lending, small business lending, small farm lending, deposits, and demographic data from the CRA Analytics Data Tables. Separate breakouts for open- and closed-end home mortgages were not available prior to 2018. The Retail Lending Volume Screen was not applied in this analysis.

Table 40 to § __.22: Small Business Lending Performance, 2006-2020 (Percentage of Retail Lending Test Areas, categorized by product score)

	Period				
	2006-2008	2009-2011	2012-2014	2015-2017	2018-2020
Performance in RLTA					
8.5+ ("Outstanding")	56.9	50.9	41.6	36.2	33.9
6.5 - 8.5 ("High Satisfactory")	30.8	30.7	35.5	39.2	34.4
4.5 - 6.5 ("Low Satisfactory")	10.0	13.8	17.4	18.3	21.4
1.5 - 4.5 ("Needs to Improve")	1.8	3.9	4.8	5.8	9.4
0 - 1.5 ("Substantial Noncompliance")	0.5	0.7	0.7	0.5	0.9

Table 41 to § __.22: Closed-End Home Mortgage Performance, 2006-2020 (Percentage of Retail Lending Test Areas, categorized by product score)

	Period				
	2006-2008	2009-2011	2012-2014	2015-2017	2018-2020
Performance in RLTA					
8.5+ ("Outstanding")	22.3	22.8	25.2	23.7	24.4
6.5 - 8.5 ("High Satisfactory")	32.1	28.5	30.1	28.5	29.1
4.5 - 6.5 ("Low Satisfactory")	27.5	27.6	25.3	26.7	27.0
1.5 - 4.5 ("Needs to Improve")	14.5	16.6	16.0	16.6	16.8
0 - 1.5 ("Substantial Noncompliance")	3.5	4.5	3.4	4.4	2.7

Note: Tables 40 and 41 show the estimated distribution of bank-Retail Lending Test Area product scores mapped to conclusion categories on the Retail Lending Test over five three-year periods for a set of intermediate and large banks that were both CRA and HMDA reporters, using the final rule multipliers. The numbers shown are the percentage of bank Retail Lending Test Areas in each conclusion category within each period. Bank asset size was determined using assets data from the last two years of the period. Wholesale banks, limited purpose banks, strategic plan banks, and banks that do not have at least one facility-based assessment area in a U.S. State or the District of Columbia were excluded from the analysis. Facility-based assessment areas of large banks that were not delineated in the final year of the period were also excluded. The analysis used home mortgage, small business, small farm, deposits, and demographic data from the CRA Analytics Data Tables. Separate breakouts for open- and closed-end home mortgages were not available prior to 2018. The Retail Lending Volume Screen was not applied in this analysis.

Section ____.23 Retail Services and Products Test

Section ____.23(a)(1) Retail Services and Products Test—In General

Section ____.23(a)(2) Main Offices

Section ____.23(a)(3) Exclusion

Current Approach

Under current CRA regulations, the service test, which only applies to large banks, establishes four criteria for evaluating retail services: (1) the current distribution of branches among low-, moderate-, middle-, and upper-income census tracts;[976] (2) a bank's record of opening and closing branches, particularly branches in low- or moderate-income geographies or that primarily serve low- or moderate-income individuals;[977] (3) the availability and effectiveness of alternative systems for delivering retail banking services (or non-branch delivery systems) in low- and moderate-income geographies and to low- and moderate-income individuals;[978] and (4) the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to

[976] *See* current 12 CFR ____.24(d)(1).

[977] *See* current 12 CFR ____.24(d)(2).

[978] *See* current 12 CFR ____.24(d)(3). Under the OCC's CRA regulation, current 12 CFR 25.24(d)(3) provides that alternative delivery systems include ''ATMs, ATMs not owned or operated exclusively for the bank or savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs.'' Under the Board's CRA regulation, current 12 CFR 228.24(d)(3) provides that alternative delivery systems 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.'' Under the FDIC's CRA regulation, current 12 CFR 345.24(d)(3) describes alternative delivery systems as ''RSFs [remote service facilities], RSFs 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.''

which the services are tailored to meet the needs of those geographies.[979]

The Agencies' Proposal

In § ____.23(a)(1), the agencies proposed a new Retail Services and Products Test that would evaluate the following for large banks: (1) delivery systems and (2) credit and deposit products responsive to the needs of low- and moderate-income individuals and census tracts.[980] Under this test, the agencies proposed to use a predominately qualitative approach while incorporating quantitative measures as guidelines. For the first part of the test, in § ____.23(b), the proposal sought to achieve a balanced evaluation framework that, depending on bank asset size, considered the following bank delivery systems: (1) branch availability and services; (2) remote service facility availability; and (3) digital and other delivery systems.[981] For the second part of the test, in § ____.23(c), the proposal aimed to evaluate a bank's efforts to offer credit and deposit products responsive to the needs of low- and moderate-income individuals, small businesses, and small farms depending on bank asset size.[982] The agencies also proposed in § ____.23(a)(2) that activities considered for a bank under the Community Development Services Test may not also be considered under the Retail Services and Products Test. (For a discussion of the evaluation of community development services, see the section-by-section analysis for the Community Development Services Test in § ____.25.)

The agencies proposed a tailored approach to the Retail Services and Products Test based on a large bank's asset size. As discussed in more detail in the section-by-section analysis of § ____.23(b) and (c), for large banks with assets of $10 billion or less 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 agencies proposed making certain components optional 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 proposed requiring the full evaluation under the proposed Retail Services and Products Test.

Comments Received

Many of the commenters addressing the Retail Services and Products Test generally supported the agencies' proposal, although there were differences among commenters on how to apply the test, with several of these commenters making recommendations on how the test could be improved. A few commenters argued that the test's quantitative guidelines do not add value in measuring bank performance, but supported the use of both qualitative and quantitative approaches if banks are given the opportunity to explain performance that falls short of the targets. Other commenters recommended that the test include a more rigorous assessment of retail banking and services, with two commenters noting that, while there are improvements to the service test, the test needs further developing to guide examiners against ratings inflation. Two commenters believed the test should be applied to small and intermediate banks to determine the effectiveness and impact of retail services and products, with one of these commenters believing application to these banks would be critical to ensuring branches are present in low-income communities and communities of color. One other commenter suggested that some activities included under the proposed Community Development Services Test—financial literacy and technical assistance to small businesses—should instead be included under the Retail Services and Products Test. A few other commenters recommended that direct and indirect consumer lending be evaluated quantitatively in the Retail Lending Test, but also qualitatively in the Retail Services and Products Test.

A few commenters recommended that aspects of the test be more flexible to address different business models and account for recent and future changes in digital banking. One of these commenters expressed concern that the proposed Retail Services and Products Test could be interpreted as requiring a bank to provide particular products and services deemed to be beneficial to low- and moderate-income people and requested clarification that this was not intended. This commenter also believed that the test would be inconsistent with both the agencies' stated goal of tailoring the framework to different business models and the safe and sound statutory requirement. A few commenters also suggested that the agencies avoid making peer-based comparisons under the final rule in which one particular bank is penalized for not offering a particular product or service that is offered by another bank.

Some commenters provided recommendations for incorporating race and ethnicity into the proposed Retail Services and Products Test. One commenter asserted that all elements of the agencies' proposed Retail Services and Products Test applicable to low- and moderate-income consumers and communities could also be applied to minority consumers and communities. This commenter indicated, for example, that in addition to evaluating branching in low- and moderate-income communities the agencies could evaluate branching in minority communities. Another commenter asserted that the banking industry increasingly resorts to providing digital access to financial services and products and services to reduce costs, but in doing so risks further excluding minority consumers and communities given that they then have both less access to branches and more limited digital capabilities than white consumers and communities. A commenter expressed the view that the agencies should expand qualitative reviews in the Retail Services and Products Test to provide consideration for activities that close the racial wealth gap by affirmatively serving racial minority consumers and communities. This commenter provided examples such as special purpose credit programs targeted to minority consumers, affirmative marketing and offering of affordable products to minority consumers, and responsible lending practices to prevent displacement. Another commenter proposed that positive consideration be given for special purpose credit programs, small-dollar home mortgage programs, limited English proficiency products, and products for first-generation homebuyers, indicating that they all contributed to racial equity in housing. This commenter added that incentivizing bank activities with first-time, socially disadvantaged homebuyers would meaningfully address the racial minority home ownership gap. One commenter stated that the agencies, when evaluating the distribution of services and products to low- and moderate-income consumers and communities, should assess a bank's strategies and initiatives to serve, and the responsiveness of the bank's services and products to, the needs of minority consumers and communities. Another commenter asserted that the CRA regulations should incentivize banks to meet the credit needs of minority communities in a variety of ways, including by creating products and services specifically responsive to minority community needs, placing branches in majority-minority neighborhoods, and investing in

[979] *See* current 12 CFR ____.24(d)(4).
[980] *See* proposed § ____.23(a)(1).
[981] *See* proposed § ____.23(b).
[982] *See* proposed § ____.23(c).

community development projects that serve minority communities. A commenter asserted that banks that only offer expensive products that do not serve community needs should be adversely rated. Another commenter stated that agencies should evaluate the qualitative impact of all bank lending, and prohibit predatory practices like negative amortization, interest-only loans, and adjustable-rate mortgages. A number of commenters asserted that whether a bank maintains branches in minority communities should be a performance factor. For example, a commenter stated that the agencies should consider a bank's branch distribution across tracts with different racial demographics, including majority-minority census tracts, in comparison to the aggregate distribution. The agencies have considered these comments and are addressed in section III.C of this **SUPPLEMENTARY INFORMATION**.

Final Rule

For the reasons discussed below, the agencies are adopting, with certain revisions, the proposed scope and framework of the Retail Services and Products Test in § ____.23(a)(1). More specifically, the agencies are revising the description of the scope of final § ____.23(a)(1) by clarifying that the test evaluates the availability and accessibility of a bank's retail banking services and products and the responsiveness of those services and products to the needs of the bank's entire community, including but not limited to low- and moderate-income individuals, families, or households and low- and moderate-income census tracts, as well as the needs of small businesses and small farms. In response to comments, the agencies are also removing the word ''targeted'' from the regulatory text in this paragraph to make clear that this evaluation does not mandate that banks make available certain products or services or target certain populations. In addition, as explained in more detail in the section-by-section analysis of § ____.23(b) (retail banking services) and (c) (retail banking products), the agencies are making certain revisions to the components of the Retail Services and Products Test upon consideration of the comments received.

The agencies are also adding clarity in final § ____.23(a)(2) that branches, for the purposes of the Retail Services and Products Test, also include a main office of a bank, if the main office is open to, and accepts deposits from, the general public. It was the intent of the agencies to consider a main office that offers deposits and is open to the general public as part of the test. No change in meaning is intended and this addition is meant to provide clarity to the evaluation.

Finally, to ensure that bank activities that are considered under the Retail Services and Products Test are not also considered under the Community Development Services Test, the agencies are retaining the exclusion as proposed in final § ____.23(a)(3), with a technical edit to change the word ''activities'' to ''services.'' The agencies believe the use of the word ''services'' rather than ''activities'' more clearly represents the types of activities evaluated under both the Community Development Services Test and the Retail Services and Products Test.

As explained in the proposal, the agencies are drawing on the existing approach used to evaluate a bank's retail services, while also updating and standardizing the evaluation criteria to reflect the now widespread use of mobile and online banking. Although some commenters expressed concern with how benchmarks are applied, the agencies believe that utilizing both a quantitative and qualitative approach to the test achieves the goals of maintaining the current approach to retail services while better standardizing the evaluation criteria. The agencies are sensitive to concerns about examiner judgment and understand the need to provide examiners guidance on applying the test. The agencies note that, while examiner judgment is an important part of the CRA evaluation process, the agencies will endeavor to minimize unnecessary subjectivity and increase consistency among examiners by providing updated guidance, training, and standards applicable to evaluations under this test while also attempting to guard against ratings inflation. The agencies believe that measured examiner judgment is necessary to account for the unique characteristics of a bank, including its constraints, business model, and the needs of its community. The agencies are also clarifying that the intent of the Retail Services and Products Test is not to mandate that a bank offer particular products or programs or to evaluate or penalize a bank based on the types of products or services its peers offer. Rather, the agencies intend to measure the availability and responsiveness of a bank's retail services to the needs of its communities.

The agencies also considered commenters' recommendation to require the evaluation of the Retail Services and Products Test for small and intermediate banks. As explained in the section-by-section analysis of §§ ____.21 (performance tests), ____.29 (small banks), and ____.30 (intermediate banks), these banks have more limited capacities and are less able to offer as wide a range of retail services and products as their larger counterparts. Requiring this test would increase the burden on these banks without sufficient compensating benefits. The agencies believe that additional consideration for activities under the Retail Services and Products Test for small and intermediate banks without a requirement to collect additional data is appropriate, as it may encourage additional activities in low- and moderate-income communities, without imposing additional burden. The agencies also considered commenters' recommendations with respect to the evaluation of other activities, such as financial literacy and technical assistance to small businesses. The agencies, however, believe that services such as these are best evaluated under the Community Development Services Test. Evaluating community development services separately from the Retail Services and Products Test underscores the importance of these services for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development.

Section ____.23(b) Retail Banking Services

Section ____.23(b)(1) Scope of Evaluation

The Agencies' Proposal

For large banks with assets of over $10 billion, the agencies proposed in § ____.23(b), to evaluate the full breadth of a bank's delivery systems by both maintaining an emphasis on branches and increasing the focus on digital and other delivery channels. Specifically, the agencies proposed to evaluate three components of the bank's performance: (1) branch availability and services in proposed § ____.23(b)(1); (2) remote service facility availability in proposed § ____.23(b)(2); and (3) digital and other delivery systems in proposed § ____.23(b)(3). The proposal required large banks with assets of $10 billion or less to be evaluated only under the first two components of delivery systems, unless the bank requested additional consideration of its digital and other delivery systems and collected the requisite data.[983] The agencies asked for feedback on whether the evaluation of digital and other delivery systems

[983] *See* proposed §§ ____.23(b) and ____.42(a)(4)(ii).

should be optional or required for banks with assets of $10 billion or less as proposed, or alternatively, whether the agencies should maintain current evaluation standards for alternative delivery systems for banks within this tier. The current evaluation standards include, 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.

Comments Received

Most commenters that addressed branch availability and services, and remote service facility availability agreed that branches remain an important component in the evaluation of a bank's delivery systems, with some of these commenters noting that availability of branches curtails the proliferation and use of predatory lenders in those areas. Other commenters questioned the application of the evaluation to digital banks with relatively few or no branches or remote service facilities.

Some commenters suggested that banks deemed to be performing at a ''High Satisfactory'' or ''Outstanding'' level on the proposed Retail Lending Test should receive a presumption that their distribution channels are sufficiently serving low- and moderate-income communities, or at least receive a relatively perfunctory evaluation of their channels of distribution. One commenter asked for clarity on how the evaluation criteria will be used to assess branch availability and services, remote service facility availability, digital alternatives, and other delivery systems in practice. Another commenter expressed concern that banks maintaining branches in underserved areas with little commercial or lending activity would be unable to pass the Retail Lending Volume Screen forcing these banks to close branches in these underserved areas and disincentivizing potential new market entrants from growing into rural markets. Two other commenters asked that the agencies consider the following: clarify that delivery services would be evaluated holistically to consider whether all delivery channels together effectively meet the needs of a bank's customers and communities; mitigate business-related factors behind branch closures; determine the weight of each type of delivery system, including branches, based on the bank business model and in proportion to the bank's use of such systems; provide favorable consideration for branch openings in low- and moderate-income communities and other areas of need; and apply a totality of the circumstances approach that includes, *e.g.,* the availability and responsiveness of the bank's branches and services in low- or moderate-income census tracts and to low- or moderate-income individuals, customer complaints or testimonials, and the bank's own policies and procedures.

One commenter argued that the proposal over-emphasizes delivery systems without acknowledging that banks are effectively meeting the needs of low- and moderate-income consumers through existing delivery channels. This commenter further stated that the emphasis on physical branches makes it likely that the rule would need to be updated again, as digital banking becomes more common. Another commenter asserted that the proposed framework to evaluate the distribution of a bank's branches and remote service facilities penalizes banks that primarily operate through their branch and ATM network and appears to favor a business model with few or no branches. This commenter urged the agencies to consider, instead, an evaluation of branches and ATMs that can only be favorably considered in a bank's Retail Services and Products Test conclusion.

Most commenters that addressed the agencies' request for comment on whether large banks with assets of $10 billion or less should be subject to an evaluation of their digital and other delivery systems recommended that all large banks, including those with assets of $10 billion or less, should be subject to this evaluation. A few of these commenters suggested that, at minimum, the agencies should consider evaluating large banks with assets of $10 billion or less under this component, if a certain amount of their deposit activity (*e.g.,* one third) is generated from digital channels. One commenter recommended that the evaluation should be optional for banks in the intermediate bank category and above. Another commenter recommended that military banks or banks serving military and veteran customers that have assets of $10 billion or less have the ability to request additional consideration of its digital delivery systems and other delivery systems. Another commenter suggested that CRA modernization should be used to encourage small and intermediate banks to incorporate digital channels and capabilities, including through partnerships with fintechs, to better reach low- and moderate-income consumers and small businesses. By contrast, some commenters recommended that evaluation of digital and other delivery systems should remain optional for all large banks. One other commenter stated that the asset threshold for optional evaluation of this component of $10 billion or less was too low and recommended that it be increased to $100 billion or less.

Final Rule

The final rule adopts § ____.23(b) with technical edits related to the organization of the retail banking services evaluation. Specifically, final § ____.23(b) renames the section header from ''delivery systems'' to ''retail banking services'' and adds the same terminology throughout the regulatory text where appropriate. No change in meaning is intended and this revision is meant to provide clarity that the evaluation measures the availability and accessibility of a bank's retail banking services, including through delivery systems such as branches. The final rule also includes a revision related to the consideration of digital delivery systems and other delivery systems for large banks with assets of $10 billion or less as of December 31 in either of the prior two calendar years that do not operate branches or remote service facilities. The agencies are also making the clarification that the respective evaluations of bank branches or remote service facilities only apply to a particular bank if the bank has one or more branches or remote service facilities. Specifically, the final rule requires large banks with assets of over $10 billion to be evaluated for their delivery systems under: final § ____.23(b)(2) (branch availability and services), if the bank operates one or more branches, final § ____.23(b)(3) (remote service facility availability), if the bank operates one or remote service facilities, and final § ____.23(b)(4) (digital delivery systems and other delivery systems) (*see* the section-by-section analysis of § ____.23(b)(2) through (4) for additional details). Large banks, including military banks,[984] with assets of $10 billion or less that have

[984] As discussed in the section-by-section analysis of final § ____.21(a)(5), the agencies are adopting a new paragraph in the final rule to clarify the evaluation of military banks. Under the final rule, the agencies will evaluate a military bank that chooses to delineate the entire United States and its territories as its sole facility-based assessment area because its customers are not located within a defined geographic area, as specified in final § ____.16(d), exclusively at the institution level based on the bank's performance in its sole facility-based assessment area. For purposes of the final Retail Services and Products Test, the agencies will evaluate these banks at the facility-based assessment area level pursuant to the provisions of final § ____.16 for retail banking services, and, as with other large banks with assets of $10 billion or less, military banks can request the evaluation of digital delivery systems and other delivery systems at the institution level.

branches will be evaluated only under the first two components unless they opt for consideration of digital delivery systems and other delivery systems. Further, military banks that are small and intermediate banks may also request consideration for digital and other delivery systems pursuant to § ____.29(b) or § ____.30(b), as applicable.

In response to comments, the final rule clarifies that a large bank that had assets of $10 billion or less as of December 31 in either of the prior two calendar years and that does not operate branches will be evaluated only for its digital delivery systems and other delivery systems under § ____.23(b)(4). This is a change from the proposal, which required the evaluation of this component only for large banks with assets of over $10 billion. The agencies believe requiring the evaluation of digital delivery systems and other delivery channels for branchless large banks with assets of $10 billion or less is appropriate, recognizing that such banks do not deliver retail services to their customers through branches.

However, the agencies decline to require in the final rule an evaluation of digital delivery systems and other delivery systems for all large banks as suggested by some commenters. The agencies remain sensitive to the impact of new data collection requirements for large banks with assets of $10 billion or less, and believe it is preferable to only require this evaluation component for such banks with no branches as described above. The agencies believe requiring evaluation of the digital delivery systems and other delivery systems of branchless banks with assets of $10 billion or less ensures that the delivery systems of such banks are evaluated, while appropriately tailoring the approach for banks with assets of $10 billion or less, which may have less capacity to meet new data collection requirements.

The agencies note that the approach used in the final rule for evaluating a large bank's retail banking services would leverage quantitative benchmarks to inform the branch and remote service facility availability analysis and provide favorable qualitative consideration for branch locations in certain geographic areas. In comparison to the current CRA regulations, the final rule also more fully evaluates digital and other delivery systems, as applicable, in recognition of the trend toward greater use of online and mobile banking.

The agencies decline to adopt the recommendation from some commenters that a large bank receiving a ''High Satisfactory'' or ''Outstanding'' level of performance on the Retail Lending Test should be exempted in some way from a Retail Services and Products Test evaluation or be awarded a presumptive conclusion under the Retail Services and Products Test. The agencies believe that a high level of performance in the Retail Lending Test does not obviate the importance of evaluating how well the bank serves its community through branches and other delivery systems. The agencies believe that the branch distribution and availability, remote services availability, and digital delivery systems and other delivery systems evaluations are important components in evaluating how well a bank is meeting the credit needs of its communities, including low- and moderate-income individuals, families, or households and low- and moderate-income census tracts. The agencies note that in determining how well the bank serves its communities through retail services and products, as explained in more detail in the section-by-section analysis of § ____.23(d), the final rule considers the bank's business model and other performance context factors when evaluating the bank's retail banking services. Examiners will account for, among other things, mitigating factors for closing branches and whether the bank's delivery channels are meeting the needs of the bank's communities and customers.

Section ____.23(b)(2) Branch Availability and Services

Section ____.23(b)(2)(i) Branch Distribution

Section ____.23(b)(2)(i)(A) Branch Distribution Metrics

Section ____.23(b)(2)(i)(B) Benchmarks

Current Approach

Under the current CRA regulations, the service test performance criteria for retail banking services place primary emphasis on full service branches while still considering alternative delivery systems.[985] Interagency guidance explains that the principal focus is on an institution's current distribution of branches and its record of opening and closing branches, particularly branches located in low- or moderate-income geographies or that primarily serve low- or moderate-income individuals.[986] An evaluation of a large bank's branch locations involves a review primarily of information gathered from a bank's public file.[987] Using various methods, the agencies evaluate the distribution of branches across census tracts of different income levels relative to the percentage of census tracts by income level, households (or families), businesses, and population in the census tracts.

The Agencies' Proposal

The agencies proposed to evaluate a large bank's distribution of branches among low-, moderate-, middle-, and upper-income census tracts, compared to a series of quantitative benchmarks[988] that reflect community and market characteristics as the first component of the delivery systems evaluation. Specifically, the agencies proposed, in § ____.23(b)(1)(i)(A), to consider the number and percentage of the bank's branches within low-, moderate-, middle-, and upper-income census tracts, referred to as branch distribution metrics, using the data in proposed § ____.23(b)(1)(i)(B), referred to as benchmarks, to evaluate a bank's branch distribution among low-, moderate-, middle-, and upper-income census tracts.[989] The agencies further proposed that consideration of the branch distribution metrics in a facility-based assessment area would be informed by benchmarks for the distribution of census tracts, households, total businesses, and all full-service bank branches by census tract income level.[990] Each income level and data point (census tracts, households, businesses, and branches) would have a benchmark, specific to each assessment area.[991] The agencies asked for feedback on whether the agencies should 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.

As explained more fully below, in the section-by-section analysis of § ____.23(b)(1)(i)(C), the agencies also proposed to consider the availability of branches in low or very low branch access census tracts, middle- and upper-income census tracts in which branches deliver services to low- and moderate-income individuals, distressed or underserved nonmetropolitan middle-income census tracts, and Native Land Areas.

[985] *See* current 12 CFR ____.24(d).

[986] *See* Q&A § ____.24(d)—1.

[987] *See* Interagency Large Institution CRA Examination Procedures (Apr. 2014).

[988] *See* proposed § ____.23(b)(1)(i)(B).

[989] *See* proposed § ____.23(b)(1)(i)(A) and (B).

[990] *See* proposed § ____.23(b)(1)(i)(B)(*1*) through (*4*).

[991] *See id.*

Comments Received

Several commenters supported the application of branch distribution metrics and benchmarks, and recommended removal of examiner judgment by providing examiners with enough guidance on how to apply the metrics and weigh the distribution of benchmarks to guard against ratings inflation. Commenters also expressed a range of views in response to the agencies' request for feedback on whether the percentage of families and total population should be used as additional comparators to those in the proposal to assess branches and remote service facilities. A vast majority of commenters that responded to this request stated that introducing these additional data points would be unnecessary and redundant given the comparators proposed in the rule such as census tracts, households, and businesses. One commenter believed the use of total population in an assessment area by census tract would be an unreliable indicator due to population income shifts over time. Another commenter recommended instead that the agencies consider external factors, such as commuting patterns, which may impact branch access. One commenter suggested broadening the criteria for evaluating a bank's branch distribution so that the agencies consider the population density and amount of economic activity in a particular census tract. Another commenter suggested information such as public transportation and accessibility should also be considered. One commenter requested clarification on how the agencies arrived at the benchmarks for branch distribution as they appeared to be arbitrary.

Final Rule

The agencies are adopting proposed § ____.23(b)(1)(i)(A) (branch distribution metrics) and (B) (benchmarks), renumbered in the final rule as § ____.23(b)(2)(i)(A) and (B), respectively, with minor word changes for clarity and with no change in meaning intended.[992] The agencies believe that the analysis of a bank's branch distribution through the use of metrics and benchmarks is appropriate to promote more transparency and consistency in the evaluation process and are incorporating and building upon on current practices. Examiners will be able to compare a bank's branch distribution to local data to help determine whether branches are accessible in low- or moderate-income communities, to households of different income levels, and to businesses in the assessment area.

In light of the comments received, the agencies have determined that the benchmarks sufficiently measure branch distribution. As a result, the agencies believe that other external data factors such as commuting patterns, public transportation, population density, and other factors are not necessary for this analysis. The agencies plan to provide guidance to examiners on how to consider market and demographic benchmarks when comparing to branch distribution. However, the agencies note that examiners will continue to have the ability to consider qualitative factors to inform the analysis of a bank's branch distribution.

In response to the commenter that requested the agencies provide clarification on how they arrived at the benchmarks, as explained in the proposal, the agencies believe that the three community benchmarks are important to provide additional context for each assessment area. The percentage of census tracts in a facility-based assessment area by income level 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 percentage of households and the percentage of total businesses in the facility-based assessment area by census tract income level are important complements to the percentage of census tracts in a facility-based assessment area by income level, because households, businesses, and farms reflect a bank's potential customer base, and may not be distributed evenly across census tracts. Therefore, the agencies would consider all benchmark levels to inform a judgment about the bank's branch distribution in the market.

As further explained in the proposal, the agencies also believe that using a new aggregate measurement of branch distribution—referred to as a market benchmark[993]—that would measure the distribution of all full-service bank[994] branches in the same facility-based assessment area by census tract income, would improve the branch distribution analysis in several ways. First, having such data would give examiners more information for determining the extent that branch services are provided in census tracts of different income levels. Second, examiners would have market data on branches within facility-based assessment areas to identify the extent that census tracts of various income levels are served by other banks' branches relative to community benchmarks. For example, if few other banks have branches in low-income or moderate-income census tracts within a given area, then a bank's higher share would indicate responsive or meaningful branch activity relative to their peers.

Section ____.23(b)(2)(i)(C) Geographic Considerations Access

The Agencies' Proposal

In addition to the consideration of branch metrics in § ____.23(b)(1)(i)(A) and benchmarks in § ____.23(b)(1)(i)(B) for the evaluation of a bank's branch distribution analysis, the agencies also proposed to consider the availability of branches in the following geographic areas: (1) low or very low branch access census tracts; (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.

In § ____.23(b)(1)(i)(C)(*1*), the agencies proposed providing favorable consideration for banks that operate branches in ''low branch access census tracts'' or ''very low branch access census tracts.''[995] The agencies proposed definitions for these two types of census tracts.[996] 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.[997] Low branch access census tracts would have been 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 have been those in which there are no

[992] *See supra* note 145.

[993] The aggregate number of branches in an assessment area figure in a market benchmark is comprised of full-service and limited-service branch types as defined in the FDIC's Summary of Deposits.

[994] The agencies intend to issue guidance to explain the term ''full-service bank'' and how the agencies will apply the term.

[995] *See* proposed § ____.23(b)(1)(i)(C)(*1*).

[996] *See* proposed § ____.12.

[997] *See id.*

branches within this distance or within the census tract itself.[998]

The agencies indicated in the proposal that they were considering two distance-based approaches: (1) the proposed ''fixed distance approach;'' and (2) the alternative ''local approach,'' to determine the relevant distance threshold for each census tract. The agencies also considered a second, more qualitative alternative, which did not set specific geographic distances in the identification of areas that 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.[999] 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.[1000] The agencies proposed providing the following scenarios with favorable consideration: (1) a bank opens a branch that alleviates one or more census tracts' very low branch access status; or (2) a bank maintains a branch in one or more census tracts' low branch access status. In addition, the agencies proposed 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. The agencies sought feedback on how narrowly designations of low branch access and very low branch access should be tailored so that banks may target additional retail services appropriately.

Alternative approach to low and very low branch access (local alternative approach). In the alternative approach described by the agencies in the **SUPPLEMENTARY INFORMATION** of the proposal, 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, as defined by the Office of Management and Budget. 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, and would adjust over time as branches open and close. The agencies sought feedback on how geographies should be divided to appropriately identify different distance thresholds and whether a fixed distance standard, such as that in the proposed approach, or a locally determined distance threshold, such as in the alternative approach, would be most appropriate when identifying areas with limited branch access.

Qualitative alternative approach to evaluating areas with few or no branches (qualitative alternative approach). Under a qualitative alternative approach described by the agencies in the **SUPPLEMENTARY INFORMATION** of the proposal, the agencies would not define a ''low branch access census tract,'' a ''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 actions by a bank to open branches in these areas.

Under the proposed and alternative approaches, the agencies proposed providing the following scenarios with favorable consideration: (1) a bank opens a branch that alleviates one or more census tracts' very low branch access status; or (2) a bank maintains a branch in one or more census tracts' low branch access status. In addition, the agencies proposed 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. The agencies sought feedback on how narrowly designations of low branch access and very low branch access should be tailored so that banks may target additional retail services appropriately.

Lastly, the agencies sought feedback on whether the presence of credit unions should be considered under any of the proposed approaches, and on other alternative approaches or definitions that should be considered in designating places with limited branch access.

Comments Received

In response to the agencies' proposed fixed distance approach and the alternative local distance approach, commenters were divided in their views on which of the two approaches would be most appropriate to use in determining the relevant distance threshold for census tracts proposed to be defined as low or very low branch access. Several commenters supported the fixed distance approach, with one commenter stating it would create a more consistent framework. This commenter argued that the local approach may disincentivize banks from adding branches in low branch access areas as it would result in the distance threshold decreasing in the next evaluation. By contrast, other commenters argued that the local approach would be preferable, with one of these commenters stating that the local approach has a broader reach and is a more precise measure due to the local context. A few other commenters asked for clarification on how low and very low branch access would be considered in the examination, with one of these commenters further noting that the concept lacked clarity with respect to the impact opening or closing of branches would have on these geographies. One commenter suggested that a smaller distance, such as a quarter mile, should be used in densely populated areas. Another commenter suggested that the definitions of ''low'' and ''very low'' branch access should connect to branches per population and rates of unbanked and underbanked populations, and that the agencies should consider community input in making a final determination.

Commenters' views on how geographies should be divided were generally in line with the proposed approach. However, one commenter recommended that the agencies use existing data tools to delineate or divide geographies for each distance threshold. For example, the agencies could use a combination of the FFIEC's guidance on census tracts to delineate or divide geographies for each distance threshold and the USDA's Economic Research Service, which provides rural-urban codes to classify how commutable certain rural and urban census tracts are based on urbanization, population density, and daily commuting patterns.

In response to how often local distances for the alternative local distance approach, if adopted, should be updated, some commenters recommended different frequencies including: updating in real-time using geographic mapping applications;

[998] *See id.*

[999] *See* proposed § ____.12.

[1000] *See id.*

annually; over a period of under three years; and no more frequently than every five years so as not to exacerbate issues regarding distance thresholds decreasing, and the resulting increase in areas being designated as low branch access.

Some commenters expressed a range of views with respect to whether credit union branches should be considered in the geographic considerations. Most of these commenters believed that credit union locations should not be considered for several reasons, including that credit unions are not subject to CRA, have limitations in their membership that could disqualify members of the community from utilizing their services, and pursue very different models from banks. Two commenters believed credit union locations should be included, with one commenter stating that credit union product offerings are very similar to those of banks. One commenter noted that if activities evaluated under the CRA are offered by credit unions, then their locations should be considered.

Final Rule

The agencies are not finalizing proposed § ____.23(b)(1)(i)(C)(*1*) to provide consideration for the availability of branches in low or very low branch access census tracts in the evaluation of a bank's branch distribution analysis. In making this determination, the agencies considered several points. As noted by some commenters, the agencies considered that while each of the approaches identified by the agencies had benefits, there were also downsides to each approach. The decision to remove these criteria is responsive to comments received regarding limitations of each of the methodologies proposed in terms of including local context, minimizing unnecessary complexity in the final rule, and avoiding unintended effects. Furthermore, the agencies believe that, without direct consideration of low and very low branch access areas, the final rule already includes sufficient consideration for branches in additional geographic areas which supplement the benchmarks based on tract-level median incomes. The final rule includes additional geographic considerations for areas that include: middle- and upper-income census tracts with branches delivering services used by low- and moderate-income individuals, families, or households; distressed or underserved nonmetropolitan middle-income census tracts that are defined, in part, based on being remote and lacking population density; and Native Land Areas. These additional geographic considerations are discussed below.

Section ____.23(b)(2)(i)(C)(1) Middle- and Upper-Income Census Tracts

Section ____.23(b)(2)(i)(C)(2) Distressed or Underserved Nonmetropolitan Middle-Income Census Tracts

Section ____.23(b)(2)(i)(C)(3) Native Land Areas

The Agencies' Proposal

In addition to the agencies' proposal to designate low and very low branch access census tracts, the agencies proposed providing qualitative consideration for banks operating branches in other geographic areas.[1001] These areas would be favorably considered when evaluating overall accessibility of delivery systems, including to low- and moderate-income populations.

Specifically, in § ____.23(b)(1)(i)(C)(*2*), the agencies proposed providing qualitative consideration for 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.[1002] The agencies sought feedback on what information banks should be required to provide to demonstrate the delivery of such services to low- or moderate-income individuals.

In addition, in § ____.23(b)(1)(i)(C)(*3*), the agencies proposed providing qualitative consideration for banks that operate branches in a ''distressed or underserved nonmetropolitan middle-income census tract'' as defined in proposed § ____.12. The agencies sought feedback on whether branches in distressed or underserved nonmetropolitan middle-income census tracts should receive qualitative consideration without additional bank documentation that the branch provides services to low- or moderate-income individuals. Finally, in § ____.23(b)(1)(i)(C)(*4*), the agencies proposed providing qualitative consideration if banks operate branches in ''Native Land Areas'' as defined in proposed § ____.12.

Comments Received

With respect to providing consideration for retail branching in middle- and upper-income census tracts, several commenters supported favorable qualitative consideration based on proximity to low- or moderate-income census tracts or if a bank can demonstrate with data that these locations deliver services to low- and moderate-income individuals. However, a few commenters opposed giving qualitative consideration for retail branching in higher-income census tracts, with one commenter stating that it could be used to avoid opening branches in low- or moderate-income census tracts. A few other commenters also opposed giving qualitative credit for branches in middle- and upper-income census tracts on the basis that it would be redundant, with one commenter explaining that if the agencies adopt the proposal to consider deposit products used by customers residing in low- or moderate-income census tracts, regardless of the location of the branch providing the product, that performance measures would already capture branches in non-low- or moderate-income census tracts that effectively offer deposit products to customers residing in low- or moderate-income census tracts.

Some commenters generally supported favorable qualitative consideration for branches located in distressed and underserved nonmetropolitan middle-income census tracts. A few commenters supported consideration only if documentation is provided that demonstrates these branches serve low- or moderate-income individuals. Two of these commenters noted that deposits data could be utilized to support usage by low- or moderate-income individuals. Other commenters supported the addition of positive consideration for banks that operated branches in Native Land Areas. One commenter requested that U.S. military installations be added to the list of geographies where banks could receive additional consideration if they have branches placed in these geographies.

Final Rule

After considering the comments received, the agencies are adopting proposed § ____.23(b)(1)(i)(C)(*2*) through (*4*), renumbered in the final rule as § ____.23(b)(2)(i)(C)(*1*) through (*3*), largely as proposed with clarifying edits. In evaluating the overall accessibility of retail banking services, including to low- and moderate-income individuals, families, or households and low- and moderate-income census tracts, the agencies believe it appropriate to provide qualitative consideration for operating branches in: (1) middle- and upper-income census tracts in which branches deliver services to low- and moderate-income individuals, families, or households to

[1001] *See* proposed § ____.23(b)(1)(i)(C)(*2*) through (*4*).

[1002] *See* proposed § ____.23(b)(1)(i)(C)(*2*).

the extent that low- and moderate-income individuals, families, or households use the services offered; (2) distressed and underserved nonmetropolitan middle-income census tracts; and (3) Native Land Areas.

The agencies believe that it is appropriate to extend qualitative consideration to bank branches providing retail banking services to low- and moderate-income individuals, families, or households because access to those services is integral to the financial well-being of low- and moderate-income individuals, families, or households wherever they reside. Furthermore, the agencies agree with the commenters' recommendation that, to ensure that the services provided confer an actual benefit to low- and moderate-income individuals, families, or households, the consideration of branches in middle- and upper-income census tracts should include a requirement that banks demonstrate the extent to which low- and moderate-income individuals, families, or households utilize the services at these branch locations. Accordingly, the final rule provides that if a bank seeks consideration for a branch located in a middle- or upper-income census tract, the bank should be prepared to provide documentation that indicates the extent to which low- or moderate-income individuals, families, or households use the services offered. To the extent helpful, the agencies will consider providing additional guidance to banks or examiners regarding how banks could demonstrate both that their branches in middle- or upper-income tracts deliver services to low- or moderate-income individuals, families, or households, and the extent to which low- and moderate-income individuals, families, or households use the services offered.

The agencies expect banks to use available information to demonstrate the degree to which bank branch services in middle- and upper-income census tracts are used by low- and moderate-income individuals, families, or households. However, in response to commenters who suggested the use of deposits data for these purposes, the agencies note that the deposits data reported to the agencies at the county level under final § ____.42(b)(3) does not have the necessary information for the agencies to use that data in making a determination whether branches are used by low- or moderate-income individuals, families, or households. In addition, deposits data reported to the agencies under final § ____.42(b)(3) will be reported only by large banks with assets over $10 billion, as well as other banks that may opt in to reporting these data. As a result, these data will not be useful for determining the income level of the census tracts where depositors live or the depositors' income level. However, despite the limitations of deposits data, the agencies encourage banks to use information available to the bank to demonstrate that branches outside of low- and moderate-income census tracts are serving low- and moderate-income individuals, families, or households.

The agencies also believe that qualitative consideration should be given to the availability of branches in distressed or underserved nonmetropolitan middle-income census tract because, given the economic characteristics of these areas, residents, businesses, and farms may have limited access to financial services. Additionally, in facility-based assessment areas where there are few or no low- and moderate-income census tracts, the consideration of bank branch availability in distressed or underserved census tracts could provide examiners with additional insight into the bank's overall branch availability.

The agencies also recognize that branch access is limited for many Native communities and consider it appropriate to emphasize bank placement of branches in Native Land Areas.[1003] As previously discussed in the section-by-section analysis of § ____.13(j), majority-Native American counties have an average of two bank branches compared to the nine-branch average in nonmetropolitan counties and well below the 27-branch overall average for all counties.[1004] For that reason, the final rule provides additional qualitative consideration for bank branches located in Native Land Areas. In response to one commenter who suggested additional consideration of branches on military installations the agencies note that statistics from the 2015 to 2019 American Community Survey show that current active-duty and reserve members of the military, as well as veterans live in households with higher incomes than households that do not contain veterans and decline the inclusion of this addition to the final rule.

Finally, the agencies believe that other changes to the final rule regarding the positive consideration of deposits products address concerns raised by some commenters regarding the redundancies of considering deposits products used by customers in low- and moderate-income census tracts, regardless of branch location.

Section ____.23(b)(2)(ii) Branch Openings and Closings

Section ____.23(b)(2)(iii) Branch Hours of Operation and Services

Current Approach

Under current CRA regulations, the agencies evaluate a bank's branch openings and closings during the evaluation period relative to the bank's branch distribution and consider if any changes impacted low- or moderate-income census tracts and accessibility for low- or moderate-income individuals.[1005]

The Agencies' Proposal

In reviewing a bank's branch availability and services, in proposed § ____.23(b)(1)(ii), the agencies proposed to evaluate a bank's record of opening and closing branch offices in facility-based assessment areas since the previous examination to inform the degree of accessibility of banking services to low- and moderate-income individuals and in low- and moderate-income census tracts. Specifically, the agencies proposed to include an assessment of whether branch openings and closings improved or adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income census tracts and to low- and moderate-income individuals.

In proposed § ____.23(b)(1)(iii)(A), the agencies proposed to evaluate 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. The agencies also proposed in § ____.23(b)(1)(iii)(B) to evaluate the range of services provided at branch locations that improve access to financial services or decrease costs for low- or moderate-income individuals. The agencies proposed further that examples of such services could include, but are not limited to:

• Providing bilingual/translation services;[1006]

• Free or low-cost check cashing services, including government and payroll check cashing services;[1007]

[1003] *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.*

[1004] Information calculated using the FDIC's Summary of Deposits (2020).

[1005] *See* current 12 CFR ____.24(d)(2); *see also* Q&A § ____.24(d)–1.

[1006] *See* proposed § ____.23(b)(1)(iii)(B)(*1*).

[1007] *See* proposed § ____.23(b)(1)(iii)(B)(*2*).

- Reasonably priced international remittance services; [1008] and
- Electronic benefit transfer accounts.[1009]

The agencies sought feedback on whether there are other branch-based services that could be considered as responsive to low- and moderate-income needs. The agencies also proposed in § ____.23(b)(1)(iii)(C) to evaluate the degree to which branch services are responsive to the needs of low- and moderate-income individuals in a bank's facility assessment area.

Comments Received

Several commenters emphasized the importance of branches, with some recommending additional consideration as an incentive for banks that operate and maintain branches in low- or moderate-income, rural, minority, or Native communities. Other commenters recommended stronger consequences, including negative consideration, such as penalties, for banks closing branches in low- and moderate-income and majority- minority communities, including Native American communities. Some commenters recommended that the agencies analyze branch closures over a period of time that is longer than the examination period and implement related quantitative performance metrics. Another commenter believed that qualitative factors should be used, as it would be unreasonable to draw conclusions about branch accessibility by relying only on quantitative calculations of physical branch distribution. Two commenters requested guidance related to how a disproportionate number of closings or openings in a low- or moderate-income census tract would impact the service test score.

Commenters provided a variety of examples of other branch-based services that could be considered responsive to low- and moderate-income needs. Examples of such services included language services geared to individuals with limited English proficiency, including at ATM and other remote facilities; other culturally appropriate services and resources; individual tax identification number (ITIN) accounts; credit-builder loans; other products and services targeting low- and moderate-income consumers, including but not limited to low- and moderate-income consumers with disabilities; free notary services; free or low-cost money orders; access for people with prior banking issues, such as those flagged in ChexSystems; and activities that address potential fraud. One commenter suggested the ability to come into a branch while also being able to meet with a loan officer virtually as an example of a branch-based service that should receive consideration. Other commenters suggested that deposit-taking automated services and ATMs/interactive teller machines could be considered responsive branch-based services, with one of these commenters particularly noting those in banking deserts could be considered responsive to low branch access areas. A few commenters expressed support for, and noted the importance of, banking services including hours of operation and services responsive to low- and moderate-income individuals and in low- and moderate-income communities. Other commenters requested that when evaluating banking services such as extended hours and ATM placement, the agencies should consider different business models (*e.g.,* a grocery store in middle- or upper-income areas) and clarify that a bank would not be expected to offer such hours at branches located in low- or moderate-income census tracts if the bank does not do so at similarly-situated branches located in middle- or upper-income census tracts.

Final Rule

The agencies are finalizing § ____.23(b)(1)(ii) (branch openings and closings) and (iii) (branch hours of operation and services) as proposed, renumbered in the final rule as § ____.23(b)(2)(ii) and (iii), respectively, with technical edits not intended to have a change in meaning, including revisions of the language with respect to ''check cashing services'' and ''electronic benefit transfer accounts.''

Regarding branch openings and closings, the final rule builds on the agencies' current practice in which the evaluation includes an assessment of whether branch openings and closings improved or adversely affected the accessibility of the bank's retail banking services, particularly to low- and moderate-income census tracts and low- and moderate-income individuals, families, or households. In response to commenters who recommended using incentives for banks opening or penalties for closing branches in communities of need, the agencies note that the quantitative measures of final § ____.23(b)(1)(ii) are a single aspect of the branch availability evaluation that, similar to the current CRA regulations, extends positive consideration for branch openings increasing accessibility of banking services to low- and moderate-income individuals, families, or households and census tracts. Similarly, branch closings that limit or otherwise restrict the availability of retail banking for the same individuals and geographies are also considered in evaluating bank performance. Under the final rule, examiners will also use qualitative factors, such as performance context, to draw conclusions regarding a bank's openings and closings of branches, which may impact a bank's performance for this evaluation. Importantly, although not considered for purposes of the CRA evaluation, the agencies do consider opening and closing branches in minority areas for purposes of fair lending reviews.

Also in response to comments, the agencies further note that evaluating branch opening and closings over a different time period than the time period during which other activities are evaluated with respect to the Retail Services and Products Test and other tests would make it difficult to measure the bank's overall CRA performance within the set evaluation period. The agencies believe that accounting for branch openings and closings within the same evaluation period as all other bank activities gives a clear overall picture of how well the bank is serving its community within a set time period.

With respect to the bank's hours of operation and services in low- and moderate-income census tracts, the agencies considered comments regarding the consideration of different business models and branch hours expectations in the final rule. The agencies believe the evaluation should remain qualitative and that it is not appropriate to require that branches offer extended or weekend hours. For that reason, final § ____.23(b)(1)(iii)(A) considers the reasonableness of bank branch hours in low- and moderate-income census tracts in comparison to middle-and upper-income census tracts as the primary qualitative consideration. Whether a branch offers extended or weekend hours is only one means through which the bank can demonstrate the reasonableness of its hours in low- and moderate-income census tracts. During their review, examiners will consider a range of qualitative factors, including the bank's business model.

The agencies received a variety of suggestions from commenters as to additional responsive branch-based services and considered whether these suggested services should be added to the agencies' proposed list of services considering the range of services in final § ____.23(b)(1)(iii)(B). However, the agencies do not believe that it is

[1008] *See* proposed § ____.23(b)(1)(iii)(B)(*3*).

[1009] *See* proposed § ____.23(b)(1)(iii)(B)(*4*).

necessary to add the additional examples suggested by commenters to the list provided in the final rule because it is not an exhaustive list. The agencies note that examiners may consider additional services provided at bank branches in low-, moderate-, middle-, and upper-income census tracts. Moreover, with respect to some recommendations made by commenters, such as providing CRA consideration for language services for individuals with limited English proficiency and other culturally appropriate services and resources, the agencies agree that this type of activity should be eligible for CRA credit; therefore, the Retail Services and Products Test includes bilingual and translation services in the evaluation of branch services. Other recommendations, such as placement of ATMs and extended hours are also already considered in the Retail Services and Products Test. The agencies are adopting § ____.23(b)(1)(iii)(C) as proposed with minor edits as commenters supported responsive retail banking services.

Section ____.23(b)(3) Remote Service Facility Availability

Current Approach

Currently, examiners determine whether a large bank's non-branch or alternative delivery systems,[1010] such as ATMs, are available and effective in providing retail banking services in low- and moderate-income areas and to low- and moderate-income individuals.[1011] With respect to alternative delivery systems, examiners consider factors such as: 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 the rate of adoption and use.[1012] Examiners also consider any information a bank maintains and provides to examiners to demonstrate 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.[1013] 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 Agencies' Proposal

The agencies proposed to separately evaluate a large bank's remote service facility availability[1014] from the bank's digital and other delivery systems in order to focus on the availability of these facilities and leverage community benchmarks in the evaluation. In comparison to the current CRA regulations, the agencies proposed an independent evaluation of remote service facilities to underscore the effects these facilities have on low- and moderate- income individuals and communities.

As with the branch distribution analysis, the agencies proposed to evaluate the bank's distribution of remote service facilities among low-, moderate-, middle-, and upper-income census tracts in § ____.23(b)(2)(i), referred to as metrics, compared to the three data points in § ____.23(b)(2)(ii), referred to as benchmarks, which would complement a qualitative evaluation. The agencies proposed that an evaluation of a bank's remote service facilities distribution metrics would be informed by comparing those metrics to the following benchmarks, which are specific to each facility-based assessment area: (1) the percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;[1015] (2) the percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts;[1016] and (3) the percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.[1017] 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.

In addition to using the community benchmarks, in § ____.23(b)(2)(iii), the agencies proposed to consider whether the bank offers customers fee-free access to out-of-network ATMs in low- and moderate-income census tracts.

Comments Received

There was no consensus among commenters regarding the evaluation of remote service facilities such as ATMs. A few commenters did not support the consideration of ATMs when evaluating a bank's presence in low- or moderate-income communities, with one of these commenters noting that ATMs are not the same as full-service branches. A few other commenters made specific recommendations for CRA consideration, which included considering ATM placement in low- and moderate-income geographies on an optional basis or providing favorable consideration in the Retail Services and Products Test conclusion but not downgrading a bank if it does not place a certain number of ATMs in low- and moderate-income census tracts, and favorably considering a bank's policy to reimburse fees when customers access out-of-network ATMs or partner with third-party ATM networks that have robust coverage of low- and moderate-income areas. One commenter asked for clarification on how seasonal ATMs would be considered in the evaluation.

Final Rule

The agencies are adopting proposed § ____.23(b)(2)(i) and (ii), renumbered in the final rule as § ____.23(b)(3)(i) and (ii), pertaining to the remote service facilities distribution metrics and benchmarks, respectively, with a revision to add the availability of remote service facilities in other geographies and other technical edits, as explained below. The agencies believe that the use of metrics and benchmarks will allow for the comparison of a bank's remote service facilities 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

[1010] The Board's and OCC's 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* current 12 CFR ____.24(d)(3). Under the FDIC's CRA regulations, current 12 CFR 345.24(d)(3) describes alternative delivery systems as ''RSFs, RSFs 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.''

[1011] *See* Interagency Large Institution CRA Examination Procedures; *see also* Q&A § ____.24(d)(3)–1.

[1012] *See* Q&A § ____.24(d)(3)–1.

[1013] *See id.*

[1014] The agencies define ''remote service facility'' to mean 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. *See* proposed § ____.12.

[1015] *See* proposed § ____.23(b)(2)(ii)(A).

[1016] *See* proposed § ____.23(b)(2)(ii)(B).

[1017] *See* proposed § ____.23(b)(2)(ii)(C).

individuals of different income levels, and to businesses in the assessment area and are incorporating and building on current practice. The agencies believe this type of comparison requires robust data that would not be generated with an optional evaluation. Accordingly, the agencies decline to follow commenters' suggestion to make this an optional evaluation for large banks.

The agencies agree with commenter suggestions that both branches and remote service facilities remain an important component in the evaluation of a bank's delivery systems as a means to obtain credit and banking services. For that reason, the agencies are further adopting final § ____.23(b)(3)(i)(C) with respect to additional geographic considerations to mirror the other geographic areas considered for branches in final § ____.23(b)(2)(i)(C). The agencies also agree that while both are important, remote service facilities are not the same as branches and retained the remote service facility evaluation independent from the branch evaluation. The agencies believe that commenters' concerns that bank performance on the Retail Services and Products Test may be downgraded if it does not have ATMs in low- or moderate-income census tracts will also be addressed by the additional consideration of remote service facilities in: (1) middle- and upper-income census tracts in which a remote service facility delivers services to low- and moderate-income individuals, families, or households, to the extent that low- and moderate-income individuals, families, or households use the services offered; (2) distressed or underserved nonmetropolitan middle-income census tracts; and (3) Native Land Areas.

Finally, the agencies are adopting § ____.23(b)(2)(iii), renumbered in the final rule as § ____.23(b)(3)(ii), as proposed. As explained in the proposal, the agencies believe that bank partnerships with out-of-network ATM providers may contribute to expanded access to financial services and may assist with lowering access costs, which can be particularly important in low- and moderate-income census tracts. The agencies changed the heading to the paragraph to conform to the regulatory text which referenced ATMs. A commenter's suggestion to consider seasonal ATMs may be considered in future guidance.

Section ____.23(b)(4) Digital Delivery Systems and Other Delivery Systems

Current Approach and the Agencies' Proposal

Currently, examiners determine whether a large bank's non-branch or alternative delivery systems, such as mobile and online banking services, and telephone banking are available and effective in providing retail banking services in low- and moderate-income areas and to low- and moderate-income individuals. Examiners consider factors such as 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. Examiners also consider any information a bank maintains to demonstrate 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.

The agencies proposed 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, and bank-at-work programs), including to low- and moderate-income individuals, as the third component of the delivery systems evaluation in proposed § ____.23(b)(3). The agencies proposed to require this evaluation for large banks with assets over $10 billion, and to permit large banks with assets of $10 billion or less to opt to have this component of delivery systems evaluated under the Retail Services and Products Test.[1018]

The agencies explained in the proposal that they 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. Because usage of online and mobile banking delivery systems by households is pervasive and is expected to continue to grow, the agencies further explained that these trends support a renewed focus on the evaluation of digital and other delivery systems while also recognizing that many consumers continue to rely on branches.

The agencies proposed using three factors to evaluate the availability and responsiveness of a bank's digital and other delivery systems: (1) digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts;[1019] (2) the range of digital and other delivery systems;[1020] and (3) the bank's strategy and initiatives to serve low- and moderate-income individuals with digital and other delivery systems.[1021] Regarding the first factor, the agencies proposed to measure digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts and provided examples of information that could be used to inform this analysis.[1022] The proposal included examples such as the number of checking and savings accounts opened digitally, and accountholder usage data by type of digital and other delivery system.[1023] The agencies proposed evaluating this data using census tract income level since banks have stated that they do not routinely collect customer income data at account opening.[1024] With respect to the second factor, the agencies proposed to 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.[1025] In addition, the agencies proposed to consider a bank's strategies and initiatives to meet low- and moderate-income consumer needs through digital and other delivery systems.[1026] The agencies explained that these strategies and initiatives could include, for example, 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 sought feedback on additional ways to evaluate the digital activity of individuals in low-, moderate-, middle-, and upper-income census tracts, as part of a bank's digital and other delivery systems evaluation. Additionally, the agencies sought feedback on whether affordability should be one of the factors used in evaluating digital and other delivery systems and, if so, what data the agencies should consider. Finally, the agencies sought feedback on comparators that could be considered to assess the degree to which a bank is reaching individuals in low- or moderate-income census tracts through digital and other delivery systems.

[1018] *See* proposed § ____.23(b).

[1019] *See* proposed § ____.23(b)(3)(i).

[1020] *See* proposed § ____.23(b)(3)(ii).

[1021] *See* proposed § ____.23(b)(3)(iii).

[1022] *See* proposed § ____.23(b)(3)(i).

[1023] *See* proposed § ____.23(b)(3)(i)(A) and (B).

[1024] *See* proposed § ____.23(b)(3)(i).

[1025] *See* proposed § ____.23(b)(3)(ii).

[1026] *See* proposed § ____.23(b)(3)(iii).

Comments Received

Some commenters expressed concern that the data and methodology for reviewing a bank's digital and other delivery systems would be too rigid when considering the quantitative metrics and the use of proxies (such as the number of checking accounts opened digitally in low- or moderated-income areas). These commenters further raised concerns that these metrics do not assess whether a bank's delivery systems are accessible to low- or moderate-income consumers. One commenter supported the evaluation of mobile and online banking. One commenter, while supportive of the agencies' proposal, noted that there are limitations in evaluating a number of the proposed activities at a census-tract level, particularly in nonmetropolitan areas, and urged the agencies to provide, instead, full qualitative consideration for this component. A few commenters generally stated that accessibility and responsiveness of a bank's digital and other delivery systems are not accurately measured by account opening and usage rates. One of these commenters suggested the final rule should focus on evaluation of the accessibility of a bank's digital and other delivery systems and the bank's approaches for serving low- or moderate-income individuals with these systems, rather than focusing on account opening and usage rates associated with these systems. Other commenters recommended comparative data such as customer location, click rates on promotional emails, broadband access, and Federal Communications Commission data to assess the degree to which a bank is reaching low- or moderate-income consumers through digital and other delivery systems.

A number of commenters responded to the agencies' request for feedback on ways to further evaluate the digital activity by individuals in low-, moderate-, middle-, and upper-income census tracts as part of the agencies' evaluation of a bank's digital and other delivery systems. Some commenters suggested the agencies should consider product design, marketing, and product uptake via delivery systems on a qualitative basis. Another commenter recommended assessing how active digital accounts are across income levels, comparing a bank to its peers with a market benchmark, displaying data on digital activity in the CRA performance evaluation tables, and verifying representations that modes of access to digital services are available to low- or moderate-income census tracts.

A majority of commenters responding to the agencies' request for feedback agreed that affordability should be a factor in evaluating digital and other delivery systems. Most of these commenters recommended that data on costs and fees, such as overdraft, monthly account maintenance, minimum balance, and dormant account fees, among others, should be collected to determine affordability, with one commenter suggesting low- and moderate-income individuals should be charged lower or no fees for digital services. One commenter recommended considering the difference in fees between in-person application and digital applications to determine if these fees allow for a different level of digital access. One commenter indicated that the agencies should develop specific standards to require banks engaged in digital banking to avoid discriminatory or predatory practices.

Final Rule

Throughout final § ____.23(b)(4), the agencies are adopting new definitions of ''digital delivery system'' and ''other delivery system'' (based on the substantive provision of proposed § ____.23(b)(3)) in order to distinguish and make clear the types of systems encompassed in each delivery channel. The final rule defines ''digital delivery system'' to mean a ''channel through which banks offer retail banking services electronically, such as online banking or mobile banking.'' [1027] Under the final rule ''other delivery system'' is defined to mean a ''channel, other than branches, remote services facilities, or digital delivery systems, through which banks offer retail banking services.'' [1028] This may include telephone banking, bank-by-mail, or bank-at-work.[1029] In addition, the agencies are clarifying in final § ____.23(b)(4) that the evaluation of digital delivery systems and other delivery systems is conducted at the institution level. This change is also consistent with the proposed and final rule approaches described in appendix C.[1030]

Specifically, the agencies are finalizing as proposed § ____.23(b)(3)(ii), renumbered in the final rule as § ____.23(b)(4)(i), regarding the agencies' evaluation of the range of services and products offered by a large bank. Final § ____.23(b)(4)(i) provides that, when evaluating the availability and responsiveness of a bank's digital delivery systems and other delivery systems, the agencies consider the range of retail banking services and retail banking products offered through digital delivery systems and other delivery systems. By considering the range of digital delivery systems and other delivery systems, the agencies may then consider additional detail related to those systems, such as the bank's strategy and initiatives to serve low- and moderate-income individuals, families, or households and activity by individuals, families, or households related to those systems.

The agencies are revising proposed § ____.23(b)(3)(iii), renumbered in the final rule as § ____.23(b)(4)(ii), with additional language in response to commenter feedback that the bank's strategy and initiatives to serve low- and moderate-income individuals, families, or households with digital delivery systems and other delivery systems should be evaluated by considering factors such as cost, features, and marketing. This list of non-exhaustive factors adopted by the agencies were some of the factors recommended by commenters to measure the affordability of digital delivery systems or other delivery systems or otherwise measure the effectiveness of the bank's strategy or initiatives related to those systems. The agencies believe this modification is appropriate and enables consideration of affordability and effectiveness of digital and delivery systems without increasing the data collection burden.

Further, the agencies are revising proposed § ____.23(b)(3)(i)(A), renumbered in the final rule as § ____.23(b)(4)(iii)(A), to clarify that the number of checking and savings accounts opened during each calendar year of the evaluation period digitally and through other delivery systems are considered by the agencies as evidence of digital delivery systems and other delivery systems. The agencies are also revising proposed § ____.23(b)(3)(i)(B) in response to comments, renumbered in the final rule as § ____.23(b)(4)(iii)(B), to provide that the agencies will consider the number of checking and savings accounts opened digitally and through other delivery systems that are *active* at the end of each calendar year during the evaluation period as evidence of digital delivery systems and other delivery systems, rather than require banks to provide accountholder usage data, by type, of digital delivery systems and other delivery systems. The agencies believe this revision will reduce the burden for banks providing these data and will build on other data elements in the rule. To provide further clarity, certainty, and consistency in the

[1027] *See* final § ____.12.

[1028] *See id.*

[1029] *See id.*

[1030] *See* proposed appendix C, paragraph c.3.i.A.*2; see also* final appendix C, paragraph c.2.iv.A.*2.*

required information for this evaluation, the agencies removed the ''such as'' language in proposed § ____.23(b)(3)(i), renumbered in the final rule as § ____.23(b)(4)(iii), because the agencies consider the checking and savings account information described in paragraphs (b)(3)(i)(A) and (B) of final § ____.23. In final § ____.23(b)(4)(iii)(C), the agencies indicate that they will consider any other bank data that indicates that bank digital delivery systems and other delivery systems are available to low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

In response to the commenter that suggested the agencies should provide a fully qualitative consideration for digital and other delivery systems, the agencies decline to implement this recommendation because a strictly qualitative review, without standardized data, limits the evaluation of this component across banks by not providing certainty and consistency in elements reviewed under this component. In addition, without specific data elements, the data banks provide may not support the accessibility and usage of digital delivery systems and other delivery systems. The agencies believe that the quantitative consideration of digital delivery systems and other delivery systems activity, informed by specific data points, combined with the qualitative consideration of the bank's range of services and products and their strategies and initiatives strikes the right balance to evaluate this component fully. The agencies believe this evaluation is especially important for banks that will not be evaluated under the other components of retail banking services such as branches and remote service facilities.

Although commenters expressed concerns about the rigidity of the data and methodology for reviewing a bank's digital delivery systems and other delivery systems, and that the measures do not adequately represent accessibility or usage of digital delivery systems and other delivery systems by low- or moderate-income individuals, families, or households, the agencies believe these measures are sufficient without additional data collection requirements other than the data collection requirements in the final rule. Moreover, given that banks have stated that they do not typically collect customer income data at account opening for deposit customers, the agencies believe using census tract income level is an appropriate approach.

In response to these concerns and commenters' feedback for other data that may be used to measure availability of digital delivery systems and other delivery systems, the agencies are adopting new § ____.23(b)(4)(iii)(C) to allow banks to provide any other data, other than the data required in final paragraphs (b)(4)(iii)(A) and (B) of the section, to demonstrate that their digital delivery systems and other delivery systems are available to individuals and in census tracts of different income levels, including low- and moderate-income individuals, families, or households, and low- and moderate-income census tracts. The agencies believe this addition will allow banks the flexibility to provide additional information along with the data proposed.

The agencies have carefully considered other recommendations made by commenters, including click rates on promotional emails, broadband access, and others, but have determined, in their supervisory experience, that the data points as finalized will achieve the agencies' goal to provide clarity, consistency, and transparency in the evaluation of a bank's digital delivery systems and other delivery systems without significantly increasing burden to banks.

Section ____.23(c) Retail Banking Products Evaluation

Section ____.23(c)(1) Scope of Evaluation

Current Approach

Under the current CRA regulations, retail credit products and programs are qualitatively evaluated under the large bank lending test. A bank's lending performance is evaluated by, among other things, its ''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.'' [1031] Current interagency guidance provides examples that illustrate the range of practices that examiners may consider when evaluating the innovativeness or flexibility of a bank's lending practices and notes that when evaluating such practices, examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit product themselves.[1032] Examiners also consider whether, and the extent to which, innovative or flexible terms or products augment the success and effectiveness of the bank's loan programs that are intended to address the credit needs of low- or moderate-income geographies or individuals.[1033]

A bank's retail deposit products and services are evaluated under the current service test for large banks, which as explained in the section-by-section analysis of § ____.23(a)(1), establishes four criteria for evaluating retail services.[1034] The fourth criterion of the service test—the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies [1035]—is the primary consideration given to deposit products in the current test. Examiners consider information from the bank's public file and other information provided by the bank that are 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.[1036] Current interagency guidance also explains that examiners will consider retail banking services that improve access to financial services or decrease costs for low- or moderate-income individuals.[1037] More specifically, interagency guidance identifies low-cost deposit accounts among the examples of retail banking services that improve access to financial services, or decrease costs, for low- or moderate-income individuals.[1038] 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, which demonstrates that a bank's services are tailored to meet the convenience and needs of its assessment areas, particularly in low- and moderate-income geographies or to low- and moderate-income individuals.[1039]

The Agencies' Proposal

In the second part of the Retail Services and Products Test, the agencies proposed in § ____.23(c), an evaluation that focused on large bank: (1) credit products and programs responsive to the needs of low- and moderate-income individuals, small businesses, and small farms; and (2) deposit products responsive to the needs of low- and moderate-income individuals. When

[1031] *See* current 12 CFR ____.22(b)(5).

[1032] *See* Q&A § ____.22(b)(5)–1.

[1033] *See id.*

[1034] *See* current 12 CFR ____.24(d).

[1035] *See* current 12 CFR ____.24(d)(4).

[1036] *See* Interagency Large Institution CRA Examination Procedures; *see also* Q&A § ____.24(d)(4)–1.

[1037] *See* Q&A § ____.24(a)–1.

[1038] *See id.*

[1039] *See* Q&A § ____.24(d)(4)–1.

applicable to a particular bank, bank performance on both the credit products and programs and the deposit products components of the Retail Services and Products Test would be assessed at the institution level.[1040] Evaluation of both these components would be required for large banks with assets 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.[1041] The proposal required evaluation of only the first component—the responsiveness of credit products and programs—for banks with assets of $10 billion or less,[1042] while all large banks with assets of $10 billion or less could request additional consideration for their responsive deposit products.

Comments Received

A variety of commenters commented on the proposal to evaluate the responsiveness of credit products and programs and deposit products. Overall, most of these commenters supported the general concepts of the proposal and provided a variety of suggestions for how best to evaluate a bank's credit and deposit products. A few commenters urged the agencies to provide both a quantitative and qualitative review of responsive credit and deposit products, with a few commenters stating that all features of credit and deposit products should be evaluated including, for example, terms, rates, fees, defaults, and collections. A few other commenters also recommended that the agencies: review the quality of all bank credit and deposit products; evaluate not only the bank's offering of products, but also how effectively banks connect consumers to these products; consider programs that measure the financial health of consumers; and evaluate all products and programs offered by bank affiliates, subsidiaries, and partnerships for potential evasion of usury caps and other abusive practices. One commenter stated that accessibility and affordability of responsive products and services in low- and moderate-income neighborhoods should be compared against responsive products and services in middle- and upper-income neighborhoods at the assessment area level. Another commenter suggested that the agencies make the focus of the examination not on whether a bank has responsive products ''on the shelf,'' but the extent to which such products are marketed to, and used by, low- and moderate-income and underserved individuals and communities.

Final Rule

In the final rule, the agencies are adopting § ____.23(c) largely as proposed, to evaluate the responsiveness of a bank's credit products and programs and deposit products, with technical edits related to the overall organization of the scope of the evaluation of retail banking products and revisions to conform to changes made throughout the final rule to provide clarity regarding how the agencies will consider these retail banking products in the evaluation of the Retail Services and Products Test.

Specifically, final § ____.23(c) renames the section header from ''credit products and programs and deposit products'' to ''retail banking products evaluation'' for conciseness and added the same terminology in the regulatory text where appropriate. No change in meaning is intended with this revision since the evaluation of retail banking products includes credit products and programs and deposit products. The agencies note, however, that the evaluation of retail banking products does not include an evaluation of other products and programs that are not credit products or programs and deposit products such as insurance and financial investment products. In addition, new final § ____.23(c)(1) reorganizes and clarifies the scope of the evaluation of credit products and programs in final § ____.23(c)(2) and deposit products in final § ____.23(c)(3) to conform to organizational changes made to the evaluation of delivery systems in § ____.23(b) and to other tests in the final rule.

Specifically, final § ____.23(c)(1) provides that the agencies evaluate a bank's retail banking products under paragraphs (c)(2) and (3) of the section at the institution level. Final § ____.23(c)(1)(i) provides that the agencies will evaluate the credit products and programs of all large banks. Final § ____.23(c)(1)(ii) provides that the agencies will evaluate the deposit products of large banks that had assets over $10 billion as of December 31 in both of the prior two calendar years.[1043] Moreover, consistent with the proposal, under the final rule, the agencies will evaluate the deposit products of large banks that had assets of $10 billion or less as of December 31 in either of the prior two calendar years only at the bank's option.[1044]

As explained in the proposal, evaluating credit products and programs and deposit products together in the same test, which as explained above is a change from the current practice, is intended to provide a more holistic evaluation of credit products and program and deposit products that work in tandem to facilitate credit access for low- and moderate-income individuals, families, or households. The agencies believe this change will facilitate a more robust evaluation of a bank's performance with respect to meeting the credit needs of its community, as this evaluation also incorporates important qualitative factors that capture a bank's commitment to serving low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms.

While the agencies agree with commenters perspective that quantitative factors can play a role in determining whether a product or service is responsive, the agencies also believe that a qualitative evaluation should be the predominate method of measuring the responsiveness of retail banking products because it allows for a well-rounded review of the bank's retail banking products, as well as the consideration of the impact such products and programs have on low- and moderate-income individuals, families, or households, and low- and moderate-income census tracts. Although the agencies intend to address many of commenters' suggestions for how to best evaluate a bank's retail banking products through examination procedures and interagency guidance, the agencies also note that examiners may qualitatively consider aspects of retail banking products, such as the features, accessibility, and affordability of such products and programs, to determine whether they are responsive to the needs of low- and moderate-income individuals, families, and households. The agencies believe that, as finalized, § ____.23(c) is consistent with the agencies' goal of encouraging the availability of responsive products to low- and moderate-income individuals, families, or households.

The agencies are also making additional revisions to § ____.23(c)(2) (credit products and programs) and (3) (deposit products) that are described below in the respective section-by-section analysis.

[1040] *See* proposed appendix C, paragraph c.3.i.

[1041] *See id.; see also* proposed § ____.23(c).

[1042] *See* proposed § ____.23(c).

[1043] *See* final § ____.23(c)(1)(ii)(A).

[1044] *See* final § ____.23(c)(1)(ii)(B).

Section ____.23(c)(2) Credit Products and Programs

Current Approach

As discussed above, the current CRA regulations provide 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.[1045]

The Agencies' Proposal

The agencies proposed in § ____.23(c)(1), to qualitatively evaluate 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), small businesses, and small farms.[1046] The agencies also proposed in § ____.23(c)(1) that they would evaluate whether the bank's credit products and programs are conducted in a safe and sound manner. To qualify for consideration, the agencies proposed to consider relevant information about a bank's credit products and programs, including information provided by the bank and from the bank's public file.[1047]

The proposal did not provide a specific list of retail lending products and programs that qualified under this provision.[1048] Instead, in proposed § ____.23(c)(1)(i) through (iii), the agencies proposed an illustrative list of broader categories of responsive credit products and programs that may be responsive to the needs of low- and moderate-income individuals, small businesses, and small farms. Consistent with safe and sound operations, responsive credit may include, but is not limited to, credit products and programs that, in a safe and sound manner: (1) facilitate home mortgage and consumer lending for low- or moderate-income borrowers; [1049] (2) meet the needs of small businesses and small farms, including to the smallest businesses and smallest farms; [1050] and (3) are conducted in cooperation with MDIs, WDIs, LICUs, or Treasury Department-certified CDFIs.[1051]

The agencies requested feedback regarding whether the CRA regulations should list special purpose credit programs as an example of a responsive credit product or program that facilitates home mortgage and consumer lending targeted to low- or moderate-income borrowers. The agencies also requested feedback on whether there are other categories of responsive credit products and programs, offered in a safe and sound manner, that should be taken into consideration when deciding whether to give qualitative consideration to credit products and programs, and whether the agencies should provide specific or general guidance regarding what credit products and programs may be considered especially responsive.

Comments Received

Comments regarding how to evaluate credit products and programs. Several commenters supported the agencies' proposal to evaluate credit products and programs under the Retail Services and Products Test. Some commenters identified what they viewed as shortcomings in the proposal and requested clarification or offered suggestions for improvement. For instance, a few commenters asserted that a final rule needs to define, and include an analysis of, affordability based on interest rate caps and/or fees, or establish standards for both consumer and mortgage loans to determine the appropriate level of CRA consideration to grant a financial institution.

Commenters also urged the agencies to develop an ability-to-repay standard, with some noting that the agencies need to regulate third party out-of-state bank partnerships with entities such as payday loan dealers to address what was characterized as evasion of usury limits. A few commenters suggested evaluating credit products, including mortgage and home equity loans that address existing barriers to homeownership, such as stringent underwriting criteria, appraisal bias, and other factors. One of these commenters also suggested that credit products must be offered responsibly and sustainably to small business owners, such as by examining the product's annual percentage rate.

In addition, several commenters urged the agencies to expand the scope of the impact factor review to also include the proposed Retail Services and Product Test. These commenters suggested that the agencies incorporate an analysis of loan pricing and consumer product terms to ensure that retail products are meeting local needs instead of extracting wealth, and further recommended that the agencies evaluate how well loan products match local needs and give credit to activities that close the racial wealth gap by affirmatively serving communities of color. A few commenters stated that CRA rules should clearly penalize branch closures and poor coverage in low- and moderate-income, BIPOC and rural communities. Other commenters stated that the agencies should include in impact scoring branch openings in low- and moderate-income communities, communities of color, and rural communities. These comments are also discussed in the section-by-section analysis of § ____.15.

A few commenters objected to the inclusion of credit products, particularly consumer loans, in the evaluation, with one commenter stating that the agencies did not provide implementation guidelines, while the other commenters expressed concern that the public did not have a meaningful opportunity to understand and comment on the requirement to evaluate consumer loans within this test. One commenter suggested that the agencies' proposed analysis of consumer loans as a type of credit product or program would be a departure from the CRA's historical focus on home mortgage and small business loans because consumer loans do not provide the type of foundational, wealth-building credit that the CRA has traditionally focused on promoting and incentivizing; the commenter also indicated that consumer loans may be a poor fit for meeting the needs of low- and moderate-income communities. One commenter recommended that the agencies provide further clarity on how banks will be evaluated for responsiveness under this test.

Comments regarding consumer loans other than automobile loans. Several commenters recommended a qualitative evaluation of consumer loans and made suggestions about the nature and scope of the qualitative evaluation. In general, these commenters expressed that examiners should perform a qualitative analysis to ensure that a bank's consumer lending is responsible and sustainable, such as loan marketing, language access, repayment rates, loan terms, loan pricing (including interest and fees), delinquency and default rates, and collection practices. A commenter suggested that the agencies conduct an analysis of the annual percentage rate (APR) that a bank charges on its consumer loans and compare the bank's APR to the average APR for the relevant market. Another commenter recommended that the agencies harmonize their CRA regulations as much as possible with the Interagency Lending Principles for Offering Responsible Small-Dollar Loans to further signal regulatory stability and encourage banks to offer more small-dollar loan products, which the commenter characterized as a net

[1045] *See* current 12 CFR ____.22(b)(5)

[1046] *See* proposed § ____.23(c)(1).

[1047] *See* proposed §§ ____.23(c)(1) and ____.43(a)(5).

[1048] *See* proposed § ____.23(c)(1).

[1049] *See* proposed § ____.23(c)(1)(i).

[1050] *See* proposed § ____.23(c)(1)(ii).

[1051] *See* proposed § ____.23(c)(1)(iii).

benefit to consumers.[1052] In contrast, another commenter encouraged the agencies to consider expanded metrics under the Retail Services and Products Test for evaluating the impact of unsecured consumer debt, including loan modifications directly negotiated between the bank and the borrower (without the involvement of a for-profit debt settlement company), as well as a bank's repayment policies regarding concessions to borrowers experiencing financial hardships.

Comments regarding other categories of responsive credit products. The agencies received a number of comments and suggestions regarding additional categories and examples of responsive credit products and programs for consideration. Beyond the proposed products and programs to be considered, the categories suggested by commenters included: affordable products geared to borrowers with limited English proficiency; programs that use alternative data such as rent, utilities, and telecom payments to assist in loan decisioning for applicants who would not otherwise be eligible for mortgage loans based on traditional credit scores; and small dollar mortgages and small loan alternatives to payday lending. Commenters also suggested: credit products offering lower rates after a borrower establishes a payment history; mortgage and home improvement loans with low down payment requirements for first generation homebuyers; mortgage products that are equivalent to the loan products of the Federal Housing Administration, Veteran Affairs, Federal Home Loan Banks, and Housing Financing Agencies; auto and other consumer lending that reduce reliance on high-cost predatory debt; other lending programs and underwriting that do not discriminate against individuals with criminal records; microfinance products and small business lending products that incorporate an evaluation of loan quality and pricing; affordable small installment loan programs; responsive loan products offered by NeighborWorks affiliates; debt repayment and modification programs and policies; negative consideration for predatory activities; responsive loan products that finance equitable media; and personal loans for manufactured housing. Other commenters stated that purchased loans from institutions that do not have the ability to sell loans to the GSEs, or other access to secondary markets, should receive favorable consideration under the Retail Services and Products Test to encourage banks to set up purchasing programs for these loans. One commenter discouraged the agencies from including additional regulatory requirements that have not been specifically vetted in the proposal. Instead, this commenter encouraged the agencies to adopt a final regulation that will allow future guidance to address new approaches as they are developed.

Comments regarding whether the agencies should provide specific or general guidance regarding categories of credit products and programs considered most responsive. Commenters addressing this request for feedback expressed mixed views. Some commenters noted that it was 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. One commenter stated that guidance should be left general and institutions should be allowed to self-certify responsive products and then justify their choices.

In contrast, other commenters expressed support for specific guidance. For instance, one commenter supported specific guidance on types of credit products and programs considered especially responsive, with the stipulation that the bank may pursue other impactful or responsive activities that may not be included in the guidance. Commenters urged the agencies to incorporate into the rule: a local qualitative analysis of credit products (and usage) to assure banks meet local needs; reviews of bank lending that include an affordability analysis; penalties such as downgrades for abusive products and practices; and an evaluation of retail credit products that emphasizes the extent to which responsive products are marketed to and used by low- and moderate-income and underserved individuals and communities. Another commenter stated that banks should not be able to pass their CRA examination if they only offer expensive products that do not actually serve the needs of the community. Two commenters suggested that banks should be downgraded for harm such as discrimination, displacement, and fee gouging. A few commenters also suggested that the agencies consider the environmental and climate impact of bank credit products. Some commenters recommended that the CRA framework include scrutiny of bank financing of polluting activities and the associated disparate impact on access to credit in low- and moderate-income communities and communities of color. These comments also suggested the agencies should impose penalties for financing industries that contribute to climate change, particularly in low- and moderate-income neighborhoods, while not financing renewable or clean energy. Other commenters recommended that the agencies provide an illustrative and non-exhaustive list of what the agencies deem to be products and programs that are especially responsive and, when possible, include products that specifically will not qualify as responsive. Commenters suggested the agencies include a submission process, similar to the agencies' proposed confirmation process for community development activities, with one commenter recommending that there be a clear process for banks and strategic partners to seek pre-approval on a given program before fully implementing new ideas. Another commenter suggested that the agencies recommend specific credit products if they have research or studies that support their recommendation.

Comments regarding special purpose credit products. Commenters universally supported the final rule listing 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. Some commenters requested that the final rule specify that special purpose credit programs can include programs that focus on either people or communities of color. These commenters supported favorable consideration for special purpose credit programs in CRA examinations and asserted that the agencies should more explicitly recognize the importance of special purpose credit programs as a critical way for banks to serve minority communities. A commenter recommended that the agencies clarify that special purpose credit programs targeted to the needs of minority consumers and communities, and not solely to low- and moderate-income consumers and communities, are highly responsive programs for CRA purposes. Another commenter suggested that the agencies confer ''impact points'' across all CRA performance tests for banks with special purpose credit programs targeted to racial, ethnic, and other underserved groups. This commenter also suggested that each bank should be required to offer at least one special purpose credit program. Another commenter indicated that special purpose credit programs should be targeted to Black low- and moderate-

[1052] *See* OCC, FDIC, Board, NCUA, ''Interagency Lending Principles for Offering Responsible Small-Dollar Loans'' (May 2020), *https://www.fdic.gov/news/press-releases/2020/pr20061a.pdf.*

income consumers and communities and not to other low- and moderate-income consumers and communities that have historically benefited more from CRA. Some of these commenters noted that special purpose credit programs are an important part of the remedy for targeting formerly redlined neighborhoods and people of color. Other commenters recommended that the final rule specify that special purpose credit products can include home mortgage lending, small business lending, consumer lending, or deposit products. One commenter believed that an explicit provision in the final rule that banks will receive CRA credit for qualified special purpose credit programs at both the bank level, and when targeted geographically to specific areas, at the assessment area level, would encourage more banks to utilize special purpose credit programs as a tool to help disadvantaged individuals. Another commenter addressed the significant uncertainty that exists with special purpose credit programs, noting that the rules could change in the future, leaving them exposed to risk of fair lending violations, and asked for clearer guidance from regulators and examiners. However, two commenters noted that the inclusion of special purpose credit programs would be consistent with recent HUD guidance that the use of such programs in accordance with ECOA and 12 CFR part 202 (Regulation B) is lawful under the Fair Housing Act.

Final Rule

The agencies are adopting § ____.23(c)(1), renumbered in the final rule as § ____.23(c)(2), largely as proposed pertaining to the evaluation of a bank's credit products and programs, with clarifying edits. Moreover, and as discussed in more detail below, the agencies are also finalizing as proposed the categories of responsive credit products and programs in final § ____.23(c)(2)(i) through (iii). The agencies are also adopting new paragraphs (c)(2)(iv) and (v) to include low-cost education loans and special purpose credit programs, respectively, as separate categories of responsive credit products and programs.

In final § ____.23(c)(2), the agencies are retaining the expectation that the bank's credit products and programs are conducted in a safe and sound manner. The agencies are also adding regulatory text that provides they evaluate whether a bank's credit products and programs are responsive to the credit needs of the bank's entire community as well as the residents of low- and moderate-income census tracts. Consequently, final § ____.23(c)(2) provides that the agencies evaluate whether a bank's credit products and programs are, consistent with safe and sound operations, responsive to the credit needs of the bank's entire community, including the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, or small farms. Final § ____.23(c)(2) then provides a non-exhaustive list of credit products and programs that the agencies consider responsive.

Qualitative evaluation of responsive credit products and programs. The final rule in § ____.23(c)(2) retains a qualitative evaluation of responsive credit products and programs in the Retail Services and Products Test. As explained in the proposal, the agencies believe that using *responsiveness* as part of the evaluation standard instead of the current *innovative and flexible* standard better captures the focus on community credit needs. The agencies also believe that using the term *responsiveness* helps improve consistency of terminology throughout the final rule. The agencies further believe this approach is preferable to including it as part of the more metrics-based Retail Lending Test because it pairs a qualitative evaluation of the responsiveness of a bank's lending products and programs with other qualitative criteria under the Retail Services and Products Test. The agencies believe that the qualitative consideration of credit products and programs is consistent with the intent to emphasize the impact of the product or program in helping to meet the credit needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms.

The agencies considered the comments asserting that the agencies need to define, and include an analysis of, affordability based on interest rate caps and/or fees, or establish standards for both consumer and mortgage loans to determine the appropriate level of CRA consideration to grant a financial institution, and the comments urging the agencies to develop an ability-to-repay standard. The agencies also considered a commenter's recommendation to harmonize the CRA regulations as much as possible with the existing principles for offering responsible small-dollar loans. As an initial matter, the agencies note that the CRA statute does not give the agencies the authority to impose substantive requirements on the types of credit products and programs a bank offers as recommended by commenters. Instead, the agencies' focus under the CRA is on the bank's record of meeting community credit needs consistent with safe and sound operations, which includes sound underwriting practices for all lending. For example, in May 2020, the agencies, together with the NCUA, issued a set of principles to encourage supervised banks, savings associations, and credit unions to offer responsible small-dollar loans to customers for both consumer and small business purposes to meet customers' short-term credit needs.[1053] Banks are assessed for compliance with numerous consumer laws, including section 5 of the Federal Trade Commission Act[1054] and others. Banks that make loans in violation of laws, rules, or regulations, either directly or as a result of failing to properly manage relationships with third parties, may be subject to enforcement action. As a result of any such violations, banks may also be subject to a downgrade of their CRA rating pursuant to final § ____.28, if they engage in discriminatory or other illegal credit practices with respect to their credit products and programs.

In response to commenter suggestions to expand metrics for evaluating the impact of unsecured consumer debt under the Retail Services and Products Test, the agencies note that to the extent that certain loan products and services are responsive to the needs of low- and moderate-income individuals, households, or families, small businesses, and small farms, they may be given consideration. In addition, the agencies believe that the qualitative approach to evaluation under final § ____.23(c)(2) is a better measure of the responsiveness of credit products.

After considering the comments, the agencies determined that a separate category to evaluate barriers to homeownership was unnecessary. The final rule provides that credit products that overcome barriers to homeownership for low- and moderate-income first-time homebuyers are responsive credit products falling within the category of "credit products and programs that facilitate home mortgage lending for low- and moderate-income borrowers."

In response to the commenter that asked for additional clarity on how the agencies will evaluate banks for responsiveness under this test, the agencies intend to evaluate responsiveness consistent with current interagency guidance. More specifically, when evaluating responsiveness,

[1053] *See id.*

[1054] *See* 15 U.S.C. 45.

examiners will consider three important factors: quantity, quality, and performance context. Examiners will evaluate the volume and type of an institution's activities, for example, loans and services, as a first step in evaluating the institution's responsiveness the needs of the bank's communities, including the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms. In addition, an assessment of ''responsiveness'' will encompass the qualitative aspects of performance, including the effectiveness of the activities. For example, some activities require specialized expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. In some cases, a smaller loan may have more benefit to a community than a larger loan. In other words, when evaluated qualitatively, some activities are more responsive than others. Activities are more responsive if they are successful in meeting identified credit and community development needs. Examiners also evaluate the responsiveness of an institution's activities to credit and community development needs in light of the institution's performance context, as explained in more detail in the section-by-section analysis of § ___.21(d). That is, examiners consider the institution's capacity, its business strategy, the needs of the community, and the opportunities for lending and services in the community.

In response to the comments that suggested that the public did not have a meaningful opportunity to understand and comment on the requirement to evaluate consumer loans within this test, the agencies note that they explicitly indicated in the proposal their intent to potentially consider consumer loans as a type of credit product and provided opportunity to comment on this approach. The 90-day comment period is consistent with the requirements of the Administrative Procedures Act and, in the agencies' supervisory experience, provided sufficient time for public consideration and comment. Indeed, the agencies received many detailed and thoughtful comments on the issue of whether consumer loans should be considered as credit products.

The agencies have considered concerns described by commenters that considering the responsiveness of consumer loans under credit products and programs departs from prior agency practice that traditionally focuses on wealth-building products such as home mortgages and small business loans. The agencies conclude that they are authorized by the CRA to evaluate a bank's consumer loans in assessing a bank's record of meeting the credit needs of their entire community, including low- and moderate-income census tracts. The agencies also do not agree with the commenter's suggestion that reviewing the responsiveness of consumer loans should be limited because they have a limited usefulness for low-and moderate-income communities.

The agencies considered commenter suggestions to expand the scope of the impact and responsiveness factors to include such review in the Retail Services and Product Test. The agencies believe that the test in the final rule sufficiently considers qualitative factors, including the responsiveness and availability of products and services to low- and moderate-income individuals, families, or households; residents of low- and moderate-income census tracts; small businesses; and small farms. To the extent retail banking products and retail banking services are responsive to the needs of these groups, the agencies may provide CRA consideration.

Categories of responsive credit products and programs. With respect to the categories of responsive credit products and programs, as noted above, the agencies are adopting, with technical edits, proposed § ___.23(c)(1)(i), renumbered in the final rule as § ___.23(c)(2)(i) (credit products and programs that facilitate home mortgage and consumer lending); proposed § ___.23(c)(1)(ii), renumbered in the final rule as § ___.23(c)(2)(ii) (credit products and programs that meet the credit needs of small businesses and small farms); and proposed § ___.23(c)(1)(iii), renumbered in the final rule as § ___.23(c)(2)(iii) (credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs, or CDFIs). Specifically, final § ___.23(c)(2)(i) through (iii) removes ''in a safe and sound manner'' from each of the categories of responsive credit products and programs. The agencies determined the references were unnecessary and repetitive of the reference to ''in a safe and sound manner'' in final § ___.23(c)(2). In addition, the agencies are making a clarifying revision to § ___.23(c)(2)(ii) changing ''smallest businesses'' and smallest farms'' to those ''with gross annual revenue of $250,000 or less.''

The agencies believe that inclusion of these categories of credit products and programs is important because they outline broader categories of non-exhaustive examples of credit products and programs that are responsive to community credit needs. The final rule recognizes the unique needs of low- and moderate-income borrowers, small businesses, and small farms, and attempts to encourage the provision of credit to these groups. Under the final rule, the agencies are retaining § ___.23(c)(2)(i), credit products and programs that ''facilitate mortgage and consumer lending targeted to low- or moderate-income borrowers,'' as one category of responsive credit products and programs. Small-dollar mortgages and consumer lending programs that utilize alternative credit histories in a manner that would benefit low- or moderate-income individuals could be examples of a responsive credit product or program in this category. The agencies are revising final § ___.23(c)(2)(ii), to encompass credit products and programs that ''meet the needs of small businesses and small farms, including small businesses and small farms with gross annual revenues of $250,000 or less,'' as another category of responsive credit products or programs. Examples in this category include microloans (such as loans of $50,000 or less) and patient capital to entrepreneurs through longer-term loans. Finally, the agencies are also retaining § ___.23(c)(2)(iii), credit products and programs that are conducted in cooperation with MDIs, WDIs, LICUs, or CDFIs, as a category of responsive credit products and programs. Examples include home mortgage loans and small business loans that banks purchase from MDIs, WDIs, LICUs, and CDFIs. The agencies acknowledge the importance of supporting institutions such as CDFIs, MDIs, CDFIs, and LICUs in their efforts to provide access to credit and other financial services in traditionally underserved communities. Bank purchases of MDI, WDI, LICU, and CDFI loans can provide necessary liquidity to these lenders and extend their capability to originate loans to low- and moderate-income individuals, families, or households, in low- and moderate-income census tracts, and to small businesses and small farms.

The agencies have considered the recommendations made by commenters regarding other categories of responsive credit products and programs. As discussed above, the agencies are finalizing § ___.23(c)(2) without a more detailed list of categories of responsive credit products or programs. The agencies agree with commenters who do not believe that a more detailed list of products and programs is warranted in the regulation. The agencies believe that the approach taken is appropriate because the proposed list is broad and recognizes that bank credit products and programs may vary to meet the needs of different communities and may be dependent on a bank's business model and focus. Moreover, given that the list of categories of responsive credit products and programs is not exhaustive, the list permits examiners to consider additional products and programs and allows sufficient flexibility for the agencies to consider new approaches as they are developed.

The agencies appreciate other recommendations, such as programs to provide affordable credit products to individuals with limited English proficiency, and note that some suggestions may also qualify as a responsive credit product or program. For instance, in the proposal, the agencies listed examples of credit products that can be challenging for consumers to obtain because they generate less revenue for a bank than larger loans, because borrowers do not have sufficient down payments, or because consumers have limited conventional credit histories.[1055] Some of the suggested products also contain these characteristics. Other suggestions, such as responsive loan products that finance equitable media, fall outside of the scope of this regulation.

The agencies note that commenter suggestion to consider purchased loans under the Retail Services and Products Test is unnecessary given that these loans are already considered under the Retail Lending Test (which addresses liquidity support for institutions raised by this comment). However, purchased loans could potentially be considered under this component of the Retail Services and Products Test if a bank purchased a responsive credit product identified in § ____.23(c)(2); for example, a loan that was purchased from an MDI or CDFI would be considered.

The agencies are sensitive to concerns from some commenters who believe that a detailed list or specific guidance is needed to provide banks with certainty, which is often needed before implementing new ideas. However, as explained in the proposal, the agencies believe that a specific list of retail lending products and programs within the regulation could have the unintended consequence of constraining bank efforts to meet the credit needs of its communities and pursuing more impactful activities that may deviate from the specific examples. Nevertheless, the agencies acknowledge that a more detailed list of examples of responsive credit products and programs could be provided outside of the regulation and will continue exploring the feasibility of whether such a list would be helpful to provide banks and partners with additional certainty regarding qualifying activities under the Retail Services and Products Test. Similarly, in reference to suggestions from commenters that the agencies develop and provide a non-exhaustive illustrative list of qualifying activities, the agencies have committed to assessing whether to provide additional guidance regarding qualifying responsive credit products outside of the regulation.

Regarding recommendations from commenters on evaluating credit products that impact the environment or lead to displacement, the agencies have developed a criterion under final § ____.13(i) that will qualify loans and investments that help improve the disaster preparedness and weather resiliency of such communities. The agencies did not find it appropriate to restrict the types of consumer products and programs because the agencies did not find persuasive evidence that consumer products and programs had environmental or displacement impacts.

Low-Cost Education Loans. To clarify that low-cost education loans, as defined in final § ____.12, are an example of responsive credit products and programs under the Retail Services and Products Test, the agencies are adopting new final § ____.23(c)(2)(iv) as a fourth category of responsive credit products and programs. Although the agencies proposed ''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),'' the agencies believe it is appropriate to separately enumerate low-cost education loans given the explicit CRA statutory requirement that the agencies consider low-cost education loans provided by banks to low-income borrowers as a factor when evaluating the bank's record of meeting community credit needs.[1056]

Special Purpose Credit Products. In response to comments received, the agencies are also adopting new final § ____.23(c)(2)(v), which adds special purpose credit programs under 12 CFR 1002.8 as a fifth category of responsive credit programs, regardless of whether the special purpose credit programs includes income limitations. In response to comments and the agencies' internal considerations, the agencies decided to add this category rather than to include special purpose credit program as an example of a program that facilitates mortgage and consumer lending targeted to low- or moderate-income borrowers. This decision is based on the fact that not all special purpose credit programs have income limitations, and some do not necessarily target low- and moderate-income borrowers, which means that these programs may be ineligible under final § ____.23(c)(2)(i). Moreover, as banks consider how they may expand access to credit to better address specific social needs, the agencies believe including special purpose credit programs as a category of responsive credit products and programs eligible for CRA consideration will encourage creditors to explore opportunities to develop these programs consistent with applicable law, including, but not limited to, ECOA and Regulation B, as well as applicable safe and sound lending principles. The inclusion of special purpose credit programs is particularly important given that in February 2022, several Federal agencies issued an interagency statement to remind creditors of the ability under ECOA and Regulation B to establish special purpose credit programs to meet the credit needs of specified classes of persons.[1057] Importantly, the agencies do not determine whether a program qualifies for special purpose credit program status, banks with questions about any aspect of ECOA and Regulation B's special purpose credit program provisions may consult their appropriate regulatory agencies.

Section ____.23(c)(3) Deposit Products

Current Approach

As discussed above, a bank's retail deposit products and services are evaluated under the current service test for large banks, primarily as part of the range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.[1058]

The Agencies' Proposal

In proposed § ____.23(c)(2) the agencies proposed modernizing the

[1055] *See* 87 FR 33884, 33966 (June 2022).

[1056] *See* 12 U.S.C. 2903(d).

[1057] *See* Board, FDIC, NCUA, OCC, CFPB, HUD, U.S. Dept. of Justice, Federal Housing Finance Agency, ''Interagency Statement on Special Purpose Credit Programs Under the Equal Credit Opportunity Act and Regulation B'' (Feb. 22, 2022), *https://www.fdic.gov/news/financial-institution-letters/2022/fil22008a.pdf.*

[1058] *See* current 12 CFR ____.24(d)(4); *see also* Q&A § ____.24(d)(4)–1.

existing evaluation of a bank's deposit products and services by adding a more explicit focus on the financial inclusion of deposit products and by adding specific measures for evaluation, such as availability and usage.[1059] Specifically, for large banks with 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 agencies proposed to evaluate the availability and usage of a bank's deposit products that are responsive to the needs of low- and moderate-income individuals.[1060] This evaluation would be optional for large banks with assets of $10 billion or less, though the agencies requested feedback on whether the evaluation should be required for these banks.[1061]

Comments Received

The agencies received a number of comments addressing the proposed evaluation of deposit products responsive to the needs of low- and moderate-income individuals. The commenters were generally supportive of the proposal, although some provided recommendations for improvement. For instance, one commenter urged the agencies to also evaluate the responsiveness of deposit products for small businesses and claimed that their exclusion from the test would disadvantage banks with a small business lending model. A few commenters suggested that the agencies consider the quality of the products offered as measured, for example, by the deposit account revenue derived from overdraft or insufficient fund fees. One commenter urged the agencies to require the collection of the income of the consumers receiving responsive deposit accounts; however, two commenters opposed such a requirement stating that large banks do not collect income information related to the opening of accounts, and even if they did, the data collected would have to be updated regularly. Another commenter recommended that the agencies mirror the 1995 CRA rules' performance standards by evaluating the responsiveness of deposit products using qualitative factors, while allowing banks to support their evaluation of performance. Another commenter recommended expanding consideration of deposit products to the needs of military personnel, veterans, and their families.

In contrast, a few commenters opposed the inclusion of a bank's deposit products in the evaluation of the test altogether. These commenters asserted that: there is no statutory basis in the CRA for evaluating the features of bank deposit products; there is no statutory basis for regulating these products under the CRA; the CRA is not the appropriate vehicle through which to regulate a bank's product offerings and associated fees; and the proposed approach contains no apparent limiting principle and leaves unanswered key questions regarding the scope of agency authority to evaluate deposit products. One of these commenters suggested the evaluation of deposit products should serve only as performance context, but not as a mandatory element or minimum requirement.

In response to the agencies' request for feedback on whether, in addition to deposit accounts, there are other products or services that encourage retail banking activities that may increase credit access, the agencies received several comments which provided suggestions on other retail services or products that may increase access to credit in addition to deposit accounts. The most common recommendation across the variety of commenters was financial counseling. Other commenters suggested products or services such as: credit-building loans; small dollar loans for homeowners and small businesses; GSE pilot programs; community land trusts; direct deposit advances; secured credit cards; and refund transfers.

The agencies received several comments in response to the request for feedback on whether large banks with assets of $10 billion or less should be subject to a responsive deposit products evaluation with mixed views. Two commenters argued that this component should be required for large banks with assets of $10 billion or less as it is for large banks with assets of over $10 billion, with one suggesting that intermediate banks should be provided with a formal option for electing to be considered under the proposed Retail Services and Products Test. A few commenters went further and suggested that this component should be required for banks of all asset sizes, as they all should be responsive to the deposit needs of people in the bank's delineated assessment areas in order to ensure that low- and moderate-income families have easy access to banking products. In contrast, other commenters favored the proposal's optionality for large banks with assets of $10 billion or less stating it is an important factor that should be maintained. One commenter noted that while larger banks can have a disproportionate impact because of their ability to scale products more effectively, requiring this additional evaluation could hinder scaling innovative products. Another commenter suggested that banks with assets $10 billion or less have the option of a qualitative review with the focus on product design and demonstration of products being openly available.

Final Rule

As explained below, the agencies are finalizing § ____.23(c)(2), renumbered in the final rule as § ____.23(c)(3), largely as proposed to provide for the evaluation of the availability of deposit products responsive to low- and moderate-income individuals, families, or households, renumbered in the final rule as § ____.23(c)(3)(i), and the usage of deposit products, renumbered in the final rule as § ____.23(c)(3)(ii). The agencies also made clarifying changes, including but not limited to a change to the heading.

The agencies conclude that they have statutory authority to evaluate responsive large bank deposit products under the final rule. While the operational provisions of the CRA instructs the agencies to evaluate a bank's record of meeting the credit needs of its communities,[1062] the agencies have found that there is a sufficient nexus between deposit products and the provision of credit such that, to comprehensively assess large bank performance for banks with more than $10 billion in assets, it is appropriate to evaluate deposit accounts responsive to the needs of low- and moderate-income individuals, families, or households. For the reasons described below, the availability of bank deposit products that meet the needs of low- and moderate-income individuals, families, or households frequently assume a foundational role in the ability for individuals to access credit responsive to their particular needs.

First, the agencies believe that deposit products are important for supporting the credit needs of low- and moderate-income individuals, families, or households because they increase credit access by helping individuals improve their financial stability and build wealth through deposit accounts.[1063] A greater

[1059] *See* proposed § ____.23(c)(2).

[1060] *See* proposed § ____.23(c) introductory text (application to large banks with assets of over $10 billion) and (c)(2)(i) (availability) and (ii) (usage).

[1061] *See* proposed § ____.23(c).

[1062] *See* 12 U.S.C. 2903(a)(1) and 2906(a)(1).

[1063] *See, e.g.,* Ryan M. Goodstein, Alicia Lloro, Sherrie L. Rhine, & Jeffrey M. Weinstein, ''What accounts for racial and ethnic differences in credit use?'', 55 J. of Consumer Affairs 389–416 (2021); FDIC, ''2017 FDIC National Survey of Unbanked

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focus on responsive deposit products could strengthen a bank's ability to serve the credit needs of its communities.

Second, deposit products can help consumers qualify for loans by facilitating consumers' savings so that they can post collateral and to pay transactions costs. Consumers frequently rely on deposit accounts to save for and then fund the down payment for a house, the money down on a car, or the initial capital for a small business. Deposit products may also assist consumers in improving their credit scores. Features like scheduled recurring or automatic bill payments, check writing privileges, and quick availability of funds make it much easier for consumers to make payments on time and build their credit scores. Data from consumers' use of deposit accounts are also sometimes included in credit evaluations as ''alternative data.'' While the use of these data is not currently widespread, the agencies have encouraged the responsible use of alternative data and noted that it could expand the availability of credit.

Finally, deposit products are a pathway for a bank customer to establish an ongoing relationship with a bank. Customers who hold deposit products have contact with a bank—either physically or electronically—every time they perform a transaction. Banks can use various touch points to market credit products, explain how credit products can help consumers meet financial needs, and provide services to improve consumers' financial literacy. The bank also obtains valuable information from interactions with their customers. Some banks rely on ''relationship lending,'' or using this ''soft'' data based on an ongoing relationship with a customer to make underwriting decisions.[1064]

Data and empirical studies support the idea that deposit accounts facilitate lending and improved financial outcomes. A 2019 study provides some causal evidence that increases in consumers' access to deposit accounts led to increased savings, increased net worth, and increased holdings of various types of credit.[1065] The effects could be more important for low-income consumers, since the increases in bank access they study were larger in places where incomes were lower. There also is a strong correlation between deposit accounts and mainstream credit, though this correlation could be for several other reasons as well.[1066]

The agencies note that deposit products are considered under the existing CRA framework.[1067] The agencies retain discretion under the final rule to consider other factors and features in determining if a deposit product is responsive to low- and moderate-income individuals, families, or households. Examples of products that meet the responsiveness standard include accounts certified by the Cities for Financial Empowerment as meeting the Bank On National Account standard, which precludes overdraft and insufficient funds fees, and ''second-chance accounts.'' Savings accounts targeted toward low- or moderate-income individuals, families, or households such as Family Self-Sufficiency Accounts are another example of a product that would be considered responsive. These are not exclusive examples, and the agencies will be able to consider other factors. The agencies decided not to require the collection of income for consumers opening accounts to help determine responsiveness because the burden could present a barrier to bank participation in offering such products.

In response to the recommendation that the agencies mirror the 1995 CRA rules' performance standards, the agencies believe that the approach taken in the final rule modernizes 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.

The agencies are sensitive to concerns raised by some commenters that the final rule should not operate in a way that regulates or otherwise requires banks to provide certain deposit products. The agencies note that evaluation of deposit product in final § ____.23(c)(3) does not regulate or set the prices of a bank's product offerings and associated fees. Furthermore, as described below in § ____.23(d)(1), the evaluation of a banks deposit products only contributes positively to a bank's Retail Services and Products Test conclusion.

The agencies have considered the comments, and after further analysis, the agencies have decided against requiring a responsive deposit product assessment for banks with assets of $10 billion or less, but instead retain it as an option for such banks. The agencies are sensitive to concerns that institutions with assets of $10 billion or less may not have sufficient resources for the data collection contemplated by this assessment. Additionally, the required data collection for this evaluation could be burdensome.

The agencies decline commenter suggestions to make the consideration of deposit accounts a type of performance context or otherwise make it a type of evaluation in the Retail Services or Products Test an optional requirement for all large banks. As discussed above, because the agencies believe that deposit accounts responsive to the needs of low- and moderate-income individuals play a vital role in the access to credit products, it is appropriate to require the consideration for banks with assets greater than $10 billion and provide banks with assets of $10 billion or less an option to have their responsive deposit accounts considered.

The agencies considered the comments on whether, in addition to deposit accounts, there are other products or services that encourage retail banking activities that may increase credit access. While the agencies believe that most suggestions provided by commenters in response to the question may actually increase access to credit, these recommendations are generally captured in other parts of the rule. For example, a bank may receive consideration for financial counseling as a type of community development service under final §§ ____.13(1) and ____.25.

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and Underbanked Households'' (October 2018), *https://www.fdic.gov/analysis/household-survey/2017/index.html*; Michael Barr, Jane K. Dokko, & Benjamin J. Keys, ''And Banking for All?'' Board Finance and Economics Discussion Series Working Paper No. 2009–34 (Aug, 2009), *https://www.federalreserve.gov/pubs/feds/2009/200934/200934pap.pdf.*

[1064] Elyas Elyasiani & Lawrence G. Goldberg, *Relationship lending: a survey of the literature,* 56 J. Econ. & Bus. 315–330 (2004).

[1065] Claire Celerier & Adrien Matray, *Bank-Branch Supply Financial Inclusion and Wealth Accumulation,* 32 Rev. of Fin. Stud. 4767–4809 (Dec. 2019); A related study uses a different design to provide evidence that exposure to banking as a child leads to higher credit scores and lower delinquency rates as an adult: James R. Brown, J. Anthony Cookson & Rawley Z. Heimer, *Growing up without finance,* 134 J. Fin. Econ. 591–616 (Dec. 2019).

[1066] One reason why there could be a correlation without causation is omitted variable bias. Consumers who have bank accounts could also be more likely to have credit because of some other characteristic that would lead to both. For example, consumers with higher incomes are more likely to own bank accounts and higher incomes also make it easier for consumers to borrow. For the statistic, see FDIC, Table 10.1, ''Use of Credit by Bank Account Ownership, 2017–2021,'' of the ''2021 FDIC National Survey of Unbanked and Underbanked Households'' (Oct. 2022), *https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[1067] *See e.g.,* current 12 CFR ____.24(d)(4); *see also* Q&A § ____.24(a)–1 and Q&A § ____.24(d)(4)–1.

Section ____.23(c)(3)(i) Availability of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals, Families, or Households

The Agencies' Proposal

The agencies proposed to evaluate in § ____.23(c)(2)(i) whether a bank offers deposit products that have features and cost characteristics that, consistent with safe and sound operations, include, but are not limited to: (1) low-cost features;[1068] (2) features facilitating broad functionality and accessibility;[1069] and (3) features facilitating inclusivity of access.[1070] The agencies proposed 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.

The agencies requested comment on whether the features of cost, functionality, and inclusion of access are appropriate for establishing whether a deposit product is responsive to the needs of low- and moderate-income individuals or whether other features or characteristic should be considered. The agencies also requested comment on whether a minimum number of features should be met in order to be considered ''responsive.''

Comments Received

The agencies received several comments in response to their request for feedback on whether there are other features or characteristics that the agencies should consider. These commenters were generally supportive of the proposed features to determine if a deposit product is responsive. Most commenters generally agreed that considering the features of cost, functionality, and accessibility to determine if a deposit product is responsive to the needs of low- and moderate-income individuals is appropriate. Some commenters made additional recommendations. For example, one commenter agreed with the list of features, but urged the agencies to clarify that a responsive product needs to be both low-cost and accessible. Another commenter supported the approach but recommended that the agencies include a fourth feature—wealth enabling opportunities, such as financial wellness coaching, wealth building advice, credit repair, money management assistance, and bank career training opportunities. A few commenters suggested that banks should be evaluated not only for offering, for example, Bank On accounts, which preclude the assessment of overdraft and insufficient funds fees, but for actually connecting consumers with such accounts. Other commenters recommended expanding the features to consider whether the deposit product: is inclusive of immigrant communities or is part of the Veterans Benefits Banking Program; provides noncustodial accounts for foster youth; ensures that people with disabilities and older adults have equal access to the products; if the deposit product is a checking account, is free, with no overdraft fees, and with features such as bill pay and debit cards; or is a second chance account that requires no ChexSystems approval and has no, or low, fees.

A few commenters expressed concern about the proposed cost features. Some of these commenters urged the agencies to ensure that the evaluation of a bank's deposit products would not depend on a comparison to peer banks, while a few other commenters warned the agencies against regulating costs and fees, asserting that the statute does not authorize the agencies to do so. Two commenters encouraged the agencies to omit the evaluation of deposit products or at least clarify that the enumerated factors will be reviewed holistically and will not serve as a checklist. Similarly, another commenter noted that the analysis of low-cost features could force banks to offer certain products at particular prices and fees and urged the agencies to implement safeguards to prevent the evaluation from causing such a result.

Only a few commenters addressed whether a certain number of features should be met. These commenters stated that setting a minimum threshold for consideration of responsiveness was not necessary, with one of these commenters explaining that product design offsets may be required to ensure a product is viable in a marketplace and that, in the course of an examination, a bank should be able to explain how the product is responsive to the needs of its particular community. However, one of the commenters urged the agencies to also compare a bank's products to their peers' offerings. A few commenters expressed concern that the proposed list of relevant features implies that any one feature would make a product responsive, and therefore requested that the agencies clarify that in order to be responsive to the needs of underserved consumers, deposit products must be both low-cost and accessible, and that low-cost refers both to front-end fees and back-end fees.

Final Rule

The agencies are finalizing § ____.23(c)(2)(i), renumbered in the final rule as § ____.23(c)(3)(i), as proposed, to evaluate whether a bank offers deposit products that have features and characteristics responsive to the needs of low- and moderated-income individuals, families, or households, including low-cost features, features facilitating broad functionality and accessibility, and features facilitating inclusivity of access.

The agencies believe the proposed features are appropriate and sufficient. For instance, consideration of deposit products with low-cost features is consistent with current guidance, and cost issues remain a prevalent reason cited by unbanked individuals as to why they do not have a bank account.[1071] As such, the agencies believe that low-cost should remain a feature of responsive deposit product despite concerns expressed by some commenters.

Similarly, the agencies are retaining in the final rule features facilitating broad functionality and accessibility and facilitating inclusivity of access, which are also consistent with current guidance.[1072] The agencies believe that 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 predatory sources, and that research indicates that prior bank account problems remain barriers for consumers who are unbanked.[1073]

While some of the recommended additional features suggested by commenters may be helpful in establishing responsiveness, the agencies believe that the features in the final rule are sufficient without adding burden. The proposed standards for responsiveness, in addition to being consistent with current guidance, also align with the national account standards issued by the Cities for

[1068] *See* proposed § ____.23(c)(2)(i)(A).

[1069] *See* proposed § ____.23(c)(2)(i)(B).

[1070] *See* proposed § ____.23(c)(2)(i)(C).

[1071] *See* FDIC, ''2021 FDIC National Survey of Unbanked and Underbanked Households'' (Oct. 2022), *https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[1072] *See* Q&A § ____.24(a)–1; Q&A § ____.24(d)(4)–1.

[1073] *See* FDIC, ''How America Banks: Household Use of Banking and Financial Services,'' 2019 FDIC Survey (Oct. 2020), *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), *https://www.dallasfed.org/~/media/documents/cd/pubs/digitaldivide.pdf.*

Financial Empowerment Fund's Bank On program, which are regarded with favorable CRA consideration today.[1074] The Bank On national account standards were informed by the FDIC's Model Safe Accounts Template, a set of guidelines for offering cost-effective transactional and savings accounts that are safe and affordable, and meet the needs of underserved consumers.[1075]

The agencies note that, in response to the commenter that recommended adding wealth-enabling opportunities as a fourth feature, this section focuses on deposit products that are responsive to low- and moderate-income individuals, families, or households. The agencies believe that the features listed in the regulation, which are not exclusive, do create opportunities to build wealth. In addition, a number of the commenter suggested additions would be considered under the Community Development Services Test. Lastly, the list in the regulation is broad and not exhaustive; therefore, it allows examiners the flexibility to consider some of the additional features recommended by commenters that are not explicitly listed.

With respect to commenter suggestions that the agencies set a minimum number of features for consideration of responsiveness, the agencies do not believe it is necessary. In reaching this decision, the agencies balanced concerns about being overly prescriptive in establishing standards, while recognizing that categories, including cost and broad functionality and accessibility, are important considerations in determining responsiveness. However, the agencies are noting that in order to be responsive to the needs of underserved consumers, deposit products should have both low-cost and accessible characteristics, and that low-cost features should refer both to front-end fees and back-end fees.

Section ____.23(c)(3)(ii) Usage of Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals, Families, or Households

The Agencies' Proposal

The agencies also proposed in § ____.23(c)(2)(ii), to evaluate usage of responsive deposit products in § ____.23(c)(2)(ii)(A) through (C), by considering, for example: (1) 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;[1076] (2) the percentage of total responsive deposit accounts compared to total deposit accounts for each year of the evaluation period;[1077] and (3) 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.[1078] The agencies also proposed considering outreach activity undertaken to promote awareness and use of responsive deposit accounts by low- and moderate-income individuals. In particular, the agencies proposed giving qualitative consideration to marketing, partnerships, and other activities to attract low- and moderate-income individuals.

The agencies requested feedback regarding whether the proposed usage factors are appropriate for an evaluation of responsive deposit products and whether the agencies should consider the total number of active deposit products relative to all active consumer deposit accounts offered by the bank, which was proposed in § ____.23(c)(2)(ii)(B) as an example of a usage feature. The agencies also requested feedback on whether the agencies should take other information into consideration when evaluating the responsiveness of a bank's deposit products under proposed § ____.23(c)(2)(ii), such as the location where the responsive deposit products are made available.

Comments Received

Comments related to the appropriateness of usage factors. The agencies received several comments expressing differing opinions in response to whether the proposed usage factors are appropriate for an evaluation of responsive deposit products and whether the agencies should consider the total number of active deposit products relative to all active consumer deposit accounts offered by the bank. Commenters were overwhelmingly in support of the general usage factors even though many also suggested additions to, and clarifications of, the factors. Another commenter urged the agencies to create a market benchmark to compare a bank's percentage of accounts in low- and moderate-income census tracts to peer data and also suggested that openings and closings are a useful indicator that should be paired with evaluation of transaction activity, marketing, and partnerships. Another commenter suggested the agencies should add analysis of higher-cost products and fees, including overdraft, ATM, and maintenance fees by geography.

By contrast, some commenters believed the proposed usage factors were not appropriate and requested that the agencies measure deposit products qualitatively and only require an optional, if any, evaluation of the usage factors. One of these commenters asserted that quantitative factors such as usage are not appropriate for a qualitative assessment of deposit products nor are they an accurate measure to assess the responsiveness of deposit products. Other commenters urged the agencies to provide optional evaluation of usage rates and account openings by people in low- and moderate-income census tracts as a means for banks to show that they are reaching low- and moderate-income individuals given that these rates are an imperfect proxy for actual rates of usage by low- and moderate-income individuals. A few of these commenters also noted that it may be extremely burdensome to try to accurately evaluate or monitor these factors quantitatively. For instance, two commenters suggested that usage of deposit products in low- and moderate-income areas cannot accurately reflect the overall ''responsiveness'' and ''availability'' of a bank's deposit products to low- and moderate-income individuals, with one of these commenters stating that there is no data that suggests low- and moderate-income individuals live only, or primarily, in low- and moderate-income census tracts, and the other commenter noting there is data that suggests there are significantly more low- and moderate-income individuals living in middle- and upper-income tracts combined, than low- and moderate-income people living in low- and moderate-income tracts combined.

Comments related to the consideration of total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank. There was similar disagreement with respect to whether the agencies should consider the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank as proposed in § ____.23(c)(2)(ii)(B). A few commenters opposed this approach for several reasons, including that the approach lacks accuracy, since low- and

[1074] *See* Q&A § ____.24(a)–1; Cities for Financial Empowerment Fund, ''Bank On National Account Standards (2023–2024),'' *https://bankon.wpenginepowered.com/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf.*

[1075] *See* FDIC, ''FDIC Model Safe Accounts Pilot'' (Apr. 5, 2012), *https://www.fdic.gov/consumers/template/*; FDIC, ''FDIC Model Safe Accounts Template'' (Apr. 2012), *https://www.fdic.gov/consumers/template/template.pdf.*

[1076] *See* proposed § ____.23(c)(2)(ii)(A).

[1077] *See* proposed § ____.23(c)(2)(ii)(B).

[1078] *See* proposed § ____.23(c)(2)(ii)(C).

moderate-income individuals do not necessarily have the resources to open multiple accounts compared to middle- and upper-income individuals, which: skews comparison; would be too complex and challenging for most non-CDFI institutions; is not probative of whether a bank is adequately serving low- and moderate-income individuals because there may be valid reasons for closing accounts; and is more qualitative than it is quantitative. Another commenter expressed concern about whether the total number of active responsive deposit products relative to all active consumer deposit accounts offered by the bank would be an indicator of responsiveness because, if a bank offers an account opening reward, there could be a surge in account openings and a drop after the reward is no longer offered. Instead, this commenter recommended that the agencies consider deposit account closures in the same manner as deposit account openings are evaluated in terms of responsiveness. Conversely, two other commenters generally supported the proposal and agreed that the ratio of active responsive deposit products relative to all active deposit accounts would be an appropriate metric for evaluation, with one of these commenters also noting that this metric must also be compared to the performance of peers. Another group supported considering the number of responsive accounts opened and closed during each year of the evaluation period in low-, moderate-, middle- and upper-income census tracts.

Comments related to the review of marketing, partnerships, and other activities to promote awareness and use of responsive deposit accounts. Various commenters supported the review of marketing materials. One commenter agreed with assessing whether products are marketed to and used by low- and moderate-income individuals and communities. Another commenter recommended that examiners engage community stakeholders in this assessment to better assess the extent and rigor of the bank's activities.

Comments related to whether other information, such as location, should be taken into consideration in the evaluation of responsive deposit accounts. A variety of commenters discussed whether other information, such as location, should be taken into consideration when evaluating the responsiveness of a bank's deposit products under proposed § ____.23(c)(2)(ii). A few commenters were supportive of including a review of the location where the responsive deposit product is made available. For instance, a commenter noted that location of a product's availability is reflective of its responsiveness, but cautioned that a product offered in-branch in a low-income census tract is unlikely to be responsive if the product is not marketed or staff are not trained in its design and purpose. Another commenter encouraged the agencies to also consider how a customer's inability to access a location, and perceived safety near a location, influences how and when they make deposits. Another commenter recommended that the agencies assess whether responsive deposit products are offered in branches and at remote service facilities in low- and moderate-income census tracts. Two other commenters suggested the agencies look to the Federal Reserve Bank of St. Louis' Bank On National Data Hub for workable metrics for account engagement and whether a deposit product is responsive to the needs of low- and moderate-income communities.

However, a commenter cautioned the agencies against using geography as a primary factor in determining whether a bank's deposit products and delivery channels are serving low- and moderate-income individuals, because some low- and moderate-income individuals reside outside low- and moderate-income areas and there is a lower concentration of low- and moderate-income individuals in census tracts outside metropolitan areas. Instead, this commenter urged the agencies to focus the evaluation on qualitative factors, such as a bank's strategies and initiatives for reaching low- and moderate-income individuals as well as an assessment of whether the bank's deposit offerings are responsive to their needs, and consider performance context when evaluating products and services. A commenter expressed the view that the agencies should always consider additional information, but cautioned against stipulating a requirement because it could have the unintended consequence of limiting innovation. This commenter further noted that full impact of a responsive product should be subject to examiner judgement based on location and other limiting factors in order to encourage credit for particularly impactful products without adding to reporting burden. Other commenters provided recommendations on useful information to review including affordability of deposit accounts for low- and moderate-income communities by comparing and refining, if necessary, fee information collected in Call Report data.

Final Rule

The agencies are finalizing proposed § ____.23(c)(2)(ii), renumbered in the final rule as § ____.23(c)(3)(ii), by retaining the usage factors in renumbered § ____.23(c)(3)(ii)(A) through (C). The usage factors include the consideration of the percentage of *responsive* deposit accounts compared to total deposit accounts for each year in final § ____.23(c)(3)(ii)(B). The agencies are adopting new § ____.23(c)(3)(ii)(D) in the final rule. This provision is intended to offer banks the flexibility to provide any other information not captured by paragraphs (c)(3)(ii)(A) through (C) of final § ____.23 that demonstrates usage of deposit products responsive to the needs of low- and moderate-income individuals, families, or households. The agencies are also making clarifying edits.

Regarding the usage factors and in response to commenters' concerns about burden, the agencies will require examiners to rely on data provided by banks and will not include depositor income levels. The agencies agree with commenters who assert that the usage factors are appropriate.

For instance, the information about deposit account openings and closings could be an approximate indicator of the extent to which the needs in low- and moderate-income areas are being met. The comparison of responsive deposit accounts to total deposit accounts is intended to give a sense of the magnitude of the commitment to broadening the customer base to include low- and moderate-income individuals, families, or households. Also, bank outreach and marketing may contribute to the successful take-up of deposit products targeted to low- and moderate-income individuals, families, or households. These factors are important criteria to help facilitate evaluating whether a bank's deposit products are responsive to the needs of low- and moderate-income individuals, families, or households.

Although the agencies considered the commenters' recommendations, such as the creation of a market benchmark, comparison of performance to peers, and concerns that the usage features of account opening by people in low- and moderate-income geographies is not a perfect measure of actual usage by low- and moderate-income individuals, the agencies believe that the approach taken in the final rule balances the needs for flexibility against the increased burden that may result from enhanced data collection and monitoring of low- and moderate-income individual's, family's, or household's usage of the accounts.

The agencies also decided not to adopt commenter suggestions to only measure deposit products qualitatively. Quantitative data such as information on account openings could be used to measure the penetration or usage of the responsive product in low- and moderate-income areas. Lastly, the agencies believe that focusing on the income level of census tracts (even with its limitations), rather than depositor income, reflects stakeholder feedback that banks do not collect depositor income levels for deposit accounts.

As noted above, the agencies are also adopting new § ____.23(c)(3)(ii)(D) as a catchall provision that offers banks the flexibility to provide any additional information that ''demonstrates usage of the bank's deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.'' The agencies carefully considered the contrasting comments that responded to the agencies' request for feedback on the consideration of other information and were persuaded by commenter statements regarding the value of reviewing all information, including location, to determine whether a bank's deposit products are serving low- and moderate-income individuals, families, or households.

The agencies are sensitive to concerns regarding the use of geography as a primary factor in determining whether a bank's deposit products serve low- and moderate-income individuals, families, or households and agree that many low- and moderate-income individuals reside outside of low- and moderate-income areas and there is less concentration of low- and moderate-income individuals, families, or households by census tracts outside metropolitan areas. However, on balance, the agencies believe that using geography as a proxy is the best measure of responsiveness of a bank's products in reaching and serving low- and moderate-income individuals, families, or households given available data and the need to minimize burden.

The agencies recognize that some of the additional recommended information suggested by commenters could be helpful in determining responsiveness, and believe that the approach taken in the final regulation provides flexibility for agency consideration without adding burden. The agencies will continue the practice of reviewing public file information for the locations of available services and products. The information needed to make a determination is in the public file, and examiners can use bank management interviews to confirm findings and inquire as to any discrepancy in offerings or terms, without adding burden. Additionally, the review of responsive deposit products will consider performance context.

Section ____.23(d) Retail Services and Products Test Performance Conclusions and Ratings

Section ____.23(d)(1) Conclusions

Current Approach

Currently, § ____.24(d) of the CRA regulation requires the agencies to evaluate the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.[1079] The conclusions assigned by the agencies are informed by a qualitative evaluation, are determined at the assessment area level, and are descriptive of the bank's performance relating to: (1) accessibility of delivery systems, (2) its record of opening and closing branches, (3) business hours and services, and (4) its community development services. Based on a bank's performance in these four areas, examiners reach an overall assessment area conclusion for the service test.

The Agencies' Proposal

In proposed § ____.23(d)(1), the agencies proposed to assign conclusions for a bank's Retail Services and Products Test performance in each facility-based assessment area, State, multistate MSA, and at the institution level in accordance with proposed § ____.28 and proposed appendix C of the CRA regulations. The agencies proposed, in appendix C, that a bank's conclusions for its performance in the bank's facility-based assessment areas would form the basis for conclusions at the State, multistate MSA, and institution levels. As applicable, a bank's performance conclusion at the institution level would have also been informed by the bank's performance regarding digital and other delivery systems under proposed § ____.23(b)(3) and credit products and programs and deposit products under proposed § ____.23(c).[1080]

Facility-based Assessment Area Retail Services and Products Test Conclusion. The agencies proposed, in paragraph c.1.i of proposed appendix C, to reach a single conclusion for a bank's performance under the Retail Services and Products Test in each of the bank's facility-based assessment areas based on two of the *delivery systems* components: (1) branch availability and services, and (2) remote service facility availability. The agencies would evaluate these two components qualitatively using community and market benchmarks (as described above in the section-by-section analysis of § ____.23(b)(1) and (2)) 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 service facility availability, the bank would be assigned a conclusion corresponding with the conclusion category nearest to the performance score as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).[1081]

State and Multistate MSA Retail Services and Products Test Conclusions. The agencies proposed, in paragraph c.2 of appendix C, to develop State and multistate MSA level conclusions for the Retail Services and Products Test based exclusively on the bank's performance in its facility-based assessment areas. The agencies would then calculate the simple weighted average of a bank's conclusions across its facility-based assessment areas in each relevant 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 dollars of retail loans and dollars of deposits in facility-based assessment areas in the State or multistate MSA area, as applicable, to derive a State-level score.[1082] Similar to the proposed weighting approach for assigning Retail Lending Test conclusions, pursuant to proposed § ____.42(a)(7), deposits would be based on collected and maintained deposits data for banks that collect deposits data, and on the FDIC's Summary of Deposits for banks that do not collect deposits data.[1083] The State level score would then be rounded to the nearest conclusion category point value to determine the Retail Services and Products Test conclusion for the State or multistate MSA.[1084]

Institution Retail Services and Products Test Conclusion. The agencies proposed to assign a Retail Services and

[1079] *See* current 12 CFR ____.24(d)(1) through (4).

[1080] *See* proposed appendix C, paragraph c.

[1081] *See* proposed appendix C, paragraph c.1.ii.

[1082] *See* proposed appendix C, paragraph c.2.

[1083] *See id.; see also* proposed appendix A, section VII.1.

[1084] *See* proposed appendix C, paragraph c.2.

Products Test conclusion for the institution based on the combined assessment of both parts of the test: *delivery systems* and *credit and deposit products*.[1085]

Delivery systems evaluation. The agencies proposed in paragraphs c.3.i.A.*1* and *2* of proposed appendix C that a bank's *delivery systems* evaluation would be based on the three proposed parts of the delivery systems evaluation, as applicable: (1) branch availability and services; (2) remote service facility availability; and (3) digital and other delivery systems. 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 that elect to have digital and other delivery systems considered, the agencies proposed evaluating digital and other delivery systems at the institution level. 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 evaluation would be based exclusively on the bank's branch availability and services and remote service facility availability.

The agencies proposed that examiners would derive the institution delivery systems evaluation by considering the bank's performance for 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. The agencies also indicated that examiners would take into account a bank's business model and strategies when determining the appropriate weighting.

Credit products and programs and deposit products evaluation. The agencies proposed in paragraph c.3.i.B of proposed appendix C, that a bank's credit and deposit products evaluation would be based on the performance for the applicable parts of the credit and deposit products evaluation, which are: (1) the responsiveness of credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms; and (2) deposit products responsive to the needs of low- and moderate-income individuals. The agencies proposed to apply the first part of the evaluation to all large banks at the institution level. The agencies also proposed evaluating the bank's deposit products 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. 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 products and programs and deposit products evaluation would be based exclusively on the responsiveness of a bank's credit products and programs to the needs of low- and moderate-income individuals, small businesses, and small farms.

As with the delivery systems evaluation, the agencies proposed that examiners, considering performance context, would reach a determination 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).[1086]

Retail Services and Products Test conclusion for the institution. The agencies proposed to assign a Retail Services and Products Test conclusion based on a combined assessment of the bank's delivery systems evaluation and the credit and deposit products evaluation, as applicable. The agencies proposed that examiner judgment would be relied upon to determine the appropriate weighting between these two parts of the Retail Services and Products Test for purposes of assigning the institution conclusion, 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 assign 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).

The agencies requested feedback on a series of questions regarding the proposed approach. With respect to the evaluation of delivery systems, the agencies asked whether branches and remote services facilities should be evaluated at the assessment area level and digital and other delivery systems at the institution level, as proposed. The agencies also asked whether the proposed weighting of the digital and other delivery systems component relative to the physical delivery systems according to bank business model, as demonstrated by the share of consumer accounts opened digitally, was appropriate; whether weighting should be based on performance context; or whether a different approach was appropriate. With respect to the evaluation of credit and deposit products, the agencies requested feedback on whether the two subcomponents (credit and deposit products) should receive equal weight, or should be based on examiner judgement and performance context. The agencies also asked whether each subcomponent should receive its own conclusion that would be combined with the delivery systems evaluation for an overall institution conclusion, or whether favorable performance in the credit and deposit products evaluation should be used solely to upgrade the delivery systems conclusion. The agencies further asked how test conclusions should be determined for banks with assets of $10 billion or less that opt to be evaluated on their digital delivery systems and deposit products. Finally, the agencies requested feedback on whether each part of the Retail Services and Products Test should receive equal weighting.

Comments Received

Delivery systems evaluation. There was no consensus among the commenters responding to the agencies' request for feedback regarding the appropriateness of the proposed approach to evaluate the bank's delivery systems (branches and remote service facilities) at the assessment area level, and their digital and other delivery systems at the institution level. A few commenters supported evaluating each subcomponent as proposed by the agencies. One of these commenters noted that this approach would be appropriate, particularly given that digital delivery systems are consistent across the institution and that the institution-level assessment provides the best allocation of a limited regulatory burden budget given the cost of developing, promoting, and maintaining high quality systems. Some commenters supported evaluating both subcomponents at the same level, and at both the assessment area and institution levels, with another commenter stating local responsiveness to needs is best evaluated at the assessment area level.

With respect to the agencies' proposal to weight the digital and other delivery systems component relative to the physical delivery systems and according to the bank's business model (as

[1085] *See* proposed appendix C, paragraph c.3.i.

[1086] *See* proposed appendix C, paragraph c.3.ii.

demonstrated by the share of consumer accounts opened digitally), commenters were also divided. One commenter was supportive of the agencies' approach and found the proposal appropriate, while commenters preferred that weighting be determined based on performance context, stating that it is key to understanding the position of a bank. A few other commenters asserted that the weighting should be determined based on both business model and performance context, while another commenter recommended that weighting should be appropriate to the bank's business model. Two commenters were of the view that, because low- and moderate-income customers rely more heavily on branches, the physical delivery component should weigh more (*e.g.,* a bank that gathers 50 percent or more of its deposits from branches should have a weight for their physical delivery systems and their digital delivery systems of two-thirds and one-third, respectively). One commenter recommended that the agencies offer flexible weighting based on a bank's business model for the three types of delivery systems (branches, remote service facilities, and digital and other). Several other commenters recommended that banks with few or no physical branches or remote service facilities should be evaluated on their primary delivery channels, *e.g.,* their digital delivery systems. Another commenter stated that the share of consumer accounts opened digitally should be the metric and that it is not clear why physical delivery systems are relevant and how much a bank's business model should be factored into the evaluation unless the bank offers no digital banking services.

Credit and deposit products evaluation. In response to how the agencies should weight the two subcomponents of the credit and deposit products evaluation, commenters provided a variety of recommendations. Two commenters recommended that the two subcomponents generally receive equal weighting, with one commenter recommending that if a bank is mostly a lender, credit products should be weighted more heavily, and conversely, if the bank mostly offers deposit services, deposit products should be weighted more heavily. This commenter also recommended that examiners should not determine weights since it would be too subjective, and that the agencies should develop a table of weights based on business models. Another commenter similarly recommended that examiners should not determine the weights, but recommended that credit products receive greater weight, expressing the view that providing credit has a more significant beneficial impact on the community. Two commenters expressed a different view, stating that examiner judgment and performance context should be used to determine the relative weight of the two subcomponents, with one of these commenters stating that doing so would impart flexibility with regard to a bank's business model, assessment area characteristics, and product demand. Two other commenters believed weighting should be determined based on the business model and performance context, and another commenter asserted that weighting should also depend on the importance of each product to the communities in the assessment area.

A few commenters addressed the agencies' request for feedback concerning how the credit and deposit products evaluation should be considered when developing a bank's overall Retail Services and Products Test conclusion. Most of these commenters recommended that the evaluation should have its own conclusion rather than use the evaluation to upgrade the delivery systems conclusion, with one commenter stating that the credit and deposit products evaluation should be considered a qualitative factor in the Retail Lending Test.

Weighting the components to derive the institution conclusion. A small number of commenters responded to the agencies' request for comment on whether each part of the Retail Services and Products Test should receive equal weighting to derive the institution's conclusion or vary the weight based on business model and performance context. A few commenters supported weighting each part of the test based on business model and performance context, with one of these commenters stating it would encourage responsiveness and innovation. Another one of these commenters also stated that weighting should be treated much like the current innovative and flexible lending test to supplement the rating. Another commenter supported an overall institution conclusion with the appropriate weighting of each composite evaluation and recommended that the agencies weight delivery systems conclusions less than the other systems conclusions if they are deemed less critical. Two other commenters generally supported equal weight for each part of the test, with one of these commenters also recommending consideration of business model but not relying on examiner judgment to establish the weight. Some commenters expressed concern that digital banks may not have data or products to be evaluated under this test and, given the great deal of examiner judgment provided under the proposal, that it is unknown whether examiners would disregard those tests, adding significant uncertainty for the assessed institution. Other commenter recommendations included the following: the delivery systems portion of the test should be given more weight, and if the agencies provide additional guidance on the impact and responsiveness of an activity, then each part of the test should be weighted according to the specific guidance; a clearly-defined grading system should be created that emphasizes lending, branches, fair lending performance, and responsible loan products for working class families; and banks should not be permitted to pass if they fail to serve communities with branches and affordable and accessible products, and provide banking and deposit products equitably, as can happen with strict numerical weighting systems.

Final Rule

The agencies are adopting § ____.23(d)(1) largely as proposed, assigning conclusions for a bank's Retail Services and Products Test in each facility-based assessment area, State, multistate MSA, and at the institution level in accordance with final § ____.28 and final appendix C of the CRA regulations. As explained in more detail below, the agencies are also revising proposed appendix C to provide that the agencies will consider the bank's performance regarding its retail banking products, as applicable, to determine whether the bank's performance contributes positively to the bank's overall Retail Services and Products Test conclusion. The agencies are also clarifying in appendix C that consideration of a bank's retail banking products evaluated at the institution level may include retail banking products offered in facility-based assessment areas and nationwide. As a result of the revisions made in the final rule to the proposed conclusions for retail banking products, the agencies are also revising proposed appendix C with respect to a bank's overall institution Retail Services and Products Test conclusion. Specifically, paragraph c.2.iv.B.*3* of final appendix C clarifies that ''[t]he bank's lack of responsive retail products does not adversely affect the bank's Retail Services and Products Test performance conclusion.'' Final

§ ____.23(d)(1) is also revised to add that ''[i]n assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § ____.21(d). The evaluation of a bank's retail banking products under paragraph (c) of this section may only contribute positively to the bank's Retail Services and Products Test conclusion.''

Delivery systems conclusion. Conclusions in the final rule with respect to the delivery systems, component of the test are based on the conclusions for each of the three parts of the delivery systems evaluation: branch availability and services, remote service facility availability, and digital and other delivery systems. Consistent with the proposal, the final rule evaluates branches and remote service facilities for all large banks at the facility-based assessment area level and then aggregates those conclusions to form a branch availability and services and remote service facility availability subcomponent conclusion at the institution level, as provided in paragraph c.1 of final appendix C.

The final rule evaluates digital and other delivery systems for large banks with assets of over $10 billion, large banks with assets of $10 billion or less that have no branches, and large banks with assets of $10 billion or less that elect to have digital and other delivery systems considered. The agencies will develop an institution-level conclusion for these banks' digital and other delivery systems subcomponent. The agencies believe it is appropriate to evaluate digital and other delivery systems at the institution level because the features of this subcomponent are generally not place-based and may extend beyond facility-based assessment areas. Digital and other delivery systems are also generally consistent across the institution.

In the final rule, the institution-level delivery systems conclusion for large banks with assets of $10 billion or less that have branches and do not elect to have their digital and other delivery systems considered will be based exclusively on the evaluation of such bank's branch availability and services and remote service facility availability.

The final rule also contemplates that examiner judgment will be relied upon to determine the appropriate weight that should be given to each subcomponent of delivery systems at the institution level based on the bank's business model and performance context. As noted in the proposal, this approach for developing delivery systems conclusions is intended to provide the agencies with the flexibility to take into account the unique business models and strategies of different banks. 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 considered and appreciate commenters' suggestions regarding how weighting of the subcomponents of delivery systems should be determined. The agencies note that the final rule will not require weighting as demonstrated by the share of consumer accounts opened digitally. As noted above, the final rule adds consideration of performance context, which is important to understanding the bank's business model and strategy. The agencies believe that dictating the specific measures in the regulation for how to derive conclusions for delivery systems could also be limiting. On balance, the agencies believe that the approach in the final rule will provide flexibility to banks and examiners to consider other factors, while minimizing burden.

Retail banking products conclusion. In response to comments, and to conform to changes made in the test, the agencies will evaluate the bank's performance regarding its retail banking products and determine whether the bank's performance contributes positively to the bank's Retail Services and Products Test. Under the final rule, examiner judgment and performance context will be considered in determining the responsiveness of a bank's retail banking products.

The lack of responsive retail banking products will not adversely affect the evaluation of the bank's Retail Services and Products Test performance. If the bank presents and has the data to support that its credit products and programs are responsive to the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses and small farms, and are offered and used, such data will be presented in the CRA performance evaluation. However, if a bank does not offer or originate, or does not provide for consideration, any credit products and programs responsive to the credit needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, or small farms, the CRA performance evaluation will state as such.

If the bank presents and has the data to support that its deposit products are responsive to the needs of low- and moderate-income individuals, families, or households, and are offered and used, the agencies will evaluate such data for positive consideration under this test. If the agencies provide positive consideration of deposit products, such consideration will be presented in the CRA performance evaluation. If the bank does not offer any deposit products responsive to the needs of low- or moderate-income individuals, families, or households, such information will not be reflected in the CRA performance evaluation.

The agencies believe that permitting agency discretion and performance context to be used to determine the impact of any positive consideration of retail banking products is appropriate because it would impart flexibility to consider a bank's business model and strategy. The agencies determined that evaluating the retail banking products solely for positive consideration rather than weighting was appropriate given the nature of the review. The agencies also acknowledge concerns about examiner subjectivity, but on balance, the agencies believe that the approach in the final rule will allow banks more flexibility and will take into consideration bank sizes, business models, and the retail banking product needs of the local communities served by the bank. The agencies also disagree with comments that recommended that credit or deposit products should receive greater weight in the final rule. The agencies believe that both credit products and programs and deposit products have a beneficial impact on the community and that the agencies should not be constrained in evaluating banks with varying business models.

In response to commenters that suggested including retail banking products as a qualitative factor in the Retail Lending Test, the agencies disagree and believe that the Retail Lending Test should maintain its primarily quantitative approach to evaluating retail lending. The agencies believe further that the Retail Services and Products Test is the appropriate place to evaluate these products and programs qualitatively. The quantitative approach to the Retail Lending Test is discussed more in-depth in that section of the preamble.

Retail Services and Products Test Conclusion. For the reasons stated above, the agencies are not finalizing an institution-level conclusion based on conclusions derived for delivery systems and credit and deposit products as proposed. Instead, the delivery systems evaluation will receive a conclusion, and the agencies will determine whether the retail banking products evaluation contributes positively to the bank's Retail Services and Products Test conclusion. The agencies will consider a bank's retail banking products offered in facility-based assessment areas and nationwide in determining whether the evaluation of retail banking products contributes positively to the bank's Retail Services and Products Test. The agencies believe that this consideration supports the agencies' objectives to adapt to changes in the banking industry as banks offer products and programs beyond their branch locations.

The final rule also provides for agency discretion, considering a bank's business model and other performance context factors, to determine the appropriate weight to give each subcomponent of the retail banking services evaluation and to assess the responsiveness of a bank's retail banking products. The agencies agree with commenters who supported weighting each part of the test based on business model and performance context because the flexibility could encourage responsiveness and innovation. The agencies disagree, however, with the recommendations to establish definitive weighting for each part of the test or a strict numerical grading system. While the agencies are sensitive to concerns that relying on agency discretion, bank business model, and performance context may run counter to the stated objective of more certainty, the agencies believe that this approach is appropriate because it allows for flexibility without increased burden on banks.

Section ____.23(d)(2) Ratings

Current Approach and the Agencies' Proposal

Current § ____.24(f) of the CRA regulations provides that the agencies rate each large bank's service test performance pursuant to current appendix A. Under current appendix A, each bank's performance is assigned of the following five ratings: ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' As noted above, retail services are part of the overall service test rating along with community development services. Therefore, retail services do not get their own rating in the current regulations. Instead, the ratings for retail services are determined pursuant to paragraphs (b)(3)(i) through (v) of current appendix A. The ratings are determined at the State, multistate MSA, and institution levels.

The agencies proposed to incorporate a bank's Retail Services and Products Test conclusions into its State, multistate MSA, and its institution ratings as provided in § ____.28 and appendices C and D.

Final Rule

The agencies received no comments related to the specific language in § ____.23(d)(2) about the agencies' proposal to assign ratings and are finalizing § ____.23(d)(2) as proposed, with technical edits not intended to have a change in meaning. The final rule incorporates the changes in conclusions noted above into the ratings for the Retail Services and Products Test pursuant to final § ____.28 and final appendices C and D. The agencies are clarifying that business model and performance context are considered when assigning conclusions as well as the ratings for the bank's performance under the Retail Services and Products Test. Also, included specifically for the evaluation of a bank's retail banking products, the agencies will determine whether the bank's performance contributes positively to the bank's Retail Services and Products Test conclusion and rating.

Section ____.24 Community Development Financing Test

Section ____.24 In General

Current Approach

Under current CRA regulations and interagency examination procedures, the agencies assess community development loans and community development investments (community development financing activities) differently based on the asset size and business model of a bank.[1087] For small banks, the agencies consider community development investments only at a bank's option for consideration of an ''Outstanding'' rating for the institution overall.[1088] The agencies may consider a small bank's community development loans as part of lending-related activities under the lending test applicable to small banks as discussed in the section-by-section analysis of § ____.29. For intermediate small banks and wholesale and limited purpose banks, the agencies consider community development loans, community development investments, and community development services together under the applicable community development test.[1089]

For large banks, the agencies consider community development loans together with retail loans as part of the lending test, while the agencies consider community development investments separately in the investment test.[1090] A large bank receives consideration for both the number and dollar amount of community development loans originated and community development investments made during the evaluation period, as well as the remaining book value of community development investments the bank made during prior evaluation periods that remain on the bank's balance sheet. Under the current evaluation framework, banks do not receive consideration for community development loans that remain on a bank's balance sheet from prior evaluation periods.

For banks that are not small banks, the current rule also includes consideration of qualitative factors, including the innovativeness and complexity of community development financing activities, the responsiveness of the bank to credit needs in its assessment areas, and the degree of leadership the bank exhibits through its activities. The agencies assign conclusions at the assessment area level based on both the number and dollar amount of community development financing activities, as well as the qualitative factors.

The current approach emphasizes community development financing activities that serve 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 community development financing activity that specifically serves an assessment area receives consideration, as does a community development financing activity that serves a broader statewide or regional area containing one or more of a bank's assessment areas.[1091] For a bank with a nationwide footprint, this could include community development loans and investments that are nationwide in scope.[1092] In addition, if a bank has met the community development needs of its assessment areas, it may also receive consideration for community development financing activities within a broader statewide or regional area that includes an assessment area that do not benefit its assessment area.[1093]

The Agencies' Proposal

In § ____.24 of the NPR, the agencies proposed a new Community

[1087] The current performance tests and standards are included in subpart B of the current rule.

[1088] *See* current appendix A (Ratings); Q&A § ____.26(d)–1.

[1089] *See* current 12 CFR ____.25(c) and ____.26(c).

[1090] *See* current 12 CFR ____.22 and ____.23.

[1091] *See* current 12 CFR ____.12(h)(2)(ii); *see also* Q&A § ____.12(h)—6.

[1092] Q&A § ____.23(a)–2.

[1093] Q&A § ____.12(h)–6.

Development Financing Test applicable to large banks and any intermediate bank that opted to be evaluated under this test.[1094] The proposed Community Development Financing Test consisted of community development financing metrics, applicable benchmarks, and an impact review. The agencies proposed using these components to evaluate banks' community development loans and investments in facility-based assessment areas, States and multistate MSAs where banks have facility-based assessment areas, and in the nationwide area. These metrics, as compared to benchmarks and the impact reviews, would inform conclusions at those levels.

The agencies proposed using the bank community development financing metrics to measure the dollar value of a bank's community development loans [1095] and community development investments [1096] together, relative to the bank's capacity, as reflected by the dollar value of deposits. The proposed benchmarks would reflect local context, including the amount of community development financing activities in the applicable area by other banks, as well as national context that would provide additional information for the evaluation of facility-based assessment areas. The agencies would use the benchmarks in conjunction with the metrics to assess a bank's performance. The proposed metrics and benchmarks would provide additional consistency and clarity in evaluating a bank's community development financing activities under the otherwise qualitative evaluation under the proposed Community Development Financing Test.

The impact review, in proposed § ____.15, would evaluate the impact and responsiveness of a bank's community development loans and investments through the application of a series of specific qualitative factors described in more detail in the section-by-section analysis of § ____.15. The impact review would provide appropriate recognition under the Community Development Financing Test of community development loans and investments that are considered to be particularly impactful and responsive to community needs, including loans and investments that may be relatively small in dollar amount.

[1094] The agencies also proposed evaluating wholesale and limited purpose banks under the Community Development Financing Test for Wholesale and Limited Purpose Banks, as discussed in proposed § ____.26.

[1095] *See* proposed § ____.12.

[1096] *Id.*

Comments Received

The agencies received many comments on the proposed Community Development Financing Test in § ____.24 from a variety of commenters. Although some commenters supported parts of the proposed Community Development Financing Test, other commenters objected to certain aspects of the proposed performance test, including some commenters that opined that the proposed performance test was too complicated, would weaken the CRA rule, or would water down community development investments. Some of these commenters offered alternative options for the agencies to consider. The proposed rule, comments received, and final rule are described in more detail below.

Final Rule

The agencies considered the comments on proposed § ____.24 and are finalizing the Community Development Financing Test with the substantive, conforming, clarifying, and technical revisions discussed below.[1097] As with the proposal, the final Community Development Financing Test applies to large banks, and to intermediate banks that opt into the test. Consistent with the current rule and the proposal, the Community Development Financing Test is a qualitative evaluation; however, the final rule builds on the current rule by introducing standardized metrics and benchmarks that examiners will use to inform their evaluation of bank's capacity to engage in community development financing activity. The metrics and benchmarks included in the final Community Development Financing Test increase consistency by providing examiners with standardized information to evaluate bank community development financing performance. Nonetheless, the final Community Development Financing Test is a qualitative evaluation of banks' community development loans and investments in facility-based assessment areas, States, and multistate MSAs (as applicable pursuant to § ____.28(c)),[1098] and the nationwide area because the final rule does not include thresholds for determining conclusions.[1099]

[1097] *See supra* note 145.

[1098] Final § ____.28(c) explains when the agencies evaluate and conclude on a bank's performance in a State or multistate MSA. *See* the section-by-section analysis of final § ____.28(c).

[1099] As discussed below, the agencies could consider adding thresholds to the Community Development Financing Test in the future after reviewing and analyzing data on community development loans and investments and once they have experience applying the new metrics and benchmarks.

In addition to the proposed metrics and benchmarks that the agencies are adopting in the final rule, in response to comments, the agencies included an additional investment metric and benchmark for evaluating community development investments in the nationwide area for large banks that had assets greater than $10 billion. The final rule also includes consideration of the impact and responsiveness of banks' community development loans and investments. The final rule does not prescribe weighting for community development loans or investments within the Community Development Financing Test, nor does it prescribe weighting for the metrics and benchmarks or impact and responsiveness review components.

Banks Subject to the Community Development Financing Test

Current Approach

Under the current rule, the agencies evaluate community development loans and investments for both large banks and intermediate small banks under the tests applicable to those banks. As discussed above, the agencies evaluate large banks' community development lending and investments under the lending test in current § ____.22 and the investment test in current § ____.23. The agencies evaluate intermediate small banks' community development loans, community development investments, and community development services under the community development test in current § ____.26(c).

The Agencies' Proposal

The proposed Community Development Financing Test, in § ____.24, applicable to large banks and to intermediate banks that opted into the test, combined the evaluation of community development loans and investments into a single test. As proposed, the agencies would continue to evaluate intermediate banks' community development loans, community development investments, and community development services using a community development test modeled on the community development test in current § ____.26(c). The proposal provided, however, that intermediate banks could elect evaluation under proposed § ____.24.

Comments Received

As discussed above in the section-by-section analysis of § ____.21, the agencies received comments on the applicability of the performance tests and standards to different sizes and types of banks. For example, a commenter suggested that the proposal to eliminate the community development test for certain banks would eliminate those banks' accountability for providing community development financing activities and branches in underserved communities and lacks justification. Another commenter stated that the agencies should require intermediate banks to be evaluated under the proposed Community Development Financing Test, as opposed to making it optional. The commenter suggested that subjecting both large and intermediate banks to the new test would create consistency among banks and examiners and provide others in the community development industry with a common understanding of how the agencies evaluate banks.

Final Rule

The agencies are finalizing these provisions of the rule as proposed; the final Community Development Financing Test will apply to all large banks and to intermediate banks that opt into the performance test. The agencies included clarifying edits in § ____.24 of the final rule to reference intermediate banks that opt into the test. Although the agencies understand the concerns raised by the commenters, as discussed in greater detail above in the section-by-section analysis of § ____.21, the agencies believe that the additional burden of requiring the Community Development Financing Test for intermediate banks was not justified after accounting for these banks' more limited capacity to engage in community development loans and investments. Further, for the reasons discussed above, the agencies also believe that the changes to the asset size thresholds for banks appropriately balance the burden of meeting the requirements of the Community Development Financing Test with the need to assess a bank's record of helping to meet the credit needs of its community.

Combined Consideration of Community Development Loans and Investments

Current Approach

Under the current rule, as discussed above, the agencies separately evaluate large banks' community development loans and investments. The agencies evaluate a large bank's community development loans under the lending test in current § ____.22 along with its retail lending. The agencies evaluate a large bank's community development investments under the investment test in current § ____.23. For intermediate small banks, as noted above, the agencies evaluate community development loans, community development investments, and community development services under a single community development test in current § ____.26(c) of the current rule.

The Agencies' Proposal

In § ____.24 of the NPR, the agencies proposed to evaluate community development loans and investments together under the Community Development Financing Test to allow banks to make the community development loans or investments that are best suited to their expertise and most needed for the community development projects the banks are financing. The agencies intended for the proposed approach to simplify the evaluation of community development loans and investments while addressing concerns expressed by some stakeholders that the current approach favors one form of financing over another. The agencies believed that the proposed metrics would appropriately measure both community development loans and investments. As discussed, the agencies would also consider the impact and responsiveness of community development loans and investments as part of the proposed impact review.

Comments Received

The agencies received many comments on the proposal to combine the evaluation of community development lending and investments into a single Community Development Financing Test in proposed § ____.24. The majority of commenters objected to the combined evaluation of community development loans and investments under a single test or urged the agencies to retain separate evaluations for these activities within the Community Development Financing Test.

Some commenters supported combining the evaluation of community development loans and investments into a single Community Development Financing Test. Reasons provided by these commenters for supporting a single Community Development Financing Test include that it: (1) can be challenging for smaller banks to make community development investments; (2) would eliminate the unintended consequences of a mismatch in the type of funds a project needs and the funding banks will receive credit for providing; (3) would allow banks to have the flexibility to create and implement a broader variety of business plans, while serving low- and moderate-income individuals and communities in a more efficient manner; (4) can be difficult to distinguish between whether a financing activity is equity or debt, such as with investment structures that are credit-enhanced loans; (5) would avoid privileging one type of funding over the other, allowing the needs of the project to dictate the financing vehicle; (6) would provide banks with greater flexibility in determining the most effective financing structures for developments; and (7) would allow banks to meet community development needs in local communities through lending if 12 CFR part 24 requirements restrict a bank's ability to make investments. Even amongst the commenters that supported the combined evaluation of community development loans and investments, however, certain commenters noted sensitivity to concerns about banks overlooking community development investments.

In contrast, most commenters on this issue objected to the combined evaluation of community development loans and investments and predominantly focused on the potential disruptive or negative impact that the proposed test could have on community development investment markets. Commenters expressed concern that the proposal would allow banks to meet their CRA obligations through community development lending, instead of through community development investments, the latter of which are often harder to make. For example, commenters stated that banks may engage in fewer community development investments because equity investments generally require more costly capital, have a longer term and higher origination costs, are more illiquid, and carry greater risk. Other commenters expressed concern that banks may make fewer grants and donations because these activities, even with consideration as an impactful and responsive factor pursuant to final § ____.15, are smaller dollar activities that will not factor significantly in the proposed metrics and benchmarks. One of these commenters suggested the agencies consider grants under the Community Development Services Test with a metric specific to grants and contributions to nonprofit organizations.

Commenters also noted that combining the evaluation of community development loans and investments may not result in the best financing for a particular community or project. A commenter expressed concern that the proposed Community Development Financing Test may incentivize financial institutions to select one financing option over the other, without considering which option would be more beneficial for the project. The commenter noted that capital stacks required for community development initiatives vary from one project to another, and impactful projects may be delayed if the proper capital cannot be obtained.

Many of the commenters that objected to the combined evaluation of community development loans and investments expressed concern that eliminating the current, separate tests could have a particularly negative impact on the equity tax credit markets. Certain commenters expressed concern that the proposed approach could disincentivize or result in banks making fewer LIHTC or NMTC investments because these investments are often more complex and may have lower returns than community development loans. Other commenters noted that the current investment test has served as an incentive for banks to engage in these types of loans and investments and banks make up a large portion of the LIHTC and NMTC markets. Further, a few commenters asserted that any decrease in the appetite for LIHTC will likely result in fewer affordable housing deals, as well as higher costs, which will translate into decreased affordability for projects that do get built.

Other commenters focused on the potential impact that eliminating the current investment test could have on CDFI investments, with some stating that eliminating the current investment test could cause a shift in banks' CRA activity away from making equity investments in, or providing grants to, CDFIs, which are labor and time intensive but impactful. A commenter also stated that eliminating the current investment test could discourage bank investment in community development venture capital funds and other CDFIs that provide flexible risk capital to businesses and projects in low-income communities, noting that these funds cannot be prudently capitalized with debt.

Other commenters said that focusing primarily on the dollar volume of lending and investment transactions, without also evaluating the number of transactions and originations, favors larger loans that are easier to make instead of more impactful, and generally smaller, investments and loans. Further, at least one individual and a community development organization stated that combining consideration of community development loans and investments into a single test would remove longstanding precedent where the agencies base a portion of banks' CRA performance on community development investments.

Suggestions for Addressing Concerns With Combined Evaluation of Community Development Loans and Investments. To address their concerns about combined evaluation of community development loans and investments, commenters provided several suggestions for revisions or alternatives to the proposed Community Development Financing Test. As discussed below, commenter suggestions included retaining the current performance evaluation tests, adding subtests to the proposed Community Development Financing Test, and implementing other methods of ensuring banks continue to make community development investments, such as specifying weightings and minimums. Certain commenters also focused their suggestions on particular aspects of the community development investment markets, including the tax credit markets, grants, and mortgage-backed securities.

Certain commenters suggested retaining versions of the current performance tests, which evaluate community development loans and investments separately. Specifically, a commenter supported retaining the current large bank three-test evaluation, where the agencies evaluate the relative merits of lending, investments, and services separately. A few commenters, suggested that the agencies should consider all lending under the Retail Lending Test and all investments under the Community Development Financing Test.

Other commenters suggested that the agencies incorporate separate community development lending and community development investment subtests into the Community Development Financing Test. Some of these commenters suggested that including separate subtests would encourage banks to make LIHTC investments, grants, and equity equivalent investments. These commenters also suggested weighting for the tests ranging from 15 percent to greater than 50 percent for the investment. As discussed in the section-by-section analysis of § ____.21(a), other commenters recommended a single community development test and certain of these commenters recommended weighting for the subtests as follows, community development lending (weighted 25 percent), community development investments (weighted 20 percent), and community development services (weighted 5 percent).

Commenters also provided other suggestions for ensuring that community development investments receive appropriate emphasis under the final rule. Some commenters suggested that, to ensure that banks still make community development investments, the agencies should require a minimum amount of community development financing activities to be in the form of equity investments. One of these commenters stated that a portion of this investment minimum should not be tied to tax credits. Another commenter suggested as an alternative that the agencies should not assign a bank an ''Outstanding'' rating without an adequate level of equity investments.

Instead of including an investment minimum in the Community Development Financing Test, certain commenters suggested that the agencies include investment-based metrics and benchmarks in the performance test. Commenters stated the Community Development Financing Test should include some or all of the following: (1) an institution-level equity metric and benchmark; (2) a measurement of the new institution-level equity investments over time to identify reductions; or (3) a high-impact metric and benchmark. Some of these commenters believe that banks should not receive a higher score on the Community Development Financing Test than on this recommended equity investment metric. Certain commenters suggested structuring the investment metric like the proposed institution-level Community Development Financing Metric, to measure community development equity investments in the numerator and deposits in the bank in the denominator. A few of these commenters recommended excluding mortgage-backed securities from the metric or benchmark.

Commenters also offered suggestions for how the agencies could incorporate the metrics or benchmarks into the Community Development Financing Test. Certain commenters recommended the agencies use an equity benchmark based on a comparison of investments to deposits as a peer comparator and assign higher Community Development Financing Test ratings to banks that devote a larger portion of their community development financing activities to equity investments. One of these commenters also suggested the agencies use a benchmark that measures total equity investments—exclusive of mortgage-backed securities—as a percentage of a bank's total community development loans and investments as a peer comparator. A commenter further suggested that a high equity metric could be considered as a factor for an ''Outstanding'' rating.

Some commenters also suggested that the agencies monitor levels of equity investments compared to the current baseline level, both for individual banks and nationwide, and take action to prevent reductions in equity investments, with certain commenters focusing specifically on reductions in tax credit investments. One of these commenters also encouraged examiners to potentially downgrade banks that have significantly cut back their investments without a reasonable explanation. Relatedly, a commenter suggested that, in lieu of a separate investment test, the agencies could require data collection on community development loans and investments to identify imbalances between the categories.

Commenters also made other recommendations for how the agencies could continue to ensure that banks participate in the affordable housing and tax credit markets. In the absence of a separate investment test, commenters strongly urged the agencies to: (1) put mitigating factors in place to protect LIHTC investments; (2) establish another robust mechanism to motivate both intermediate and large banks to participate in the equity markets for NMTCs and other effective community development tax credit investments; or (3) otherwise implement strong mechanisms to preserve impactful equity investments in affordable housing and community development. For example, a commenter requested that the agencies ensure that the rule reviews separately and helps increase affordable housing tax credits investments and lending.

Other commenters recommended that the agencies limit credit for investments in mortgage-backed securities so that the mortgage-backed securities investment option does not overwhelm the Community Development Financing Test. Commenter recommendations included: (1) limiting credit for mortgage-backed securities to 20–25 percent of the institution-level Community Development Financing Test conclusions and ratings; (2) requiring a two-year holding period for mortgage-backed securities, with a retrospective review of the holding period applied to the next bank examination; (3) counting only the first or second purchase of mortgage-backed securities; or (4) counting only the value of affordable loans in a qualifying mortgage-backed security, rather than the full value of the security.

Final Rule

The agencies are adopting the Community Development Financing Test as proposed with the combined evaluation of community development loans and investments. To address commenter concerns, however, the final rule includes a Bank Nationwide Community Development Investment Metric [1100] and a Nationwide Community Development Investment Benchmark,[1101] for large banks that have assets greater than $10 billion, discussed in greater detail below in the section-by-section analysis of § ____.24(e).

The agencies carefully considered commenters' concerns about the potential negative or disruptive impact that combining the evaluation of community development loans and investments could have on banks' provision of community development investments, including tax credit investments, CDFI investments, affordable housing investments, and grants and other small dollar investments and loans. The agencies also considered the reasons for combining consideration of community development loans and investments, both those articulated in the proposal and provided by commenters.

After weighing the potential benefits and consequences of adopting the Community Development Financing Test as proposed, the agencies continue to believe that the combined evaluation of community development loans and investments will best serve the interests of banks and communities by providing flexibility for banks to focus on the community development financing methods most consistent with their expertise. The combined evaluation of community development loans and investments also will enable banks to identify the financing most needed for a community development project without regard to how that loan or investment would affect the bank's CRA evaluation. Further, the agencies considered that there are circumstances in which banks are not competitive for certain types of community development loans or investments or there are limited opportunities in particular markets for one or the other type of financing. Combining the evaluation of community development loans and investments into a single Community Development Financing Test will reduce the consequences of these supply and demand issues on banks' CRA evaluations.

[1100] *See* final § ____.24(e)(2)(iii).

[1101] *See* final § ____.24(e)(2)(iv).

Nonetheless, the agencies understand that certain community development investments involve significant time and effort, are complex, and play an important role in supporting much-needed community development, including affordable rental housing and economic development in low- and moderate-income communities and other underserved communities. The agencies did not intend for the proposed Community Development Financing Test to incentivize banks to make fewer impactful investments. To mitigate the potential risk that banks may put less emphasis on community development investments, the final rule includes both a Bank Nationwide Community Development Investment Metric and a Nationwide Community Development Investment Benchmark for banks with assets greater than $10 billion. Under the final rule, the new investment metric and benchmark may only contribute positively to a bank's performance under the Community Development Financing Test.

Several commenters suggested that if the agencies retained a single Community Development Financing Test, the test should incorporate an investment metric and benchmark. The agencies agree that including these components in the Community Development Financing Test would allow the agencies to better understand the level of community development investments that banks are making, both individually and collectively. The agencies considered the other more specific suggestions provided by commenters for addressing the potential negative impact of eliminating the current investment test and determined that the addition of the Bank Nationwide Community Development Investment Metric and the Nationwide Community Development Investment Benchmark will provide sufficient additional information within the otherwise qualitative evaluation envisaged under the Community Development Financing Test. These metrics and benchmarks are part of a holistic consideration of a bank's community development financing performance; some of the more specific recommendations are better addressed through the impact and responsiveness review in § ____.15 (*e.g.,* implementing a mechanism to recognize tax credit investments) or could inappropriately emphasize a particular type of community development investment that may not—in an examiner's view—be appropriate or necessary for a particular bank or community (*e.g.,* recognizing a particular type of equity investment for a bank that does not have the expertise to engage in that activity). The structure and applicability of the Bank Nationwide Community Development Investment Metric and the Nationwide Community Development Investment Benchmark are discussed below.

Community Development Loan and Investment Evaluation Methodology, in General Inclusion of Metrics and Benchmarks in the Community Development Financing Test

Current Approach

As noted above, the agencies currently evaluate large bank community development loans and investments in their assessment areas under the lending test in § ____.22 and the investment test in § ____.23. In contrast, the agencies consider intermediate small bank community development activities under a single community development test in current § ____.26 that assesses loans, investments, and services. The applicable tests include performance criteria for evaluating the number and amount of a bank's community development loans and community development investments.

For banks that are not small banks, the current approach also includes the evaluation of certain qualitative factors, such as the innovativeness and complexity of the bank's community development loans and investments. The current approach relies on examiner judgment to conclude on bank performance. Examiners apply the performance criteria in accordance with the CRA regulations, interagency examination procedures, and the agencies' guidance (including the Interagency Questions and Answers).[1102]

Under the current rule, the agencies do not use standard metrics or benchmarks for evaluating community development loans and investments. Rather, the agencies weight community development financing activities based on how responsive the loans and investments are to community needs.[1103] Banks with a smaller dollar volume of highly responsive community development loans or investments may receive similar conclusions and ratings as banks with a larger dollar volume of less responsive loans and investments. In the absence of standard metrics and benchmarks, however, stakeholders have noted that there is substantial variability between agencies and between examiners within the same agency in how much weight a particular community development loans or investment receives.

The Agencies' Proposal

The agencies sought to address some of the criticism of the current performance tests and standards by introducing standardized metrics and benchmarks in proposed § ____.24(b) and (c) of the Community Development Financing Test, which applied to facility-based assessment areas, States and multistate MSAs, as applicable, and the nationwide area.[1104] Although the agencies included metrics and benchmarks to the Community Development Financing Test, due to the currently limited data on community development lending and lack of data on community development investments, the agencies did not include thresholds in the test. As a result, the proposed Community Development Financing Test remained a qualitative evaluation informed by the proposed metrics and benchmarks that would continue to rely on examiner judgment to assess the dollar volume of community development loans and investments and conclude on bank performance. The agencies believed the use of uniform metrics and benchmarks would improve the consistency and clarity of evaluations as compared to the current approach. Further, the agencies introduced a more formalized impact review in the proposal for assessing performance under the Community Development Financing Test.

Comments Received

Some commenters that addressed the Community Development Financing Test stated that the proposed test included improvements compared to the current approach. Specifically, a few of these commenters identified the inclusion of metrics and benchmarks in the Community Development Financing Test as an improvement on the current framework. A commenter stated that using consistent metrics and benchmarks would provide greater uniformity and clarity under this test.

However, a few commenters, including some commenters that supported the proposed revisions, expressed concern that the Community Development Financing Test did not contain sufficient rigor, structure, or standards to guide examiner judgment in assigning performance scores and ratings. A few commenters stated that the Community Development Financing Test needed to be further developed to prevent ratings inflation and to make CRA evaluations more consistent and less subjective. Commenters also recommended that the agencies issue guidance illustrating how performance under the Community Development Financing Metric would correspond to a performance score.

Other commenters urged the agencies to extend the rigor of the proposed large bank lending test[1105] to the other tests or suggested how the agencies could evaluate performance under the Community Development Financing Test. For example, a commenter stated that the Community Development Financing Test should incorporate thresholds tied directly to conclusions in the quantitative portion of the evaluation—similar to the Retail Lending Test—and stated that the agencies should add structure to the qualitative portion of the evaluation, including how the Community Development Financing Test maps to facility-based assessment area conclusions. The commenter provided, as an example, that if a bank had a much higher score than other banks on either the local or national benchmarks, it would likely score an ''Outstanding.'' At least one local government commenter recommended the agencies base the Community Development Financing Test on the lower of a bank's nationwide area or facility-based assessment area performance. Further, a commenter stated that an appendix could more clearly explain how performance under the Community Development Financing Test relates to ratings.[1106]

Other commenters emphasized the importance of flexibility or tailoring in evaluating a bank's community development loans and investments. Specifically, a financial institution expressed concern that many MSAs and counties do not have sufficient community development lending and investment opportunities, particularly in rural areas; therefore, the commenter stated, any metrics or measurements included in the final rule must be flexible. A commenter also recommended that the agencies consider community needs in determining the relevance of a bank's performance using the proposed

[1102] *See* Q&A § ____.21(a)—1.

[1103] *See* Q&A § ____.21(a)—2.

[1104] The Community Development Financing Test metrics and benchmarks as they apply to specific geographic areas are discussed in greater detail below.

[1105] The commenters referenced the ''large bank lending test;'' however, the agencies understand these commenters to be referring to the Retail Lending Test in proposed § ____.22.

[1106] For a discussion of how performance test scores are aggregated to develop ratings under the final rule, see the section-by-section analysis of final § ____.28.

Community Development Financing Metric.

Final Rule

After considering the comments on the structure and rigor of the Community Development Financing Test, the agencies have decided to finalize the test as proposed without adding thresholds for measuring banks' performance under the metrics and the applicable benchmarks. The agencies continue to believe the use of uniform metrics and benchmarks will improve the consistency and clarity of CRA evaluations relative to the current approach because they provide standard data that examiners can use to inform conclusions. While the agencies also believe that consistency could be improved using thresholds in the Community Development Financing Test, current data limitations [1107] preclude the agencies' ability to explore including thresholds in the test at this time. The agencies note that they could consider thresholds in a future rulemaking once they have accumulated data and have experience applying the metrics and benchmarks. For now, the agencies intend to issue guidance to further clarify how they will apply the Community Development Financing Test.

The agencies also note the importance of flexibility in evaluating bank performance under the Community Development Financing Test, including the importance of considering the particular circumstances of individual banks and the needs and opportunities of the communities where banks operate. The Community Development Financing Test generally remains qualitative in nature with standardized metrics and benchmarks to promote consistency. The agencies considered that the dollar volume of a loan or investment does not always provide a complete picture of the impact that a loan or investment has on a community. In consideration of comments received, and based on supervisory experience, the agencies believe that in some instances, a small dollar loan or investment that is targeted to a specific community need can have a greater impact than a larger dollar loan or investment that is less targeted, such as a mortgage-backed security. Therefore, regardless of whether the agencies consider adding thresholds to the Community Development Financing Test after they have analyzed data collected under § ____.42 of the final rule, qualitative consideration of community development loans and investments will remain an integral part of the Community Development Financing Test.[1108] In particular, the Community Development Financing Test includes the impact and responsiveness review discussed in the section-by-section analyses of §§ ____.15 and ____.24(b), which provides enhanced qualitative consideration for certain community development loans and investments. In addition, performance context remains a part of an examiner's evaluation of a bank's performance under the Community Development Financing Test. Therefore, the agencies are adopting the proposed framework for the evaluation of community development financing performance as proposed for facility-based assessment areas, States and multistate MSAs, and the nationwide area with the substantive and clarifying edits discussed in this section-by-section analysis along with other conforming and technical edits.

Section ____.24(a)(1) In General

Current Approach and Proposal

The current rule generally provides that retail loans, except multifamily affordable housing loans (*i.e.,* multifamily loans that meet the definition of community development in 12 CFR ____.12(g)), may not be considered as community development loans.[1109] However, for current intermediate small banks that are not subject to HMDA reporting, a home mortgage loan, small business loan, and a small farm loan may be considered, at the bank's option, as a community development loan, provided it meets the definition of "community development." [1110] Consistent with the current approach, the agencies proposed to exclude retail loans receiving consideration under the proposed Retail Lending Test from receiving consideration under the proposed Community Development Financing Test as a general principle.[1111] Also consistent with the current approach, the proposal provided an exception in which a multifamily loan described in proposed § ____.13(b) may be considered under both the Retail Lending Test and the Community Development Financing Test.[1112] In addition, the proposed rule allowed that 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. The agencies aimed to reduce the potential for double counting a loan, thereby potentially skewing results.

Comments Received

A few commenters suggested that the agencies eliminate the exclusion set forth in proposed § ____.24(a)(2)(i) for considering retail loans with a community development purpose under the Community Development Financing Test. Reasons provided for eliminating the exclusion included that the proposed exclusion of retail loans could produce unintended results once the agencies replace the CRA definition of "small business loan" with a definition based on the CFPB's Section 1071 Final Rule. One of the commenters explained that many community development loans are made to special purpose, startup, or nonprofit entities that do not have gross annual revenues of more than $5 million. The commenter suggested that the proposed Retail Lending Test would incentivize banks to distribute their small business loans in a particular way but would not provide incentives for banks to make small business loans that satisfy the community development definition, which can be especially impactful loans. The commenter further explained that there would be no "double counting" of small business loans if the Community Development Financing Test allowed for certain small business loans to qualify as community development loans because the Retail Lending Test and the Community Development Financing Test would evaluate different aspects of the same qualifying small business loan.

Final Rule

In the final rule, the agencies eliminated the exclusion for considering certain types of retail loans under the Community Development Financing Test consistent with the changes to the community development loan and

[1107] Currently, the CRA rule requires data collection on the aggregate number and aggregate amount of community development loans originated or purchased. The current rule does not require data collection for community development investments. *See* current 12 CFR ____.42(b)(2).

[1108] *See* the section-by-section analysis of final § ____.21 for discussion of performance context consideration, and the section-by-section analysis of final § ____.15 for a discussion of the impact and responsiveness review.

[1109] *See* current 12 CFR ____.23(b) and Q&A § ____.42(b)(2)—1. *See also* Q&A § ____.12(h)—2.

[1110] Q&A § ____.12(h)—3.

[1111] *See* proposed § ____.24(a)(2)(i).

[1112] *See* proposed § ____.24(a)(2)(ii).

community development investment definitions and the Retail Lending Test in final § ____.22, discussed above.[1113] The Retail Lending Test and the Community Development Financing Test generally considers different aspects of a bank's lending. For example, in the agencies' view, considering loans that meet the definition of ''small business loan'' for purposes of the Retail Lending Test under the Community Development Financing Test if those loans support community development would not result in double counting. The Retail Lending Test focuses on the distribution of the number of loans while the Community Development Financing Test considers the dollar volume of loans.

The agencies also considered commenters' suggestions that the Community Development Financing Test consider the number of community development loans and investments in addition to the dollars to ensure that smaller loans and investment are not ignored. The agencies did not modify the Community Development Financing Test to include this suggestion. As is discussed elsewhere, the agencies also believe that smaller, more impactful loans and investments are an important way of helping to meet community credit needs. However, the mechanism in the final rule for incentivizing those types of loans and investments is the impact and responsiveness review. Further, under performance context, examiners can consider any information about retail banking and community development needs and opportunities 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.[1114] If a bank fails to meet identified community needs and only engages in large dollar, low-impact community development loans and investments, the agencies could consider that information when concluding on a bank's performance. Finally, as discussed above, the agencies determined that they would remove the exclusion under the Community Development Financing Test for certain retail loans with a community development purpose because the tests evaluate different aspects of a bank's lending. If the agencies incorporated consideration of the number of community development loans and investments into the Community Development Financing Test, it would eliminate this distinction and the rationale for the agencies supporting the removal of the exclusion.

Section ____.24(a)(2) and Section I of Appendix B

Inclusion of Prior Period Loans and Valuation of Community Development Financing Activities

Valuation and Allocation of Community Development Loans and Investments

Current Approach

The agencies currently consider the dollar value of community development loans based on their origination or purchase value. Because the agencies do not consider community development loans originated or purchased during a prior evaluation period that remain on a bank's balance sheet (prior period community development loans) under the current framework, a renewed or refinanced loan is valued as an origination based on the value of the loan in the year it was renewed or refinanced. Under the current rule, the agencies consider community development investments based on (1) the value of the investment in the year it was made for investments made during the current evaluation period and (2) the outstanding book value of the investment at the end of the evaluation period for investments made during a prior evaluation period. The agencies also consider the total value of legally binding commitments to extend credit or invest. As explained in the Interagency Questions and Answers, the agencies currently provide guidance on the valuation of equity type or equity equivalent investments, which allows banks to consider a portion of these investments under the current lending [1115] and investment tests.[1116] The current rule does not include metrics and benchmarks that are calculated on an annual basis; therefore, the agencies consider the dollar value of each community development loan or investment qualitatively for the evaluation period.

The Agencies' Proposal

The agencies proposed that the Community Development Financing Test would consider the dollar value of community development loans and investments originated or made during the evaluation period, as well as prior period loans and investments that remain on a bank's balance sheet.[1117] The proposal included consideration of prior period community development loans, in addition to investments, to incentivize banks to provide patient capital and to disincentivize unnecessary short-term lending and churning loans by refinancing, renewing, or modifying a loan each evaluation period to receive ongoing credit for the activity. Further, the proposed change would improve internal consistency in the rule by treating prior period loans the same as prior period investments, which receive consideration under the current rule. In appendix B, the proposal described the numerator for the metrics and benchmarks used in §§ ____.24 and ____.26, which includes: (1) community development loans originated and community development investments made; (2) the increase in an existing community development loan that is renewed or modified; and (3) 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.

Comments Received

Inclusion of new and prior period community development loans and investments. Several commenters provided feedback on the inclusion of both new community development loans and investments and prior period community development loans and investments in the proposed Community Development Financing Test metrics and benchmarks. Commenters' views on this issue varied. Certain commenters supported the proposal to consider both new and prior period community development loans and investments on a bank's balance sheet in the metrics and benchmarks. These commenters noted that the proposal would reduce artificial inflation of banks' balance sheets, lessen the incentive for CRA-motivated loan churn, and remove the incentive to provide artificially short terms for community development loans and investments, which can impede community groups' ability to project capital availability.

Other commenters suggested that the agencies should be careful in how they implement the inclusion of new and prior period lending in the community development ratio.[1118] Some of these

[1113] Along with eliminating the exclusion, the agencies eliminated the exceptions (in proposed § ____.24(a)(2)(ii) and (iii)) to the exclusions as they are no longer necessary.

[1114] *See* final § ____.21(d)(4).

[1115] *See* current 12 CFR ____.22.

[1116] *See* current 12 CFR ____.23; *see also* Q&A § ____.22(d)—1 and Q&A § ____.23(b)—1.

[1117] *See* proposed appendix B, section 1.

[1118] The agencies understand the commenter's reference to ''community development ratio'' to be a reference to the proposed community development financing metrics.

commenters acknowledged the importance of providing credit for prior period loans to incentivize long-term patient capital but asserted that the agencies should not allow banks to substantially reduce originations of impactful loans. A few commenters stated that banks should be incentivized to make new community development loans and investments in each evaluation period, noting that a significant drop in new financing should be a cause for concern. A few other commenters suggested limiting the inclusion of prior period community development lending to loans from the previous examination cycle. A commenter also asserted that the agencies should not give repeated credit for loans with low impact or harmful features (*e.g.,* a loan for a property where the landlord maintains the building in poor condition).

Other commenters opposed consideration of prior period community development loans. One of these commenters stated that allowing banks to carry prior period community development loans and investments into their current review period will disincentivize new investment,[1119] cutting down overall CRA investment in historically disinvested communities. At least one commenter recommended the agencies limit credit for prior period loans to nonprofits and use the impact and responsiveness review to incentivize meeting unmet longer-term credit needs elsewhere.

Lastly, a commenter requested that the agencies develop a streamlined process for inclusion of prior period activities during subsequent CRA examinations. The commenter believed that redundancies in ''re-proving'' a loan or investment in each examination cycle, after it has already been qualified by an examiner, is inefficient and the elimination of the need to ''re-prove'' could aid both the bank and its regulator.

Community development loan and investment valuation. The agencies received a few comments on how to value community development loans and investments. These commenters identified certain forms of community development lending and investment that they believed should be valued in certain ways. A few commenters recommended that the full value of legally binding commitments to lend or invest, rather than the amount drawn, receive CRA consideration in the final rule. One of these commenters explained that if banks do not receive CRA consideration for commitments to fund future affordable housing projects, such commitments would evaporate and cause a decrease in new affordable housing units.

Commenters also provided feedback on the valuation of equity equivalent investments, particularly in CDFIs. Specifically, a commenter supported the creation of a mechanism for recognizing banks' equity equivalent investments in CDFIs. The commenter noted that the proposed quantitative measures in the Community Development Financing Test would treat equity equivalent investments in CDFIs the same as standard debt products.

A commenter stated that the agencies should grant extra credit to banks that syndicate or sponsor funds supporting LIHTC or NMTC projects, consistent with the now-rescinded OCC 2020 CRA Final Rule. Commenters also requested that the agencies clarify how they would consider different loans and investments under a new CRA rule.

A few commenters expressed that the rule needs to be clear about the treatment of purchased and renewed community development loans. A commenter suggested that: (1) ''purchased'' community development loans and investments should be treated the same as ''originated'' community development loans and investments; and (2) renewals (with full underwriting) of lines of credit should receive consideration as ''originated'' loans.

Final Rule

Inclusion of new and prior period community development loans and investments. Under the final rule, banks will receive consideration for new community development loans and investments and community development loans and investments that remain on a bank's balance sheet.[1120] The agencies considered the comments about including prior period community development loans and investments in the Community Development Financing Test metrics and benchmarks and determined to finalize the rule as proposed. The agencies believe that providing consideration for both new originations and purchases and community development loans and investments that remain on a bank's balance sheet is a more accurate reflection of a bank's financing efforts and strikes the appropriate balance between incentivizing new community development loans and patient capital for community development projects. As discussed below, under the current framework, to receive credit for community development loans in each evaluation period, banks would need to renew or refinance the loans. In contrast, the agencies currently consider community development investments that remained on a bank's balance sheet in an evaluation period.

The agencies understand that the practice of renewal and refinancing of community development loans for the purpose of getting additional CRA consideration presented practical planning challenges for organizations engaged in community development projects because the financing was unpredictable. By providing consideration for both community development loans or investments that remain on a bank's balance sheet, the agencies believe the final rule will incentivize banks to engage in new loans and provide the length and type of financing that is most appropriate for the community development project and the bank's business model and expertise.

The agencies determined not to limit consideration for community development loans and investments that remain on a bank's balance sheet to loans and investments originated or purchased during the prior evaluation cycle or to loans and investments with nonprofit organizations because these limitations would not further the goal of incentivizing banks to provide patient capital matched to the needs of the organization engaging in the community development project. With respect to limiting the length of consideration to community development loans and investments made in the prior evaluation period, the agencies note that CRA evaluation periods are typically about three years in length.[1121] Based on the agencies' experience, it can take much longer than three years for an organization to raise capital and bring a community development project to completion. Limiting consideration for prior period community development loans and investments to the evaluation period following the one in which the loans or investments were originated, purchased, or made would perpetuate the mismatch between the needs of the community development project and the financing provided by banks. In addition, the length of evaluation

[1119] The agencies understand the commenter's reference to ''investment'' to be a reference to the flow of new money into the community; not to the defined term ''community development investment.''

[1120] *See* final appendix B, paragraph I.a.1. The method for valuing community development loans and investments is discussed below.

[1121] There is some variation in the length of evaluation periods between agencies and due to bank size or specific bank circumstances; however, in general, CRA evaluation periods are at least two years and not longer than five years in length.

periods, rather than the length of time the activity had an impact on the community benefited or served, may impact the consideration that banks receive for community development loans and investments.

With respect to community development financing activities involving nonprofit organizations, the agencies also do not believe that there is a reason to treat community development loans and investments involving nonprofit organizations differently than other types of community development loans and investments. As discussed in the section-by-section analysis for § ____.13, the agencies gave considerable thought to the types of loans and investments that support community development. In § ____.13 of the final rule, the agencies specify whether an activity must involve a nonprofit organization for the agencies to consider it to support community development. If a loan or investment meets the requirements of § ____.13, the agencies do not believe it is appropriate to impose further limitations on the amount of credit a bank receives for that loan or investment. The agencies believe that all community development loans and investments are designed to help meet community needs; to the extent that a community development loan or investments is particularly impactful or responsive, the mechanism for addressing that in a CRA evaluation is the impact and responsiveness review in § ____.15, not limitations on the length of time that the bank can get credit for the community development loan or investment that remains on the bank's balance sheet.

In response to commenters concerns about providing repeated credit for lower impact or harmful community development loans and investments, the agencies do not believe this is a reason for limiting credit for prior period community development loans or investments. Under the final rule, the appropriate Federal financial supervisory agency determines whether a loan or investment supports community development when the loan or investment is originated, made, or purchased. If the appropriate Federal financial supervisory agency later identifies that there is evidence of discriminatory or other illegal credit practices pursuant to § ____.28(d), it will consider that information in the bank's CRA evaluation.

Community development loan and investment valuation. After considering the comments regarding valuing community development loans and investments, the agencies are finalizing an annual valuation methodology; however, the agencies are clarifying this aspect of the proposal to explain how the final rule values different forms of community development loans and investments.

The agencies believe that annual valuation of community development loans and investments is appropriate because banks receive consideration for the full dollar volume of the loan or investment in the year that it is originated, purchased, or made and the remaining value on a bank's balance sheet in other years. This valuation methodology helps to incentivize new loans and investments by both giving full credit for new loans and investments and diminishing the value as the loan or investment is paid off or changes value. Annual valuation also allows the agencies to calculate the metrics and benchmarks for banks with different evaluation periods because they can include the annual value in the appropriate calculations, which enhances consistency in the consideration of community development loans and investments.

The agencies added further detail to paragraph I.a of appendix B in two areas. First, the agencies clarified the general description of the inputs for the numerator [1122] and added a description for the inputs for the denominator for the metrics and benchmark calculations in §§ ____.24 and ____.26. These descriptions provide the annual building blocks for the metrics and benchmark calculations in the Community Development Financing Test (*i.e.,* the annual dollar volume [1123] of community development loans and community development investments and the annual dollar volume of deposits).[1124]

Second, the agencies clarified how to value different forms of community development loans and investments for purposes of calculating the metrics and benchmarks, including by adding additional detail and explaining that the calculations are determined annually. The proposal described determining the value of community development loans originated and community development investments made, the increase in an existing community development loan that is renewed or modified, and 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.[1125] As was clear from the comments, this description did not sufficiently explain how the agencies would value all forms of community development loans and investments or for what period the agencies would value the loans and investments. Under the final rule, and consistent with the proposal, banks value community development loans and investments annually as of December 31 of each calendar year. The annual dollar volume of a community development loan or investment will depend on whether the loan or investment is new to the bank that year or is a loan or investment from a prior year.

The agencies also clarified in paragraph I.a of appendix B of the final rule that they will treat purchased loans the same as loans originated and investments made in a year. In proposed appendix B, the agencies explained how they would value purchased community development loans that remain on a bank's balance sheet. Commenters noted that the agencies should also explain how to value a community development loan purchased by a bank in the year of purchase. Consistent with current practice, under the final rule, appendix B explains that the agencies will value a purchased community development loan the same way as an origination in the year the bank originated the loan. In the agencies' experience, a secondary market for community development loans ensures that banks can manage their balance sheets based on their business models and capacity and are not disincentivized from seeking out new opportunities because they cannot

[1122] Final § ____.24 provides that the Community Development Financing Test evaluates a bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments. As provided in final § ____.21, under certain circumstances this evaluation will include community development loans and investments of operations subsidiaries or operating subsidiaries, as applicable, other affiliates, consortiums, and third parties. To ensure that the rule clearly provides that the agencies will consider community development loans and investments from all of these entities when appropriate, not just those of a bank or its operations subsidiaries or operating subsidiaries, as applicable, final appendix B, paragraph I.a, clarifies that the agencies include community development loans and community development investments ''attributed to the bank pursuant to § ____.21(b) and (c)'' in the numerator of the metrics and benchmarks in the Community Development Financing Test. This is a clarifying revision that is not intended to have a substantive effect.

[1123] As discussed in the section-by-section analysis of final § ____.24(b)(1), for purposes of consistency in the final rule, the agencies changed the description in the final rule to use only the word ''volume'' instead ''value'' in final § ____.24 and final appendix B. The agencies do not intend this to be a substantive change.

[1124] For use in the metrics and benchmarks calculations in final § ____.26, final appendix B, paragraph I.a.2.ii, also includes a description of the ''annual dollar volume of assets.''

[1125] *See* proposed appendix B, section 1.

free up capital to pursue those opportunities. The final rule also provides additional detail on the valuation of legally binding commitments to lend and invest. The agencies determined that banks should receive credit for the full dollar volume committed for all legally binding commitments to extend credit and legally binding commitments to invest. However, the agencies also determined that after the commitment is made the valuation depends on whether the commitment has been drawn upon.

The agencies considered that valuing a commitment to extend credit or invest only on the drawn portion of the commitment would put banks that entered into commitments at a disadvantage because these banks would have committed resources and may not have capacity to originate, purchase, or make other community development loans and investments. Further, the agencies consider legally binding commitments to extend credit or invest a necessary tool in financing certain community development projects, and, for that reason, included commitments in the definition of community development loan and community development investment. If the agencies limited credit for commitments to extend credit or invest to the drawn portion of the commitment, the disadvantage created could disincentivize banks from making commitments, which could impact the viability of certain community development projects. However, the agencies also recognize that once a commitment has been drawn upon, the drawn portion of a commitment to extend credit or invest is no longer a ''commitment'' but is an outstanding loan or investment. Therefore, to give appropriate value to commitments, non-drawn commitments are valued based on the full dollar volume committed, but commitments that have been drawn upon are valued based on a combination of both the outstanding dollar volume of the commitment and the drawn portion of the commitment. Specifically, final appendix B includes a footnote that the dollar volume of a legally binding commitment to extend credit or legally binding commitment to invest in any given calendar year is (1) the full dollar volume committed; or (2) if drawn upon, the combined dollar volume of the outstanding commitment and any drawn portion of the commitment.[1126]

The final rule also clarifies how the agencies will value refinances and renewals in the year of the refinance or renewal and in subsequent years.[1127] The agencies' clarifications to the valuation of refinances and renewals are to ensure that banks receive consideration for these loans or investments without incentivizing banks to churn loans solely for the purpose of receiving credit in each evaluation period. Under the final rule, the agencies will provide banks with credit for the dollar volume of any increase in the calendar year to an existing community development loan that is refinanced or renewed and in an existing community development investment that is renewed.[1128]

Banks will receive credit for the outstanding dollar volume of community development loans originated or purchased in previous calendar years and community development investments made in previous calendar years, as of December 31 of each calendar year that the loan or investment remains on the bank's balance sheet.[1129] Banks will also receive credit for the outstanding dollar volume, less any increase in the same calendar year, of a community development loan a bank refinanced or renewed in a calendar year subsequent to the calendar year of origination or purchase, as of December 31 for each calendar year that the loan remains on the bank's balance sheet, and an existing community development investment renewed in a calendar year subsequent to the calendar year of the investment, as of December 31 for each calendar year that the investment remains on the bank's balance sheet.[1130] As discussed above, the agencies believe that these valuation methods strike the appropriate balance between incentivizing new community development loans and investments and encouraging patient capital.

The agencies proposed to value the outstanding value of community development loans originated or purchased and community development investments made in previous years based on the value that remained on the bank's balance sheet on the last day of each quarter of the year, averaged across the four quarters of the year. The final rule instead values these community development loans and investments based on the value as of December 31 of each calendar year that the loan or investment remains on the bank's balance sheet. The agencies made this revision in response to overall comments received about the complexity and burden of the proposed rule. The agencies believe this change simplifies the rule and appropriately balances burden associated with data collection under the final rule with the need for data to calculate the metrics and benchmarks.

The agencies determined not to treat equity equivalent investments and syndications differently than other community development loans and investments. Under the final rule, community development loans and investments are considered in the single Community Development Financing Test. This contrasts with the current rule where large banks are separately evaluated under different tests for community development loans and investments. Therefore, the final rule eliminates the motivation for accounting for a portion of an equity equivalent investment as a loan and a portion as an investment to receive consideration under each of the current lending and investment tests.[1131] Under the final rule, if an equity equivalent investment supports community development pursuant to § ____.13, the agencies will provide consideration for the full value of the investment under the Community Development Financing Test. Further, if the equity equivalent investment or syndication is consistent with one of the impact and responsiveness factors, banks will receive additional qualitative consideration for the investment. The agencies believe that this combined quantitative and qualitative consideration of equity equivalent investments and syndications under the Community Development Financing Test appropriately accounts for the value of these investments and further enhanced valuations are not necessary.

With respect to the comments regarding ''re-proving'' in a later evaluation period that a loan or investment that remains on a bank's balance sheet supports community development, the agencies expect that they will engage in data integrity assessments under the final rule consistent with their current practices. In general, the agencies take a measured approach to data integrity to reduce

[1126] *See* footnote 1 to final appendix B, paragraph I.a.1.i.A.

[1127] The agencies note that refinances and renewals are treated differently under the Retail Lending Test in final § ____.22 and the Community Development Financing Test in final § ____.24 because of differences between the performance tests. Specifically, because the Community Development Financing Test considers the dollar volume of community development loans and investments, it was necessary that the rule provide a method for valuing refinances and renewals that balanced the incentives for new originations and patient capital. Therefore, for purposes of the Community Development Financing Test, refinances and renewals are addressed and valued separately from originations and purchases.

[1128] *See* final appendix B, paragraph I.a.1.i.B.

[1129] *See* final appendix B, paragraph I.a.1.i.C.

[1130] *See* final appendix B, paragraph I.a.1.i.D.

[1131] *See* current 12 CFR ____.22 and ____.23.

burden. Under the final rule, community development loans and investments generally remain qualifying for a bank as long as the loan or investment remains on the bank's balance sheet, even if the agency has determined that the loan or investment no longer meets the requirements of § ___.13.[1132] For this reason, in most circumstances banks need only maintain the information used to substantiate that the loan or investment supported community development at the time it was originated, purchased, or made.

Denominator for the Community Development Financing Test, Paragraph I.a of Appendix B

In considering the comments on the valuation of community development loans and investments, as well as other comments about the metric and benchmark calculations, the agencies determined that additional information regarding the inputs to the calculations would help clarify the rule. Therefore, in addition to the revisions and clarifications that the agencies made to the numerator of the metrics and benchmarks in final paragraph I.a of appendix B, the agencies also provided additional clarifications to the denominator for the metrics and benchmarks.

The final rule provides in paragraph I.a.2.i of appendix B that for purposes of the metrics and benchmarks in § ___.24, the appropriate Federal financial supervisory agency calculates an annual dollar volume of deposits in a bank that is specific to each metric or benchmark for each calendar year in the evaluation period. The final rule describes this as the annual dollar volume of deposits and that term is used in the calculations for the Community Development Financing Test. The final rule goes on to reference the source of deposits for banks based on the definition of deposit in § ___.12. Specifically, the final rule states that for a bank that (1) collects, maintains, and reports deposits data as provided in § ___.42, the annual dollar volume of deposits is determined using the annual average daily balance of deposits in the bank as provided in bank statements (*e.g.,* monthly, or quarterly) based on the deposit location and (2) does not collect, maintain, and report deposits data as provided in § ___.42, the annual dollar volume of deposits is determined using the deposits assigned to each branch pursuant to the FDIC's Summary of Deposits data.

[1132] *See* final § ___.14(a)(2)(ii).

Section ___.24(a)(2) Allocation of Community Development Financing Activities (and Paragraph I.b of Appendix B)

Current Approach

Under the current rule, community development loans and investments must benefit a bank's assessment areas or a broader statewide or regional area that includes at least one of a bank's assessment areas.[1133] The current rule does not include specific provisions for the allocation of the dollar value of community development loans and investments in circumstances where a bank cannot clearly attribute the loan or investment to one or more of its assessment areas.[1134]

The Agencies' Proposal

In § ___.24 and section 14 of appendix B of the NPR, the agencies proposed an approach to consistently allocate the dollar value of community development loans and investments for the purpose of calculating the metrics and benchmarks used in the Community Development Financing Test. The agencies intended that the proposed approach would attribute the dollar value of community development loans and investments to the geographic areas benefited or served by the loan or investment and provide certainty that community development loans and investments benefiting geographic areas outside of a bank's facility-based assessment areas would receive consideration, as provided for in the proposed rule.

The agencies proposed that banks would allocate the dollar amount of community development loans and investments to one or more counties,[1135] States, or the nationwide area, depending on specific documentation or the geographic scope of the activity. As proposed, at the facility-based assessment area level, the agencies would sum the dollar value of community development loans and investments assigned to the counties within the facility-based assessment area in calculating the Bank Assessment Area Community Development Financing Metric and the benchmarks applicable to facility-based assessment areas, which would inform the facility-based assessment area conclusions. In States in which a bank has at least one facility-based assessment area, the agencies would sum the dollar value of community development loans and investments allocated to the State and to any counties within the State to calculate the Bank State Community Development Financing Metric and the benchmark applicable to the State. In multistate MSAs in which a bank has at least one facility-based assessment area, the agencies would sum the dollar value of community development loans and investments allocated to the multistate MSA and to any counties within the multistate MSA to calculate the Bank Multistate MSA Community Development Financing Metric and the benchmark applicable to the multistate MSA. In the nationwide area, the agencies would sum the dollar value of all of a bank's community development loans and investments—those allocated to counties, States, multistate MSAs, and the nationwide area—to calculate the Bank Nationwide Community Development Financing Metric and the proposed benchmark applicable to the nationwide area.

The agencies believed this approach would allow for metrics that consistently measure performance at the different levels and was intended to support a balance between emphasizing facility-based assessment area performance and considering community development loans and investments that benefit geographic areas outside of those assessment areas. The agencies intended that the proposed approach would emphasize facility-based assessment area performance because it would allow the agencies to measure the dollar value of community development loans and investments that specifically serve a facility-based assessment area, distinct from community development loans and investments that serve a broader geographic area or that primarily serve other areas. At the same time, the proposal also would have considered all community development loans and investments in the nationwide metric.[1136] The agencies believed this would provide additional certainty and flexibility relative to the current approach and allow banks the opportunity to conduct impactful and responsive community development loans and investments in areas that may have few assessment areas.

The agencies proposed to determine the geographic scope of a community loan or investment based on information provided by the bank, and as needed, publicly available information and information provided by government or community sources that demonstrates

[1133] *See* Q&A § ___.12(h)—6.

[1134] *See* Interagency Large Institution CRA Examination Procedures (April 2014) at appendix.

[1135] Under the proposal and the final rule, "county" means "any county or statistically equivalent entity as defined by the U.S. Census Bureau." *See* proposed § ___.12 and final § ___.12.

[1136] *See* proposed § ___.24(c)(4)(ii)(A).

that the activity serves individuals or census tracts located within the area. Proposed § ____.24 also cross-referenced proposed section 14 of appendix B, where the agencies proposed to allocate a community development loan or investment that benefited a single county to that county. For an activity that benefited multiple counties, the agencies proposed two options for allocating the dollar value of the activity. Under the first proposed option, if a bank produced documentation for an activity specifying the appropriate dollar amount to assign to the counties benefited by the activity, then the bank would allocate the dollar value of the activity accordingly at the county level. In the alternative, if a bank did not produce documentation specifying how to allocate the loan or investment to the geographic area benefited or served by the particular activity, the bank would allocate the dollar amount based on the proportion of low- and moderate-income families in the applicable areas.

Under the second proposed option, for a community development loan or investment that served multiple counties but not an entire statewide area, the agencies proposed that banks would allocate the dollar amount of the loan or investment across the counties served, in proportion to the percentage distribution of low- and moderate-income families across those counties.[1137] The agencies proposed that community development loans or investments that served one or more States, but not the entire nation, would be allocated at the State level, and not to specific counties within the State, based on the proportion of low- and moderate-income families in each State.[1138] Lastly, the agencies proposed that for a community development loan or investment with a nationwide scope, for which the bank did not provide documentation, the bank would allocate loan or investment to the institution level and not to specific States or counties.[1139] The agencies believed the use of demographic data for allocating the dollar value of community development loans and investments without documentation of locations served would provide certainty and consistency compared to the current approach and would reflect the population served by community development financing activities.

The agencies sought feedback on other data points that the agencies could use for allocating community development loans and investments and may more appropriately reflect the population served, such as total population or number of small businesses. The agencies also sought feedback regarding whether community development loans and investments that cannot be allocated to a specific county or State should be considered at the highest geographic level benefited or served by a loan or investment instead of being allocated to multiple counties or counties within States based upon the distribution of all low- and moderate-income families. In addition, the agencies sought feedback on what methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties (*i.e.,* allocate based on the distribution of low- and moderate-income families or some other method).

Comments Received

In general, commenters that provided feedback on the allocation of community development loans and investments did not object to including an allocation method in the rule. Commenters' opinions varied, however, on how to allocate these community development loans and investments. A commenter generally supported the proposed geographic flexibility for allocating the dollar value of community development loans and investments under the Community Development Financing Test, which the commenter stated could help bring community development capital to more neighborhoods away from areas where banks have branches—especially Native and rural communities.

Commenters expressed differing views on whether to allocate community development loans and investments based on the percentage of low- and moderate-income families when banks did not provide specific documentation for allocating a loan or investment. A few commenters supported the agencies proposed approach of allocating community development loans or investments in proportion to the percentage of low- and moderate-income families. Other commenters instead recommended that the agencies allocate community development financing activities based on the distribution of low- and moderate-income households. One of these commenters supported its position by explaining that this allocation method reflects the intended beneficiaries of CRA. As an alternative, a commenter suggested that the agencies could use a simpler approach of allocating community development loans and investments based on the distribution of all families. Another commenter recommended the agencies use an allocation approach based on the proportion of low- and moderate-income families, small businesses, and small farms. The commenter also recommended the agencies conduct targeted impact assessments using surveys and other research tools that gauge how much and which residents or businesses benefit the most from banks' community development loans and investments in each assessment area.

Commenters also provided opposing views on whether, in the absence of specific documentation, the agencies should allocate community development loans and investments at the highest geographic level. A few commenters objected to allocating community development financing activities at the highest geographic level. For example, a state government commenter stated that the Community Development Financing Test is intended to measure banks' loans and investments against benchmarks that reflect local context, which the commenter asserted is incongruous with the idea that a bank with a nationwide footprint could include community development loans and investments that are nationwide in scope. The commenter believes that banks should have the burden of demonstrating local-, county-, or State-level impact. Another commenter requested that banks receive credit at the assessment area level for housing credit investments made anywhere in the State where a bank has more than one assessment area.

Commenters offered several alternatives to allocating at the highest geographic level including that the agencies should: (1) make best efforts to ensure that they assign community development loans and investments in a manner that is consistent with the bank's preferences, as well as with standard industry practices; (2) permit geographic allocation based on allocation or side letters; (3) base allocations on the capital committed for an investment, even if the fund has not identified all of its specific development sites or other projects; (4) allocate loans and investments to each assessment area as the loan or investment indicates or equally to each applicable assessment area served; (5) allocate based on the purpose, mandate, or function of the organization or activity, including which geographic areas are served; or (6) permit the bank and the recipient of the loan or investment to identify a reasonable geographic allocation (*e.g.,* allow banks to rely on geographic

[1137] *See* proposed appendix B, section 14.

[1138] *Id.*

[1139] *Id.*

allocations provided by the recipient or consortium).

In contrast, a few commenters supported allocating community development loans and investments that cannot be allocated to a certain area at the highest geographic level, whether that be the State, multistate MSA, or institution level. One of these commenters noted that, if the community development loans and investments are broad reaching, the State, county, or regional planning commission may have accompanying metrics the agencies could use in assessing the impact on a State or county. Another commenter expressed that allocating a community development loan or investment across multiple counties would create an impossible burden for many of the local (and often nonprofit) bank partners that help banks serve their communities. Some commenters recommended allocating community development loans and investments at the institution level.

Final Rule

The agencies are finalizing the allocation provisions included in the proposed rule with certain revisions to clarify how banks will allocate community development loans and investments. Section ____.24(a)(2) of the final rule provides that the agencies consider community development loans and investments allocated pursuant to paragraph I.b of appendix B. Final paragraph I.b of appendix B includes the specific allocation provisions that were included in proposed section 14 of appendix B, with clarifying revisions.[1140]

The agencies determined that permitting banks to choose between allocating community development loans and investments based on specific documentation or the geographic scope of an activity provided the appropriate level of flexibility. As such, the final rule retains both options. The agencies considered feedback from certain commenters noting that banks should have flexibility in allocating community development loans and investments. Further, the agencies considered the options provided by commenters for allocating community development loans and investments, including permitting the use of side letters, considering allocation information from the recipient, or basing allocations on the purpose, mandate, or function of the recipient of the loan or investment.

The agencies continue to believe it is important that banks can receive consideration in specific geographic areas if they are able to demonstrate that a community development loan or investment, or a portion of a loan or investment, benefited or served a particular area. Allowing for allocation based on specific documentation enhances the accuracy of the metrics and benchmarks in the Community Development Financing Test. Further, it provides an incentive for banks to serve particular communities by including a method for the bank to get consideration for the whole or a specific portion of a community loan or investment in the area benefited or served.

Under the final rule, the agencies would consider any documentation provided by the bank that specifies the appropriate dollar volume of a community development loan or investment to assign to each county, such as the specific addresses and dollar volume associated with each address, or other information that indicates the specific dollar volume of the loan or investment that benefited or served each county. Consistent with commenters' suggestions, specific documentation could include, but would not be limited to, side or allocation letters; information on the purpose, mandate, or function of the organization that received the community development loan or investment; or any other information that reasonably demonstrates the specific dollar volume of the activity that benefited or served a county. The agencies removed the word ''accounting'' before ''information'' to clarify that they did not intend to limit the type of information considered strictly to information related to accounting; information could also include, for example, a mission statement for the organization that received the community development loan or investment.

If a bank does not provide specific documentation, the agencies determined it is appropriate to allocate a community development loan or investment to the highest geographic level that the activity benefits or serves (*i.e.,* county, State, multistate MSA,[1141] or nationwide area) based on the geographic scope[1142] of the loan or investment and in proportion to the percentage of low- and moderate-income families in the area benefited or served by the loan or investment. Following consideration of the comments, the agencies determined that allocating at the highest geographic level benefited or served appropriately balances the burden of allocating community development loans and investments at a more granular level with the desire for accuracy of the metrics and benchmarks. If a community development loan or investment has a geographic scope of benefiting or serving one or more entire States, multistate MSAs, or the nationwide area and the bank cannot attribute the loan or investment to any particular county, then the loan or investment will be allocated to the State(s) or multistate MSA(s) that the activity benefits or serves or, if the activity benefits or serves the nationwide area, to the nationwide area. Consequently, a bank will not receive consideration for community development loans or investments allocated to a State, multistate MSA, or the nationwide area in its lower geographic-level evaluations. For the purposes of allocating community development loans and investments, the agencies consider low- or moderate-income families to be located in a State or multistate MSA, as applicable, consistent with final § ____.28(c). The agencies determined that this was appropriate because allocating community development financing activities to the county, State, or multistate MSA level in the absence of specific documentation that the loan or investment benefited or served that area could result in an artificial inflation of the metrics and benchmarks because the loan or investment may not have benefited or served one of the geographic areas where the agencies are allocating a portion of the dollar value. Further, allocating part of a community development loan or investment to a county, State, or multistate MSA that did not actually benefit from that loan or investment may disincentivize banks from engaging in more targeted loans and investments that do benefit or serve those areas.

The agencies also considered the comments suggesting alternatives to the proposed approach of allocating community development loans and

[1140] The Community Development Financing Test for Limited Purpose Banks includes a similar provision for allocation in final § ____.26(c)(2), which also cross-references final appendix B, paragraph I.b.

[1141] The NPR discussed allocating at the multistate MSA level. The agencies did not include this level of allocation in proposed appendix B. The final rule includes allocation at the multistate MSA level because allocation at this level is necessary based on the structure of the proposal and the final rule.

[1142] The agencies determine the highest geographic level for allocating a community development financing activity based on the geographic scope of the activity. For example, the agencies would allocate an investment in a statewide economic development fund for which the bank does not have specific documentation identifying projects financed at the county level to the State—not the nationwide area.

investments in proportion to the percentage of low- and moderate-income families in the geographic area benefited or served. The agencies are finalizing allocation based on the percentage of low- and moderate-income families because they believe this: (1) is consistent with the CRA statute's and CRA regulations' focus on helping to meet the credit needs of a bank's entire community, including low- and moderate-income communities; and (2) it does not introduce additional complexity that would result from allocating based on a combination of low- and moderate-income families, small businesses, and small farms. The agencies determined that other options for allocating community development loans or investments, such as allocation based on all families or dividing between facility-based assessment areas, lacked the connection to low- and moderate-income communities that the agencies believe is at the core of the CRA. Further, the agencies considered commenter feedback and determined that it was not appropriate to allocate one type of activity, such as housing tax credit investments, differently than other types of activities because the mechanism for recognizing particularly impactful activities under the final rule is the impact and responsiveness review. The final rule includes the following table outlining how community development loans and investments will be allocated:

Table 42 to Appendix B: Community Development Loan or Community Development Investment Allocation

Community Development Loan or Community Development Investment Benefits or Serves	Allocation Approach if Specific Documentation is Available	Allocation approach based on Geographic Scope of Activity
One county	Allocate to county	NA
Multiple counties that are part of one State or multistate MSA	Allocate to counties	Allocate to counties in proportions equivalent to the distribution of low- and moderate-income families
One State or multistate MSA	Allocate to counties	Allocate to the State or multistate MSA
Multiple States or multistate MSAs, less than the entire nation	Allocate to counties	Allocate to the States or multistate MSAs, as applicable, based on the proportion of low- and moderate-income families in each State or multistate MSA
Nationwide area	Allocate to counties	Allocate to the nationwide area

Final paragraph I.b.2.ii.B of appendix B also includes a footnote explaining that for purposes of allocating community development loans and investments, the agencies consider low- or moderate-income families to be located in a State or multistate MSA, as applicable, consistent with final § ____.28(c). As noted above, the agencies also made several clarifying edits to proposed § ____.24(a) and paragraph I.b of appendix B. The agencies divided proposed § ____.24(a) into two paragraphs, so that the allocation paragraph[1143] is independent of the general paragraph describing the performance test.[1144] The agencies removed the portion of proposed § ____.24(a) referencing the

[1143] *See* final § ____.24(a)(2).

[1144] *See* final § ____.24(a)(1).

documentation that banks can provide, or the agencies will use, to support the allocation of community development loans and investments because this concept is adequately addressed in paragraph I.b of appendix B of the final rule. Under the final rule, paragraph I.b.1 of appendix B provides that, as appropriate, the appropriate Federal financial supervisory agency may also consider publicly available information and information provided by government or community sources that demonstrates that a community development loan or community development investment benefits or serves a facility-based assessment area, State, or multistate MSA, or the nationwide area. The agencies intend that these changes will clarify, but not substantively alter, the proposal.

Further, the agencies reorganized paragraph I.b of appendix B and added additional detail to explain the allocation process for community development loans and investments. First, following the paragraphs on valuation in paragraph I.a.i of appendix B, paragraph I.a.ii explains that to calculate the metrics and benchmarks provided in §§ ____.24 and ____.26, the agency includes all community development loans and community development investments that are allocated to the specific facility-based assessment area, State, multistate MSA, or nationwide area, respectively, in the numerator for the metric and benchmarks applicable to that geographic area and then cross references paragraph I.b of appendix B, which includes the allocation provisions. Second, the agencies included in paragraph I.b.1 of appendix B cross references to § ____.42(a)(5)(ii)(D) and (E), which explain the data a bank must provide to support the allocation of a community development loan or investment. The agencies also made other conforming revisions.

Section ____.24(b) Facility-Based Assessment Area Evaluation

Current Rule and the Agencies' Proposal

As discussed above, the agencies currently evaluate banks' community development performance in banks' assessment areas. The agencies proposed to continue evaluation of community development financing activities in facility-based assessment areas consistent with the current rule.

Comments Received

Commenters generally supported the continued evaluation of community development financing performance in facility-based assessment areas. The comments regarding specific aspects of the proposed facility-based assessment area evaluation, including the applicable metrics, benchmarks, impact review, and conclusions are discussed below in the relevant section-by-section analyses.

Final Rule [1145]

Under the final rule, the appropriate Federal financial supervisory agency evaluates a bank's community development financing performance in a facility-based assessment areas using (1) the Bank Assessment Area Community Development Financing Metric in § ____.24(b)(1); (2) the applicable benchmarks, which include the Assessment Area Community Development Financing Benchmark and the MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks (referred to as the local and national benchmarks in the section-by-section analysis of § ____.24(b)(2)); and (3) the impact and responsiveness review in § ____.24(b)(3). The final rule also provides that the agency assigns conclusions for a bank's facility-based assessment areas pursuant to paragraph d.1 of appendix C. This section includes conforming and technical edits to update the numbering in the rule and other wording for purposes of consistency and clarity that are not intended to have a substantive effect.

Section ____.24(b)(1) Bank Assessment Area Community Development Financing Metric

The Agencies' Proposal

The agencies proposed in § ____.24(b)(1) to use a Bank Assessment Area Community Development Financing Metric to measure the dollar value of a bank's community development loans and investments compared to deposits from the bank's deposit accounts [1146] in the facility-based assessment area. As discussed below, the agencies also proposed comparing this metric to certain benchmarks for the purpose of informing the evaluation of bank performance.[1147]

Bank Assessment Area Community Development Financing Metric—Numerator. The agencies proposed in § ____.24(b)(1) and section 2 of appendix B that the Bank Assessment Area Community Development Financing Metric would be the ratio of a bank's community development financing dollars (the numerator) that serve the facility-based assessment area, averaged over the years of the evaluation period, relative to the dollar value of the deposits from the bank's deposit accounts (the denominator) in a bank's facility-based assessment area, averaged over the evaluation period.

The agencies proposed that the numerator of the Bank Assessment Area Community Development Financing Metric would be a bank's annual average of dollars of community development loans and investments that serve a facility-based assessment area.[1148] As discussed above, for each year in an evaluation period this calculation would include the dollar amount of all community development loans originated and community development investments made in that year. The agencies also proposed to include the dollar amount of any increase in an existing community development loan that is renewed or modified in that year.[1149] The proposed numerator would also include the 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 during the evaluation period.[1150] Considering the outstanding balance of a loan or investment in bank's metric on an annual basis would make long-term financing beneficial to a bank's metric.

Bank Assessment Area Community Development Financing Metric—Denominator. The proposed denominator of the Bank Assessment Area Community Development Financing Metric would be a bank's annual average dollar amount of deposits from the bank's deposit accounts sourced from a facility-based assessment area during the evaluation period.[1151] As proposed in § ____.42, collecting and maintaining deposits data would be required for banks with assets

[1145] As discussed in the section-by-section analysis of final § ____.21(a)(5), the agencies are adopting a new paragraph in the final rule to clarify the evaluation of military banks. Under the final rule, the agencies will evaluate a military bank that chooses to delineate the entire United States and its territories as its sole facility-based assessment area because its customers are not located within a defined geographic area, as specified in final § ____.16(d), exclusively at the institution level based on the bank's performance in its sole facility-based assessment area. For purposes of the final Community Development Financing Test, the agencies will evaluate these banks pursuant to the facility-based assessment area provisions in final § ____.24(b).

[1146] *See* proposed § ____.12 (defining "deposits").

[1147] *See* proposed § ____.24(b)(2).

[1148] *See* proposed § ____.24(b)(1) and proposed appendix B, section 1.

[1149] *See* proposed appendix B, section 1.

[1150] *Id.*

[1151] *Id.*

greater than $10 billion as of December 31 in both of the prior two calendar years and optional for banks with assets of $10 billion or less as of December 31 of either of the prior two calendar years.[1152] Under the proposal, banks that collected and maintained 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.[1153] An annual average would then be computed across the years of the evaluation period. The agencies proposed that, for banks that do not collect and maintain deposits data under proposed § ____.42, CRA evaluations would use the FDIC's Summary of Deposits data in order to tailor data requirements for these banks.

This denominator was an indicator of a bank's financial capacity to conduct community development loans and investments because deposits are a major source of bank funding for loans and investments. The agencies considered that, in their view, the greater a bank's volume of deposits, the greater its capacity and CRA obligation to lend and invest would become.[1154] Therefore, the proposed approach for the Bank Assessment Area Community Development Financing Metric would establish a proportionately greater obligation to serve facility-based assessment areas for banks with a greater presence in that market.

As an alternative, the agencies considered basing the Bank Assessment Area Community Development Financing Metric denominator on the share of a bank's depositors residing in a facility-based assessment area. Using this alternative, the agencies would calculate the denominator by multiplying the bank's institution level deposits by the percentage of the bank's depositors that reside in a facility-based assessment area. For example, if the bank had a total of $100,000,000 in deposits and one percent of the bank's depositors resided in a given facility-based assessment area, then the denominator for that assessment area's metric would be $100,000,000 × .01 = $1,000,000. The objective of this alternative approach would be to more evenly allocate a bank's CRA obligations across markets, including less affluent markets in which a bank's depositors hold relatively small amounts of deposits, because deposits would be allocated to facility-based assessment areas in proportion to the number of depositors. However, the agencies considered that this option would require all large banks and any intermediate banks that opt into the Community Development Financing Test to collect and maintain the number of depositors residing in each of their facility-based assessment areas and in other geographic areas because this information is not available from existing data such as the FDIC's Summary of Deposits data.

Comments Received

The agencies received several comments on the proposed Bank Assessment Area Community Development Financing Metric.[1155] Commenters generally supported the proposed metric; however, at least one commenter objected and recommended the agencies use only the number of loans and investments and consider their overall impact in assessing banks' CRA performance. Further, some comments on the proposed metric may reflect a misunderstanding of the proposed calculations.

Bank Assessment Area Community Development Financing Metric—numerator. With respect to the proposed calculation of the numerator of the Bank Assessment Area Community Development Financing Metric, the agencies received several comments expressing differing views on the proposal for averaging banks' on balance sheet community development loans and investments for purposes of the Bank Assessment Area Community Development Financing Test Metric numerator. A commenter objected to using a three-year average of community development loans and investments because the loan values would likely decrease over that time, which the commenter stated would devalue community development loans. The commenter urged the agencies to consider an approach where the Bank Assessment Area Community Development Financing Test Metric numerator is the sum of: (1) the annual average of community development loans and investments originated or purchased in a prior evaluation period that remain on a bank's balance sheet; and (2) the total of all of community development loans and investments originated or purchased during the current evaluation period, without annual averaging.[1156] The commenter stated this approach would promote the provision of long-term capital since banks would still receive credit for remaining balances in the next evaluation period while encouraging community development financing generally by allowing banks to realize the full value of their community development loans and investments in the current evaluation period.

Another commenter stated that the proposed methodology of the Bank Assessment Area Community Development Financing Metric would artificially inflate the numerator by giving consideration during the current review period for activities in each year. The commenter suggested that a better way of encouraging patient capital would be to consider ''past'' loans and investments to refer only to prior evaluation period activities. Notwithstanding these concerns, the commenter suggested that if the agencies proceed with finalizing the current proposal, the final rule should include three additional ratios: (1) current community development financing activity divided by deposits; (2) past community development financing activity divided by deposits; and (3) total community development financing activity divided by deposits. Another commenter also expressed concern that providing consideration for current review period activities each year would limit the number of new loan originations.

Bank Assessment Area Community Development Financing Metric—denominator. Commenters that provided feedback on the denominator for the Bank Assessment Area Community Development Financing Metric and other metrics in the Community Development Financing Test generally expressed a preference for using the dollar value of deposits as proposed. Commenters generally did not support the alternative of using the share of bank depositors residing in a facility-based assessment area as the Bank Assessment Area Community Development Financing Metric denominator.

Commenters provided several reasons for their objection to the alternative denominator. One commenter noted that obtaining accurate data on the actual share of bank depositors residing

[1152] The proposed rule was silent as to whether intermediate banks that opted into the Community Development Financing Test could opt to collect and maintain deposits data for purposes of calculating the Community Development Financing Test metrics.

[1153] *See* proposed § ____.42(b)(5).

[1154] *See* 12 U.S.C. 2901.

[1155] The agencies note that comments on the Bank Assessment Area Community Development Financing Metric related to the calculation of the metric apply equally to the other metrics in the Community Development Financing Test. These comments will not be separately discussed when considering the other metrics in this performance test.

[1156] The agencies note that the commenter's suggestion is generally consistent with the proposal.

in an assessment area would be difficult. Another commenter stated that the agencies' proposed approach of using deposits as the Bank Assessment Area Community Development Financing Metric denominator was simpler and offered a more realistic chance for obtaining accurate data. Another commenter stated that it understood the agencies' desire to account for population and resource differences across assessment areas but that it was not clear the alternative approach would accomplish this goal. Lastly, a commenter noted that the spirit of the CRA includes how well banks are lending compared to where they are taking deposits.

The agencies also sought feedback regarding whether the source of deposits data for the Bank Assessment Area Community Development Financing Metric denominator should be collected deposits data or the FDIC's Summary of Deposits data for banks with assets less than or equal to $10 billion. Some commenters supported the proposed use of Summary of Deposits data for the denominator for banks with assets of $10 billion or less. A commenter also recommended that all banks, not just banks with assets less than or equal to $10 billion, use Summary of Deposits data for the Bank Assessment Area Community Development Financing Metric denominator. This commenter suggested that banks may voluntarily collect and maintain deposits data for the sake of ensuring accurate metrics and weights.

Alternatively, some commenters preferred using collected deposits data for the denominator. Specifically, certain commenters recommended that the agencies should require deposits data collection for all large banks for use in determining the denominator. One of these commenters stated that collected deposits data more accurately reflect bank performance under the Community Development Financing Test. Another commenter recommended allowing banks to rely on the FDIC's Summary of Deposits data to mitigate compliance burden but suggested that banks may opt to collect and report deposits data to offset the risk of inaccuracy associated with the use of Summary of Deposits data.

Final Rule

After considering the comments, the agencies are finalizing the Bank Assessment Area Community Development Financing Metric as proposed with certain revisions, including clarifying and conforming revisions, to final § ____.24(b)(1) and paragraph II.a of final appendix B (proposed as section 2 of appendix B).

Bank Assessment Area Community Development Financing Metric—numerator. With respect to the numerator of the Bank Assessment Area Community Development Financing Metric, the commenters focused on: (1) the types of loans and investments included in the numerator; (2) when banks originated, purchased, or made those loans and investments; and (3) whether they were averaged annually over the evaluation period. As discussed in the section-by-section analysis of § ____.24(a), the agencies considered how to value community development loans and investments to encourage patient capital while still giving appropriate consideration for new community development loans and investments and believe that the final rule strikes the right balance.

The agencies considered the alternatives suggested by commenters, including averaging only the annual value of prior period community development loans and investments and adding additional metrics if the rule is finalized as proposed. The agencies determined not to adopt these or other alternatives. Because the same metrics and benchmarks apply to all banks evaluated under the Community Development Financing Test, banks that want to differentiate themselves will need to increase their community development lending and investments in comparison to their peers. Banks that substantially reduce the amount of new community development lending and investments will likely perform poorly in comparison to peers that maintain or increase their level of community development lending and investment. For this reason, the introduction of standard metrics and benchmarks will encourage banks to increase their community development lending and investment.

The agencies also note that the Community Development Financing Test includes consideration of the performance context information provided in § ____.21(d), as further discussed in that section-by-section analysis. Performance context that the agencies may consider under the final rule includes: (1) information regarding a bank's past performance; (2) any information about community development needs and opportunities; and (3) any other information the appropriate Federal financial supervisory agency deems relevant. Given that the agencies will use the metrics and benchmarks to inform a qualitative assessment of a bank's community development financing performance, an examiner could consider these performance context factors in concluding on a bank's performance in circumstances where the bank has substantially reduced the amount of new community development loans and investments during an evaluation period.

Bank Assessment Area Community Development Financing Metric—denominator. The agencies considered commenter feedback on the Bank Assessment Area Community Development Financing Metric denominator and for this purpose, deposits are an indicator of a bank's financial capacity to conduct community development loans and investments because deposits are a major source of bank funding for loans and investments. Although the alternative described in the proposal of using the share of a bank's depositors residing in an facility-based assessment area for the denominator may have allowed the agencies to more evenly allocate a bank's CRA obligations across markets—including less affluent markets in which the bank's depositors hold relatively small amounts of deposits—the burden associated with this option outweighs the benefit of using depositors as the denominator because it would require data collection for all banks evaluated under the Community Development Financing Test. Using deposits as the denominator is consistent with the spirit of the CRA because it enables the agencies to assess the extent to which banks are reinvesting in the communities where they take deposits.

The agencies also considered the comments regarding the use of deposits data collected pursuant to § ____.42 as opposed to the FDIC's Summary of Deposits data in the denominator for the Bank Assessment Area Community Development Financing Metric. The split in commenters' views on this issue reflects the inherent tradeoffs associated with each option. While use of collected deposits data would make the Bank Assessment Area Community Development Financing Metric more accurate, collecting data on deposits would be a new data collection requirement that imposes burden on banks. In contrast, although using Summary of Deposits data in the denominator eliminates the burden on banks to collect data, it may not accurately reflect the dollar volume of deposits drawn from a particular geographic area. The agencies are adopting the final rule as proposed because it balances the tradeoff between increased burden associated with collecting, maintaining, and reporting deposits data and the accuracy of the deposits data.

The final rule requires banks that had assets greater than $10 billion to collect, maintain, and report deposits data. It is important to tailor the requirement to collect, maintain, and report deposits data in order to only apply to banks with greater resources. The agencies determined that, due to the greater resources of banks that had assets greater than $10 billion, these banks have the capacity to collect, maintain, and report more accurate data and the benefit of more accurate deposits data outweighs the burden of collecting, maintaining, and reporting that data. *See* the section-by-section analysis of § ____.42. For banks that had assets less than or equal to $10 billion, the final rule uses the FDIC's Summary of Deposits data in the denominator, thereby limiting the burden for these banks. Nonetheless, because certain banks that had assets of less than or equal to $10 billion may have dispersed deposits or the assignment of the banks' deposits under the Summary of Deposits data may not reflect the actual location of the deposits, the final rule provides these banks with the option to collect, maintain, and report deposits data. Providing this option mitigates the potential negative consequences of using Summary of Deposits data in the denominator because banks that would not perform well compared to their peers using Summary of Deposits data will be able to choose to collect, maintain, and report deposits data pursuant to final § ____.42 to provide a fuller and more accurate picture of their community development lending and investment.

Section ____.24(b)—clarifying, conforming, and technical revisions to the facility-based assessment area evaluation. Although the agencies are finalizing the facility-based assessment area evaluation, including the Bank Assessment Area Community Development Financing Metric, substantively as proposed, as noted by commenters, the structure of proposed § ____.24 and appendix B may be confusing. To address that concern, the agencies revised aspects of the final rule for clarity and consistency. With respect to the facility-based assessment area evaluation, the agencies included technical revisions to cross reference the sections of the final rule that include the metrics, benchmarks, and the impact and responsiveness review as well as how the agencies assign conclusions.[1157] The agencies also enhanced the descriptions of the metrics and benchmarks in final § ____.24 and clarified the calculations in appendix B by segmenting the descriptions into steps and adding sample formulas to the examples. These edits are intended to eliminate unintended inconsistencies and inaccuracies in the calculations in the final rule and improve the ability to understand and apply the metrics and benchmarks in the final Community Development Financing Test.

Under the final rule, § ____.24(b)(1) provides that the Bank Assessment Area Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments[1158] that benefit or serve a facility-based assessment area compared to those deposits in the bank that are located in the facility-based assessment area, calculated pursuant to paragraph II.a of appendix B.

Paragraph I.a.1 of appendix B of the final rule provides that the appropriate Federal financial supervisory agency calculates an annual dollar volume of community development loans and community development investments based on the annual dollar volume of these loans and investments. Paragraph I.a.2.i of appendix B of the final rule provides that the agency also determines the annual dollar volume of deposits. The agencies use the annual dollar volume of community development loans and investments and the annual dollar volume of deposits to calculate the Bank Assessment Area Community Development Financing Metric pursuant to paragraph II.a of appendix B. Paragraph II.a of appendix B includes the three steps for calculating the Bank Assessment Area Community Development Financing Metric. Specifically, the agency calculates the Bank Assessment Area Community Development Financing Metric by: (1) summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve the facility-based assessment area for each year in the evaluation period (sum of community development loans and investments); (2) summing the annual dollar volume of deposits located in the facility-based assessment area (sum of deposits); and (3) dividing the result of the sum of community development loans and investments by the sum of deposits.

The agencies made a technical change to consistently use the term ''dollar volume'' when describing community development loans and investments and deposits in the Bank Assessment Area Community Development Financing Metric. The agencies also revised the phrase used to describe deposits in the Bank Assessment Area Community Development Financing Metric. In the proposal, community development loans were compared to ''deposits from the bank's deposit accounts.'' The agencies determined that this description could be misinterpreted to mean the bank's own accounts (*i.e.,* accounts containing the bank's money). To clarify the denominator, the final rule uses the phrase ''deposits in the bank.''

The agencies made conforming revisions to the remainder of final § ____.24 and final appendix B to reflect these clarifying, conforming, and technical revisions.

Section ____.24(b)(2) Benchmarks

The Agencies' Proposal

The agencies proposed establishing local[1159] and national[1160] benchmarks for each facility-based assessment area. To help develop facility-based assessment area conclusions, the agencies would compare the Bank Assessment Area Community Development Financing Metric to both (1) an Assessment Area Community Development Financing Benchmark (local benchmark) and, as applicable, (2) a Metropolitan or a Nonmetropolitan Nationwide Community Development Financing Benchmark (national benchmarks).[1161] 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. The agencies based the proposed benchmarks on the aggregate amount of community development loans and investments and the total dollar value of deposits in the bank's facility-based assessment area or nationwide area, among all large banks.

As proposed, the aggregate amounts of deposits for these benchmarks would be based on reported deposits data for banks that had assets greater than $10 billion and the FDIC's Summary of Deposits data for banks that had assets less than or equal to $10 billion, using

[1157] *See, e.g.,* final § ____.24(b).

[1158] The agencies consider a bank's community development loans and investments to include those community development loans and investments that the bank is required or elects to have the agencies consider under final § ____.21(b) and (c) (*i.e.,* community development loans and investments conducted by operations subsidiaries or operating subsidiaries, as applicable, other affiliates, third parties, or consortiums).

[1159] *See* proposed § ____.24(b)(2)(i) and proposed appendix B, section 3.

[1160] *See* proposed § ____.24(b)(2)(ii) and proposed appendix B, section 4.

[1161] *See* proposed § ____.24(b)(2)(i) and (ii).

the deposits assigned to branches located in each assessment area for which the benchmark is calculated.[1162] The agencies sought feedback on the proposed approach to using the Summary of Deposits data for calculating community development financing benchmarks, the tradeoffs of the proposed approach, and potential alternatives to the proposed approach.

The proposed approach of using both local and national benchmarks would provide the agencies, banks, and the public with additional context about the local level of community development lending and investment that could help to interpret and set goals for performance. For example, a bank whose metric fell short of the local benchmark, in a facility-based assessment area where the local benchmark is much lower than the national benchmark, could be considered to have conducted a relatively low volume of loans and investments. The agencies also intended the national benchmarks to provide a baseline for evaluating the level of a particular bank's community development loans and investments in a facility-based assessment area with few or no other large banks from which to calculate a local benchmark. In the preamble to the proposed rule, the agencies suggested the benchmarks would be made publicly available, for example, in dashboards.

Assessment Area Community Development Financing Benchmark.[1163] The agencies provided in section 3 of proposed appendix B that the numerator for the Assessment Area Community Development Financing Benchmark would be the annual average dollar amount of all large banks' community development financing activities in the facility-based assessment area during the evaluation period. Under this proposed section, the denominator for the Assessment Area Community Development Financing Benchmark would be the annual average of the total dollar amount of all deposits held in the assessment area by large banks. The agencies proposed that the deposits in the facility-based assessment area would be the sum of: (1) the annual average of deposits in counties in the facility-based assessment area by all banks that had assets greater than $10 billion over the evaluation period, as reported under proposed § ____.42; and (2) the annual average of deposits assigned to branches in the facility-based assessment area by all large banks that had assets less than or equal to $10 billion, according to the FDIC's Summary of Deposits data, over the evaluation period.[1164]

$$\frac{\text{Annual average of local CD loans} + \text{CD investments}}{\text{Annual average of local deposits}}$$

$$= \text{Assessment Area Community Development Financing Benchmark}$$

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 lending and investment across communities and within a community across time. The agencies considered 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 community development lending and investment.

Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks. In § ____.24(b)(2)(ii), the agencies proposed to develop separate nationwide community development financing benchmarks for all metropolitan areas and all nonmetropolitan areas (the national benchmarks), respectively. The agencies would apply one of these national benchmarks to each facility-based assessment area, depending on whether the facility-based assessment area was located in a metropolitan area or nonmetropolitan area.[1165] Based on the agencies' analysis, the ratio of banks' community development loans and investments to deposits is higher in metropolitan facility-based assessment areas than in nonmetropolitan assessment areas.[1166] The agencies proposed setting the national benchmark separately for metropolitan and nonmetropolitan areas to help account for differences in the level of community development opportunities in these areas.

The agencies proposed that the numerator for the national benchmarks would be the annual average of the total dollar amount of all large banks' community development loans and investments (in either metropolitan or nonmetropolitan areas, depending on the facility-based assessment area) during the evaluation period. The

[1162] *See* proposed § ____.12 (defining ''deposits'') and proposed appendix B, sections 3 and 4.

[1163] The agencies note that many of the comments on the Assessment Area Community Development Financing Benchmark apply equally to the other benchmarks in the Community Development Financing Test. This SUPPLEMENTARY INFORMATION does not separately discuss these comments when considering the other benchmarks in this performance test.

[1164] *See* proposed appendix B, section 2.

[1165] *See* proposed § ____.24(b)(2)(ii) and proposed appendix B, section 4.

[1166] 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 volume of current period community development loan originations, as well as current period and prior period community development investments in each assessment area. The total dollar volume of community development loans and investments was divided by the length in years of each examination evaluation period, to produce an annual average for each assessment area evaluation. The FDIC's Summary of Deposits data was used to identify the dollar volume of deposits associated with the corresponding bank's branches in the assessment area, which is the best available approach for estimating the dollar volume of deposits associated with each of a bank's assessment areas. The aggregate ratio of annualized dollars of community development loans and investments to dollar volume 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.

proposed denominator was the annual average of the total dollar amount of deposits (again, either in metropolitan or nonmetropolitan areas) during the evaluation period. Under the proposal, the deposits in the metropolitan or nonmetropolitan areas would be the sum of: (1) the annual average of deposits in counties in the metropolitan or nonmetropolitan areas reported by all banks that had assets greater than $10 billion over the evaluation period (as reported under proposed § ____.42); and (2) the annual average of deposits assigned to branches in the metropolitan or nonmetropolitan areas by all banks that had assets less than or equal to $10 billion, according to the FDIC's Summary of Deposits data, over the evaluation period.[1167]

$$\frac{\text{Annual average of nationwide metropolitan CD loans + CD investments}}{\text{Annual average of nationwide metropolitan deposits}}$$

$$= \text{Nationwide Community Development Financing Benchmark-Metropolitan}$$

$$\frac{\text{Annual average of nationwide nonmetropolitan CD loans + CD investments}}{\text{Annual average of nationwide nonmetropolitan deposits}}$$

$$= \text{Nationwide Community Development Financing Benchmark-Nonmetropolitan}$$

Timing of benchmark data. The agencies also considered whether they should calculate and fix the benchmarks based on community development lending, community development investment, and deposits data that are available at least one year in advance of the end of the evaluation period. For example, for a three-year evaluation period ending in December 2024, the agencies could determine the benchmarks for that evaluation period using data over the three-year timeframe spanning from 2021 to 2023. This alternative would have provided 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 did not propose this alternative because they believed the benchmarks to which a bank is compared under this alternative may not reflect the credit needs and opportunities in the assessment area to the same degree as the proposed approach, which calculated the benchmarks based on the years in the evaluation period, especially if there were significant changes in community development opportunities during the final year of the evaluation period.

Comments Received

Local and national benchmarks. Commenters that addressed the agencies' proposal to compare the Bank Assessment Area Community Development Financing Metric to both local and national benchmarks expressed varying views regarding the use of the proposed benchmarks. Certain commenters supported the use of local and national benchmarks stating that the benchmarks would create more transparency and consistency across performance evaluations and more certainty as to whether banks will receive credit for community development loans and investments outside of facility-based assessment areas. For example, a commenter expressed the view that the local and national benchmarks would encourage more investments in underserved communities, as well as in statewide and national funds.

A few other commenters expressed support for the inclusion of the local benchmarks in the Community Development Financing Test but opposed or expressed reservations about the national benchmarks. These commenters provided several reasons for objecting to the use of national benchmarks, including that: (1) they would compare a regional bank's performance against that of much larger, nationwide banks, thereby requiring regional banks to attempt to make up for quantitative deficiencies in the comparison of the bank's metric to the benchmarks through qualitative considerations; (2) the availability of community development loans and investments varies considerably from region to region; and (3) they fail to account for peculiarities or limitations in an assessment area or factors beyond a bank's control. One of these commenters requested that if the agencies retain the nationwide area benchmarks,[1168] the final rule should allow banks the option of a nationwide area review. A few commenters expressed concern that a formulaic approach for the use of benchmarks may have unintended consequences due to its lack of nuance. One of these commenters stated that a national benchmark is not appropriate in facility-based assessment areas with low levels of community development lending and investments because opportunities in these areas tend to be limited and a national benchmark could be unduly demanding. The commenter noted that, on the other hand, use of a national benchmark in facility-based assessment areas with high levels of community development lending and investment opportunities could be unduly lenient.

The agencies also asked for feedback on the appropriate method for using the local and national benchmarks. Commenters generally supported allowing examiner judgement regarding the use of benchmarks. However, consistent with the comments on enhancing the rigor of the Community Development Financing Test, discussed above, other commenters preferred that the agencies standardize the use of benchmarks, with one commenter stating that the agencies should only use

[1167] *See* proposed § ____.24(b)(2)(ii) and proposed appendix B, section 4.

[1168] The agencies understand the commenter to be referring to the proposed national benchmarks.

examiner judgement until they collect community development lending and investment data and identify patterns.

Other commenters requested that the agencies provide examiners with guidelines for using the local and national benchmarks. For example, a few commenters expressed concern that the proposal failed to provide enough guidelines for comparing the Bank Assessment Area Community Development Financing Metric to either the local or national benchmarks making it possible for an examiner to inflate a rating by choosing the lowest comparator benchmark.

Certain comments suggested additional guidelines for the local and national benchmarks. A few commenters suggested the agencies establish the following guidelines: (1) weight the national benchmark at 60 percent and local benchmark at 40 percent in facility-based assessment areas where the local benchmark is lower than the national benchmark to motivate banks to exceed the local benchmark; and (2) weight the local benchmark at 60 percent and the national benchmark at 40 percent in facility-based assessment areas where the local benchmark is higher than the national benchmark. These commenters further suggested that the agencies could refine these weights by determining the distribution of local benchmarks as measured by percentiles or other distances from the median or mean benchmarks. A commenter suggested that examiners could tailor the weighting of the local and national benchmarks to emphasize the stronger of the two ratios for a bank's facility-based assessment areas.

Timing of benchmark data. The agencies also sought feedback on what other considerations they could undertake to ensure clarity and consistency in the benchmark calculations. Specifically, the agencies sought feedback on whether they should calculate the benchmarks based on data available prior to the end of the evaluation period or align calculation of the benchmarks with data available at the beginning and end of the evaluation period.

In response, a few commenters supported aligning data with the evaluation period while others noted that the agencies should set benchmarks based on data that are available prior to a bank's evaluation period. One of the commenters that supported aligning the benchmark calculations with the beginning and end of the evaluation period specified that the agencies should do so in the initial year implementing the new CRA regulations to determine changes in performance levels. The commenter suggested, however, that the agencies may not need this process in subsequent periods.

In contrast to the commenters that supported using data from the evaluation period to establish the benchmarks, other commenters requested that the agencies make the benchmarks known to banks in advance of evaluation periods. One of these commenters stated that this approach would ensure that banks know the target to which they are being held, and the community would have a clear standard to which they can hold banks accountable. Another commenter stated that it is a fundamental matter of fairness and due process that banks know the benchmarks the agencies will use to evaluate banks' performance prior to the evaluation period.

Certain commenters offered alternatives to using data as of the end of the evaluation period. A few of these commenters recommended that the benchmarks be set annually, based on the most recent year that data are available, which would align with the proposed annual assessment. For example, data from year one would be available in year two, and the agencies could use that data to set the benchmarks for year three. These commenters stated that this approach would provide banks more transparency and predictability and avoid applying different benchmarks to comparable banks depending on the timing of their evaluation periods. To offer greater clarity, another commenter suggested the agencies use data available by the start of every year, even if it means the agencies use lagging data. To calculate the benchmarks, a commenter recommended that the agencies average data for the examination period to best reflect any market shifts or changing circumstances. The commenter also recommended that the agencies should use the maximum amount of data available for the CRA examination even if the available market data do not match up perfectly in terms of availability at the time of the examination.

Final Rule

After considering the comments on the local and national benchmarks, the agencies are finalizing the benchmarks as proposed with certain clarifying revisions. The final rule provides in § ____.24(b)(2) that the appropriate Federal financial supervisory agency compares the Bank Assessment Area Community Development Financing Metric [1169] to (1) the Assessment Area Community Development Financing Benchmark [1170] and (2) either the MSA or Nonmetropolitan Nationwide Community Development Financing Benchmark, depending on whether the facility-based assessment area is within an MSA or a nonmetropolitan area.[1171]

The agencies considered commenters' concerns with applying the national benchmark to evaluate community development lending and investments in facility-based assessment areas. However, the local and national benchmarks are both useful tools for examiners and will help to improve consistency in CRA performance evaluations. As explained in the proposal, the local and national benchmarks provide useful information for understanding how a bank's community development lending and investment compares to other banks in their local markets and nationwide. In particular, the local benchmark is based on community development lending and investment in a facility-based assessment area for large banks, and, therefore, provides insight into the performance of other banks operating in the same community, while the national benchmark provides a baseline comparator for the nationwide performance of all large banks in MSAs or nonmetropolitan areas, as applicable.

The agencies are sensitive to the concerns raised by commenters about variations in lending and investment between regions, economic cycles, and types of banks. For this reason, the agencies emphasize that the benchmarks provide standardized data points that the agencies will consider in evaluating banks' community development lending and investment, but performance context remains an important part of CRA performance evaluations. Through performance context, examiners can consider any variations in lending and investment among banks and the reasons for those variations, such as those noted by commenters, and account for a bank's particular circumstances in concluding on performance in a facility-based assessment area. In those circumstances where the local benchmarks may lack robust data due to limited market participants, the agencies may rely more heavily on the national benchmark because the local benchmark may provide less meaningful information against which to compare a bank's performance. The agencies may also rely more heavily on supervisory experience

[1169] *See* final § ____.24(b)(1).

[1170] *See* final § ____.24(b)(2)(i).

[1171] *See* final § ____.24(b)(2)(ii).

and performance context, particularly market opportunities and bank capacity and constraints, in considering a bank's performance under the Community Development Financing Test in these circumstances.

The agencies also determined that, under the final rule, they will calculate the local and national benchmarks using data from the evaluation period, as proposed with clarifying revisions. The agencies understand commenters' concerns that using community development lending and investment and deposits data that correspond to the years in the evaluation period would mean that banks would not know the benchmarks in advance of conducting the community development lending and investments that the agencies will compare to those benchmarks. However, lagging benchmarks (*i.e.,* benchmarks based on data from before the evaluation period) would be an inappropriate measure given that they would not reflect lending and investment conducted contemporaneous to the community development loans and investments considered in a bank's CRA performance evaluation. Based on our supervisory experience, the agencies have observed that changes in economic cycles and other external factors influence the level of community development lending and investment that banks engage in during a given year. For that reason, using more timely data for comparison, coupled with consideration of performance context, will result in the most useful information for evaluating bank performance under the Community Development Financing Test.

Consistent with the revisions to the Bank Assessment Area Community Development Financing Metric, the agencies made conforming revisions to streamline the discussion of the benchmarks in final § ____.24(b)(2) and clarify the calculation of the benchmarks in paragraphs II.b and II.c of final appendix B. The agencies intend for these revisions to clarify the final rule and eliminate inconsistencies that were present in the proposal.

The local benchmark is provided in final § ____.24(b)(2)(i), which applies in each facility-based assessment area. Under the final rule, the Assessment Area Community Development Financing Benchmark measures the dollar volume of community development loans and investments that benefit or serve the facility-based assessment area for all large banks compared to deposits located in the facility-based assessment area for all large banks. The appropriate Federal financial supervisory agency calculates the local benchmark pursuant to paragraph II.b of final appendix B, which provides that the agency calculates the Assessment Area Community Development Financing Benchmark for each facility-based assessment area by: (1) summing all large banks' annual dollar volume of community development loans and investments that benefit or serve the facility-based assessment area for each year in the evaluation period (sum of community development loans and investments); (2) summing all large banks' annual dollar volume of deposits located in the facility-based assessment area for each year in the evaluation period (sum of deposits); and (3) dividing the result of the sum of community development loans and investments by the result of the sum of deposits.

The final rule includes the national benchmarks in final § ____.24(b)(2)(ii). The MSA Nationwide Community Development Financing Benchmark [1172] applies to a bank's facility-based assessment areas within an MSA. The MSA Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and investments that benefit or serve MSAs in the nationwide area for large banks compared to deposits located in the MSAs in the nationwide area for all large banks. The Nonmetropolitan Nationwide Community Development Financing Benchmark [1173] applies to a bank's facility-based assessment areas within a nonmetropolitan area. The Nonmetropolitan Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and investments that benefit or serve nonmetropolitan areas in the nationwide area for large banks compared to deposits located in nonmetropolitan areas in the nationwide area for all large banks. The appropriate Federal financial supervisory agency calculates the MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks pursuant to paragraph II.c of final appendix B.[1174]

The agency calculates the MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks by: (1) summing all large banks' annual dollar volume of community development loans and investments that benefit or serve MSAs or nonmetropolitan areas in the nationwide area for each year in the evaluation period (sum of community development loans and investments); (2) summing all large banks' annual dollar volume of deposits located in MSAs or nonmetropolitan areas in the nationwide area for each year in the evaluation period (sum of deposits); and (3) dividing the result of the sum of community development loans and investments by the result of the sum of deposits.[1175]

Section ____.24(b)(3), (c)(2)(iii), (d)(2)(iii), and (e)(2)(v) Impact and Responsiveness Review

Current Approach

Under the current rule, the performance criteria in the large bank lending test and investment test and the community development test applicable to intermediate small banks include several qualitative components. The lending test includes consideration of a bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or census tracts.[1176] The agencies consider, under the investment test: (1) the innovativeness or complexity of community development investments; and (2) the responsiveness of community development investments to credit and community development needs.[1177] For intermediate small banks, the community development test includes consideration of a bank's responsiveness to community development lending, investment, and service needs through community development loans, investments, and services.[1178] These qualitative performance criteria are components of the current performance tests and standards and the agencies consider these components in conjunction with the bank's performance context in evaluating a bank's community development lending and investment.

The interagency examination procedures reference these performance criteria without elaborating on how to identify whether certain community development loans or investments are particularly innovative, flexible,

[1172] *See* final § ____.24(b)(2)(ii)(A). In the proposal, this benchmark was described as the Metropolitan Nationwide Community Development Financing Benchmark. In the final rule, the agencies retitled this benchmark the MSA Nationwide Community Development Financing Benchmark to more accurately reflect the geographic areas included in the calculation.

[1173] *See* final § ____.24(b)(2)(ii)(B).

[1174] *See* final § ____.24(b)(2)(ii)(C).

[1175] *See* final appendix B, paragraph II.c.

[1176] *See* current 12 CFR ____.22(b)(5). The current rule uses the defined term ''geographies,'' which means census tracts.

[1177] *See* current 12 CFR ____.23(e)(2) and (3).

[1178] *See* current 12 CFR ____.26(c)(4).

complex, or responsive, as applicable. Over time, stakeholders indicated that these concepts were not well understood, and the agencies endeavored to provide additional clarity through the Interagency Questions and Answers.[1179] Although these Interagency Questions and Answers provided some additional guidance, questions remained as to what types of community development loans, investments, or services were considered most responsive or impactful to a community because of the extent or manner in which they helped to meet community needs.

The Agencies' Proposal

To complement the community development financing metrics and benchmarks, the agencies proposed evaluating the impact and responsiveness of a bank's community development loans and investments in facility-based assessment areas, States and multistate MSAs, as applicable, and the nationwide area.[1180] The qualitative evaluation in proposed § ____.24 would draw on the impact factors defined in proposed § ____.15, and on any other performance context information, as provided in proposed § ____.21(e), considered by the agencies to determine how the bank's community development loans and investments were responsive to the geographic area's community development needs and opportunities. This approach would advance the CRA's purpose by ensuring a strong emphasis on the impact and responsiveness of community development loans and investments in meeting community credit needs; increase consistency in the evaluation of qualitative factors relative to the current approach by creating clear factors to consider; and foster transparency for banks and the public by providing information about the type and purpose of community development loans and investments considered to be particularly impactful or responsive.

Consideration of qualitative factors as a supplement to the dollar-based metrics and benchmarks was aligned with the CRA's purpose of strengthening low- and moderate-income communities by more fully accounting for factors that may reflect the overall impact or responsiveness of a community development loan or investment. First, a qualitative review could consider the responsiveness of community development loans and investments 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 a community development loan or investment to reflect this context and address specific credit needs of the community, which can further the loan's or investment's impact or responsiveness.

Second, a qualitative evaluation was important for emphasizing relatively small loans or investments that nonetheless have a significant positive impact on the communities served. For example, grants and other monetary or in-kind donations that support organizations providing assistance to small businesses tend to have small dollar balances relative to loans to larger businesses, but they are critically important for addressing small business credit needs. Third, the qualitative evaluation could emphasize community development loans and investments 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 loans and investments that reach a broad range of low- and moderate-income communities, including those that are more challenging to serve. Finally, the qualitative review could emphasize specific categories of community development loans and investments aligned with the CRA's purpose of strengthening credit access for a bank's communities, including low- and moderate-income communities, such as loans and investments that support specified mission-driven financial institutions.

To promote greater consistency and transparency in the evaluation approach, the agencies noted in the NPR that they would consider whether a bank's community development loans and investments met the impact factors defined in proposed § ____.15,[1181] based on information provided by the bank, local community data, community feedback, and other performance context information.

Given the current lack of data to set thresholds, the agencies proposed that this process initially would be qualitative in nature. Specifically, the agencies explained in the proposed rule that they would consider a bank's community development loans and investments that meet each impact factor but would not use multipliers or specific thresholds to directly tie the impact review factors to specific conclusions. Under the proposed rule, a more significant volume of community development loans and investments that align with the impact review factors would positively affect conclusions. In the proposed rule, the agencies indicated that after banks report and the agencies analyze additional community development lending and investment data, the agencies could consider whether the agencies should implement additional approaches, such as quantitative measures, to evaluate impact and responsiveness.

Comments Received

Impact and responsiveness review, in general. The agencies received several comments on the inclusion of an impact review in the Community Development Financing Test. Certain commenters supported this aspect of the proposed rule; however, other commenters expressed concerns, in particular with the lack of clarity regarding its application as discussed further in the section-by-section analysis of § ____.15.

Specifically, a few commenters stated that the proposal's incorporation of an impact and responsiveness review in the Community Development Financing Test would encourage high-quality community development loans and investments. A commenter stated that the impact review should expressly incorporate the actual quality of a community development loan or investment, rather than a simple categorical assessment. This commenter, as well as another, stated that the agencies should use the impact review to uplift impactful or innovative small-dollar activities that banks might otherwise perceive as too risky, complex, or small to pursue.

Other commenters expressed concerns with the lack of clarity on how the impact review would affect conclusions. For example, certain commenters stated that it was unclear how the agencies would apply the impact review and whether the impact and responsiveness factors would have enough of an effect on banks' actions to mitigate disincentives created by the proposed Community Development Financing Test. Another commenter supported greater transparency in the impact review and generally more transparency in the methodologies and considerations used by examiners in forming performance context, as well as some of the justifications banks provide to support the inclusion of community development loans and investments in their Community Development Financing Test evaluation.

[1179] *See* Q&A § ____.21(a)—3 and Q&A § ____.21(a)–4.

[1180] *See* proposed § ____.24(b) and (c).

[1181] *Id.*

Weighting of the Metrics and Benchmarks and the Impact and Responsiveness Review Components. The proposal asked what approaches would enhance the clarity and consistency for assigning conclusions under the Community Development Financing Test, such as assigning separate conclusions for the metric and benchmarks component and the impact review component. The agencies also sought feedback from commenters regarding the appropriate weighting for each of these components. The agencies asked, for example, if they should weight both components equally or weight the metric and benchmarks component more than the impact review component.

In response to these questions, commenters provided varying views on the appropriate weighting of the metrics and benchmarks and the impact review components of the Community Development Financing Test. A few commenters advocated for weighting one component more than the other. Certain commenters stated that the agencies should give significant weight to the impact review component. One of these commenters stated that, in general, the impact review component should carry the most weight because smaller investments have an outsized impact and should carry more weight than higher dollar investments that have materially less impact. In contrast, certain commenters favored weighting the metrics and benchmarks component more, with a commenter stating that a higher weight for the metrics and benchmarks component would ensure banks conduct reasonable amounts of community development lending and investments while still providing qualitative consideration.

Some commenters suggested specific weighting for the metrics and benchmarks and the impact review components of the Community Development Financing Test. A few commenters supported a weight of 60 percent for the metrics and benchmarks component and 40 percent for the impact review component, explaining that assigning more weight to the metrics and benchmarks ensures a minimal level of community development financing activity in each assessment area. At least one of these commenters, however, stated that the agencies should also consider the provision of small dollar, high impact financing that can be more responsive to community needs. Another commenter stated that it would support a slightly heavier weight for the metrics and benchmarks component, of between 55 to 75 percent, and a lower weight for the impact review component, of between 25 to 45 percent.

Alternatively, certain commenters supported a more flexible approach, with one commenter recommending that the agencies, rather than assigning separate conclusions for the metric and benchmarks and the impact review components, consider using them to assess performance trends or patterns across banks. Nonetheless, the commenter stated that, if the agencies derive separate conclusions for these components, they could weight each component and then reduce or increase the overall bank performance score based on the outcome.

Impact review metrics. The agencies also sought feedback on whether they should consider publishing standard metrics in performance evaluations, such as the percentage of a bank's activities that meet one or more impact criteria. Commenters expressed different views on incorporating performance standards into the impact review.

Certain commenters supported developing standards or metrics for the impact review. For example, a commenter suggested that developing metrics for the impact review would provide greater consistency and transparency. Another commenter stated that the agencies should consider both the dollar volume and number of activities in an impact review metric to give credit to small-scale loans and investments. Other commenters agreed with adding metrics to the impact review, noting that, as currently constructed, the impact review could lead to the inconsistent or careless application of examiner discretion. At least one of the commenters that supported the inclusion of impact metrics expressed concern about how these metrics would be designed.[1182] The commenter believes that without additional data, it is infeasible to develop an effective model to measure the responsiveness of impactful activities or to incorporate the impact factors into the quantitative Community Development Financing Test. Once additional data are collected, the commenter supports ultimately publishing standard metrics outlining the percentage of a bank's activity that meet an impact factor, as well as additional relevant qualitative data.

A few commenters provided suggestions for an impact review metric. Specifically, commenters suggested that the agencies could improve the impact review by: (1) including a metric based on the percentage of a bank's community development loans and investments that meet one or more of the specific impact factors;[1183] (2) adding a score, rating, and weight to the review as part of the Community Development Financing Test; or (3) adding a quantitative measure of community development financing in persistent poverty counties and counties with low levels of finance and including the percentage of activities that involved collaboration and partnerships with public agencies and community-based organizations.

A few commenters shared views on how the agencies should count activities with MDIs, WDIs, LICUs, and CDFIs as part of a bank's CRA evaluation. For example, although not phrased as a metric for the impact review, a few commenters recommended that a ''multiplier'' be applied to activities with CDFIs and MDIs, with an additional commenter recommending that additional multiplier consideration be considered for MDIs that are CDFIs.[1184] Certain commenters also recommended that the final rule tie activities with CDFIs, MDIs, WDIs, LICUs, and variations of these entities to banks receiving an ''Outstanding'' rating.

On the other hand, certain commenters expressed reservations with adding metrics to the impact review. A commenter suggested that metrics alone do not tell the complete story of a bank's CRA efforts and recommended that the agencies retain performance context in some capacity in evaluating a bank's performance. Another commenter noted that the need for greater clarity and consistency should be balanced with examiner discretion and formal metrics could lead to unintentional credit allocation. The commenter noted that the risk of government credit allocation was a central concern of the CRA authors and plays a prominent role in the legislative history of the statute.

Other commenters offered additional suggestions for how to encourage greater consistency and clarity in the impact

[1182] Another commenter strongly encouraged the agencies to commit to additional public engagement around the impact and responsiveness factors as community development lending and investment data are collected over the coming years.

[1183] The commenter also stated that a system for weighting specific impact and responsiveness review factors and assigning points could be developed over time as more data become available to add more rigor and clarity to the impact and responsiveness review component.

[1184] Certain commenters also recommended that the final rule tie activities with CDFIs, MDIs, WDIs, LICUs, or variations of these entities to banks receiving an ''Outstanding'' rating. The agencies note that community development activities with these entities are included as impact and responsiveness review factors under final § ____.15. See the section-by-section analysis of § ____.15 for additional information.

review. A commenter suggested that the agencies consider how the CDFI Fund and CDFIs conduct impact reviews and determine if they should replicate these reviews for CRA examinations. The commenter also recommended that the agencies conduct a review of examiners to determine how equitable and consistent they are at reviewing for community development impact.

Final Rule

The agencies considered the comments on the proposed impact review as it applies to the Community Development Financing Test and are finalizing the test to include this component as proposed with technical revisions, including renaming the component ''the impact and responsiveness review'' as discussed in the section-by-section analysis of § ____.15. As such, under the final rule, the impact and responsiveness review component will be a qualitative assessment applied by examiners and considered in conjunction with the metric and benchmarks component. Further, as discussed in the section-by-section analysis of § ____.15, the agencies determined it was not appropriate to add a score, or to establish metrics or a weighting framework for this component of the Community Development Financing Test at this time. However, as noted in the NPR, a more significant volume of community development loans and investments that align with the impact and responsiveness review factors will positively affect conclusions.

Under the final rule, the appropriate Federal financial supervisory agency will review the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve a facility-based assessment area, as provided in final § ____.15. The final rule includes the impact and responsiveness component as a separate paragraph to make clear that this component is distinct from the metrics and benchmarks component. Further, the agencies consider the impact and responsiveness review to be one component of a comprehensive evaluation, with metrics, benchmarks, and impact and responsiveness reviews considered holistically in developing a performance conclusion.

As discussed above, one of the agencies' objectives in issuing the NPR was to provide greater clarity and consistency in the application of the regulations. The agencies believe that providing a list of impact and responsiveness factors in final § ____.15 is a strong first step in that direction. As discussed in the section-by-section analysis of § ____.15, the approach of identifying specific factors in § ____.15(b) will result in a more standardized qualitative evaluation relative to current practice. In addition, this approach is intended to foster transparency by providing the categories the agencies will consistently review in considering the impact and responsiveness of a bank's community development activities. The final rule's impact and responsiveness review draws on decades of supervisory experience in applying the qualitative performance criteria in the current rule. Based on that experience, the agencies identified the factors that, in general, indicate that a particular loan or investment not only has a community development purpose as required under final § ____.13, but is likely to be especially effective in helping to meet community needs associated with that community development purpose.

Although the agencies considered commenters' concerns about, and recommendations for, clarifying the application of the impact and responsiveness review, the current data limitations preclude introducing a score, additional standards, metrics, or weights into the rule at this time. In the absence of data, the agencies cannot assess the overall extent to which banks are engaging in impactful or responsive community development loans and investments. Further, given the lack of available data, the agencies do not have insight into: whether it is reasonable for banks to engage in limited impactful or responsive community development loans or investments; whether it is the dollar volume or number of impactful or responsive loans and investments that is most relevant; or whether there are other criteria that the agencies should consider in evaluating the impact and responsiveness of a bank's community development loans and investments, as an assessment of the level of impact or responsiveness of a community development loan or investment. Under final § ____.42, large banks will be required to collect, maintain, and report information related to the impact and responsiveness factors, which will provide the agencies with useful data going forward.[1185]

Nonetheless, the agencies believe that some of the suggestions provided by commenters would be useful to examiners in their consideration of the impact and responsiveness of a bank's community development loans and investments. To that end, the agencies will consider issuing guidance for examiners to help improve clarity regarding the application of the impact and responsiveness review component in the near term. The agencies anticipate that guidance might include examples of criteria that examiners could consider in evaluating the impact and responsiveness of a bank's community development loans and investments, including: (1) the percentage of a bank's community development loans and investments that meet one or more impact and responsiveness factors; (2) the dollar volume and number of community development loans that meet one or more impact and responsiveness factors; and (3) reasons for providing more or less weight to the impact and responsiveness component of the Community Development Financing Test. Further, the agencies note that adding metrics, weighting for the metrics and benchmarks and impact and responsiveness components, points for conclusions, or other mechanisms to improve clarity could be considered in a future rulemaking once data are collected and analyzed, which would provide an opportunity for additional public engagement on this topic.

Section ____.24(b) and (f) Facility-Based Assessment Area Conclusions

Under the current rule, and as discussed in greater detail in the section-by-section analysis of § ____.28, the agencies conclude on banks' performance for each performance test or standard in each MSA and nonmetropolitan portion of each State with an assessment area.[1186]

The Agencies' Proposal

The agencies proposed 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 national benchmarks, in conjunction with the impact review of the bank's activities.[1187] 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'' in each facility-based assessment area.

The agencies also considered approaches that would automatically combine the metric, benchmarks, and impact review to assign conclusions in a standardized way. However, as

[1185] *See* final § ____.42(a)(5)(ii)(C) and (b)(2).

[1186] *See e.g.,* Interagency Large Institution CRA Examination Procedures (April 2014).

[1187] *See* proposed §§ ____.24(d) and ____.28 and proposed appendix C, paragraph d.

discussed above in the section-by-section analysis of § ____.24(a), the community development financing data that are currently available are not sufficient to determine an approach that includes specific thresholds and weights for different components. Instead, the agencies explained in the proposed rule that the approach for combining these standardized factors would initially rely on examiners' judgment. The agencies further explained that analysis of community development data collected under a new rule eventually may allow for developing additional quantitative procedures for developing conclusions.

Comments Received

As explained above, the agencies received numerous comments suggesting that they include additional standards, thresholds, or other mechanisms in the Community Development Financing Test that would allow for greater standardization in concluding on performance under the Community Development Financing Test. Several commenters also provided feedback on the agencies' proposal to include quantitative and qualitative components in the proposed Community Development Financing Test. Certain commenters supported inclusion of both quantitative and qualitative components. Further, a commenter stated that it hopes that a metrics-based approach will not overshadow qualitative aspects of bank community development lending and investments.[1188]

Final Rule

The agencies are finalizing the conclusion provision for facility-based assessment area performance under the Community Development Financing Test as proposed with technical and clarifying revisions. The agencies addressed the comments related to the rigor of the Community Development Financing Test, including the extent to which it should be quantitative or qualitative in design above in the section-by-section analysis of § ____.24(a). Further, as discussed above, the agencies determined that the Community Development Financing Test should remain a qualitative evaluation informed by standardized metrics and benchmarks, as well as an impact and responsiveness review with standardized factors, to improve consistency across banks and the agencies.

Final § ____.24(f)(1), therefore, provides that, pursuant to § ____.28 and appendix C, the appropriate Federal financial supervisory agency assigns conclusions for a bank's Community Development Financing Test performance in each facility-based assessment area. Consistent with the other performance tests in the final rule, final § ____.24(f) clarifies that in assigning conclusions under the Community Development Financing Test, the agency may consider performance context information as provided in § ____.21(d) to make clear that performance context remains an important part of examiners' evaluation of community development financing performance.

Section ____.24(c) State Community Development Financing Evaluation

Current Approach

As discussed above, the current rule considers community development loans and investments that serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas. The agencies base statewide community development performance, in part, on consideration of community development loans and investments in: (1) the bank's assessment areas in the State; and (2) a broader statewide or regional area that includes the bank's assessment areas in the State and that support organizations or activities with a purpose, mandate, or function that includes serving individuals or geographies in the bank's assessment areas. For banks that have been responsive to the needs of their assessment areas, the agencies will also consider any community development loans and community development investments in the broader statewide or regional area that includes the institution's assessment areas in the State but that do not: (1) directly benefit an assessment area in the state; or (2) support organizations or activities with a purpose, mandate, or function that includes serving geographies or individuals located within the bank's assessment area.[1189]

The Agencies' Proposal

To evaluate a bank's State community development financing performance, the agencies proposed in § ____.24(c)(2) and section 15 of appendix B to consider a weighted average of the bank's performance in facility-based assessment areas within a State, 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 community development loans and investments in the State—combining community development loans and investments that are inside and outside of facility-based assessment areas—relative to the bank's total deposits across the State. The agencies believed 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 community development loans and investments outside of facility-based assessment areas in the State.

Weighted average of facility-based assessment area performance. The agencies proposed 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.[1190] The conclusion assigned to each facility-based 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).[1191] The proposed resulting score for each facility-based assessment area would be assigned a weight, calculated as the average of the percentage of retail loans, and the percentage of deposits associated with the facility-based assessment area (both measured in dollars), out of all of the bank's retail loans, as defined in the proposal, and deposits in facility-based assessment areas in the State.[1192] Similar to the proposed weighting approach for assigning Retail Lending Test conclusions, the agencies would base deposits on collected and maintained deposits data for banks that collect this data, and on the FDIC's Summary of Deposits data for banks that do not collect deposits data pursuant to this rule.[1193] Using these weights and scores, the agencies would calculate the weighted average of the facility-based assessment area scores as one

[1188] Other comments related to the assignment of conclusions under the applicable performance tests are addressed in the section-by-section analysis of § ____.28.

[1189] *See* Q&A § ____.12(h)–6.

[1190] *See* proposed § ____.24(c)(2)(i) and proposed appendix B, sections 15 and 16.

[1191] *See* the section-by-section analysis of § ____.22(h) for discussion of the point scale.

[1192] *See* proposed appendix B, section 7.

[1193] *See* proposed appendix B, section 5.

component to determine the State conclusion.[1194]

The agencies believed the proposed approach would ensure that they incorporated performance in all facility-based assessment areas into the State conclusion, proportionate to the bank's amount of business activity in each facility-based assessment area. The agencies further believed that incorporating conclusions for all facility-based assessment areas into the State conclusion would create a clear emphasis on facility-based assessment area performance, including smaller markets.

The agencies proposed that examiners would also assign a statewide score for each State in which a bank delineates a facility-based assessment area that the agencies did not consider as part of a multistate MSA score.[1195] Under the proposal, the statewide score would be assigned after considering the bank's Bank State Community Development Financing Metric, the State Community Development Financing Benchmark, and a statewide impact review.

Bank State Community Development Financing Metric. The agencies proposed in § ____.24(c)(2)(ii)(A) and section 5 of appendix B that they would calculate the Bank State Community Development Financing Metric using the same formula as the Bank Assessment Area Community Development Financing Metric and would include all of a bank's community development loans and investments and deposits in the State without distinguishing between those inside or outside of the bank's facility-based assessment areas.

For example, the agencies proposed that if a bank conducted an annual average of $200,000 in qualifying community development loans and investments and had 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.

$$\frac{\textit{CD loans+CD investments}\ (\$200{,}000)}{\textit{deposits}\ (\$10{,}000{,}000)} =$$

Bank State Community Development Financing Metric (2.0 percent)

The inclusion of all community development loans and investments and deposits in the State evaluation reflected the agencies' expectation that a bank should conduct a volume of community development loans and investments commensurate with its total capacity in a State. Therefore, the agencies explained in the proposed rule that the proposed metric would provide the option for, but would not require, banks to conduct and receive consideration for community development loans and investments outside of facility-based assessment areas, but within the States that include those facility-based assessment areas. The proposed metric did not distinguish between community development loans and investments conducted inside and outside a facility-based assessment area. However, if a bank was unable to conduct sufficient community development loans and investments within facility-based assessment areas due to lack of opportunity or high competition, the proposed metric permitted the bank to receive consideration for community development loans and investments conducted within the State but outside of facility-based assessment areas.

State Community Development Financing Benchmarks. Similar to the facility-based assessment area approach described above, the agencies proposed establishing benchmarks that would allow examiners to compare a bank's performance to other banks in comparable areas. The proposed benchmarks included: (1) a statewide benchmark called the State Community Development Financing Benchmark;[1196] and (2) a benchmark that the proposed rule tailored to each bank's facility-based assessment areas called the State Weighted Assessment Area Community Development Financing Benchmark.[1197] The agencies intended the use of two benchmarks to provide examiners with additional context and points of comparison on which to base the statewide score. For example, for a bank that primarily collects deposits or conducts community development loans and investments outside of its facility-based 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 community development loans and investments primarily within its facility-based assessment areas, the agencies may rely more heavily on the State Weighted Assessment Area Community Development Financing Benchmark, which is tailored to the bank's facility-based assessment areas to account for the level of competition and available opportunities in those areas.

The agencies proposed that the first benchmark, the State Community Development Financing Benchmark,[1198] would be defined similarly to the local benchmark used for the facility-based assessment area evaluation and it would include all community development loans and investments and deposits across the entire State. Under the proposal, 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. The proposal provided that deposits in the State would be the sum of: (1) the annual average of deposits in counties in the State reported by all large banks that had assets greater than $10 billion over the evaluation period (as reported under proposed § ____.42); and (2) the annual average of deposits assigned to branches in the State by all large banks that had assets less than or equal to $10 billion, according to the FDIC's Summary of Deposits data, over the evaluation period.[1199]

The agencies proposed that the rule would define the second benchmark, the State Weighted Assessment Area Community Development Financing Benchmark, as the weighted average of Assessment Area Community Development Financing Benchmarks across all of the bank's facility-based

[1194] *See* proposed § ____.24(c)(2)(i) and proposed appendix B, sections 15 and 16.

[1195] *See* proposed § ____.24(c)(2)(ii) and proposed appendix B, section 15.

[1196] *See* proposed appendix B, section 6.

[1197] *See* proposed appendix B, sections 7 and 17.

[1198] *See* proposed § ____.24(c)(2)(ii)(B)(*1*) and proposed appendix B, section 6.

[1199] *See* proposed § ____.24(c)(2)(ii)(B)(*1*) and proposed appendix B, section 6.

assessment areas in the State.[1200] The proposal weighted each local benchmark based on the facility-based assessment area's percentage of retail loans, as defined in the proposal, and the 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.[1201]

The agencies proposed to evaluate the impact and responsiveness of a bank's community development loans and investments for each State at a statewide level, using the same impact review approach as described previously for facility-based assessment areas.[1202] The agencies proposed that the impact review would encompass all community development loans and investments in a State, including those inside and outside of facility-based assessment areas. Pursuant to the proposed impact review, examiners would consider the extent to which the bank's community development loans and investments met the impact factors, based on information provided by the bank, local community data, community feedback, and other performance context information.

Comments Received[1203]

The agencies sought feedback on the proposal to weight a bank's facility-based assessment area Community Development Financing Test performance in States, multistate MSAs, and the nationwide area by the average share of loans and deposits. Most commenters that provided feedback supported the proposed approach. However, a commenter stated that weighting Community Development Financing Test performance by the share of loans and deposits in a facility-based assessment area may result in larger areas disproportionately contributing to the overall rating. The commenter also requested that the agencies provide clearer guidance on how to weight performance in large metropolitan areas, smaller metropolitan areas, and rural counties. Another commenter suggested that the agencies should encourage, rather than allow, community development lending and investment outside of a bank's facility-based assessment areas by ensuring those activities receive equal weight in the upper-level considerations.[1204] A commenter strongly encouraged the agencies to integrate an impact and responsiveness review into each level of the Community Development Financing Test.

Final Rule

The agencies considered the commenters' feedback and determined to finalize the State Community Development Financing Test evaluation as proposed, including with respect to weighting facility-based assessment area performance, with clarifying revisions and certain conforming edits. Under the final rule, § ____.24(c) includes the provisions related to the evaluation of community development loans and investments in a State.

After considering the comments, the agencies are adopting a methodology to calculate the weighted average of facility-based assessment area performance, which retains consistency in the weighting of facility-based assessment areas across the four performance tests.[1205] The agencies based the approach in the final rule on the proposed approach but included conforming revisions consistent with the revisions discussed in the section-by-section analysis of § ____.22(h) and appendix A. The agencies considered the comments that expressed concerns related to the proposed weighting methodology, particularly as those comments relate to the revised weighting methodology in the final rule. The agencies continue to believe that promoting internal consistency with respect to the Retail Lending Test is appropriate and that limiting variation in weighting methodologies limits unnecessary complexity and ensures that the agencies consider community development loans and investments in the geographic areas where banks are operating.

Under § ____.24(c) of the final rule, the appropriate Federal financial supervisory agency will evaluate a bank's community development financing performance in a State, pursuant to final §§ ____.19 and ____.28(c), using two components. Final § ____.24(c) also provides that the agency will assign a conclusion for each State based on a weighted combination of those components. The agencies added a cross reference to § ____.19 for clarity and to improve consistency with final § ____.25. Under the final rule, the agencies clarified in final § ____.28(c) the scope of State and multistate MSA evaluations based on where the agencies conclude on performance.[1206]

Component one is the weighted average of facility-based assessment area performance conclusions in a State.[1207] Under this component, the appropriate agency considers the weighted average of a bank's Community Development Financing Test conclusions for its facility-based assessment areas within a State, pursuant to section IV of appendix B. This section of appendix B provides that the agency calculates component one of the combined performance score, as set forth in paragraph II.p.2.i of final appendix B, for the Community Development Financing Test in final § ____.24[1208] in each State by translating the Community Development Financing Test conclusions for facility-based assessment areas into numerical performance scores consistent with the table below.

[1200] *See* proposed § ____.24(c)(2)(ii)(B)(*2*) and proposed appendix B, sections 7 and 17.

[1201] *See* proposed § ____.24(c)(2)(ii)(B)(*2*) and proposed appendix B, sections 7 and 17.

[1202] *See* proposed § ____.24(c)(1)(ii) and proposed appendix B, section 15.

[1203] As discussed above, commenters generally did not distinguish between geographic areas when discussing their views on the metrics, benchmarks, and impact and responsiveness review in the proposed Community Development Financing Test. With noted exceptions, these aspects of the performance test are similarly structured regardless of geographic area. Therefore, in considering the State, multistate MSA, and nationwide area evaluation, the agencies considered the comments on the metrics, benchmarks, and impact and responsiveness review discussed in the section-by-section analysis of final § ____.16 and made conforming revisions to other aspects of the final rule as appropriate. This section and the sections that follow, therefore, address additional comments specific to the relevant provision of the proposed and final rule.

[1204] By ''upper-level considerations'' the agencies understand the commenter to be referring to the State, multistate MSA, and nationwide area conclusions and ratings.

[1205] *See* the section-by-section analysis of § ____.22(h) for a discussion of the weighting methodology based on deposits and a combination of loan count and loan amount. The weighting methodology applies to the weighted average of facility-based assessment area performance conclusions in a State (final § ____.24(c)(1)), and the State Weighted Assessment Area Community Development Financing Benchmark (final § ____.24(c)(2)(ii)(B)).

[1206] *See* the section-by-section analysis of § ____.28.

[1207] *See* final § ____.24(c)(1).

[1208] Final appendix B, section IV, also applies to the Community Development Services Test in final § ____.25.

Table 43 of § __.24: Translation of Community Development Financing Test Conclusion in Performance Scores

Conclusion	Performance Score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

Section IV of final appendix B provides that the appropriate Federal financial supervisory agency calculates the weighted average of facility-based assessment area performance scores for a State. To determine the weighted average for a State, the agency considers facility-based assessment areas in the State pursuant to final § ____.28(c).

Under the final rule, each facility-based assessment area performance score is weighted by the average the following two ratios:

(1) The ratio measuring the share of the bank's deposits in the facility-based assessment area, calculated by:

(a) summing, over the years in the evaluation period, the bank's annual dollar volume of deposits [1209] in the facility-based assessment area;

(b) summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all facility-based assessment areas in the State; and

(c) dividing the result of the first calculation by the result of the second calculation; and

(2) The ratio measuring the share of the bank's loans in a facility-based assessment area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

(a) the bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the facility-based assessment area originated or purchased during the evaluation period; by

(b) the bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all facility-based assessment areas in the State originated or purchased during the evaluation period.[1210]

Component two of the final rule's State evaluation is State performance. Under component two, the appropriate Federal financial supervisory agency considers a bank's community development financing performance in a State using the State metric and benchmarks and a review of the impact and responsiveness of the bank's community development loans and investments.[1211] Specifically, the agency will consider the Bank State Community Development Financing Metric, calculated pursuant to paragraph II.d of appendix B,[1212] compared to the (1) State Community Development Financing Benchmark, calculated pursuant to paragraph II.e of appendix B [1213] and (2) State Weighted Assessment Area Community Development Financing Benchmark, calculated pursuant to paragraph II.f of appendix B. In addition, the agency will consider the impact and responsiveness review of the bank's community development loans and investments within the State as part of component two.[1214]

The agencies made conforming edits to the Bank State Community Development Financing Metric and State Community Development Financing Benchmark and related sections of final appendix B consistent with the changes made to the similar metric and benchmarks applicable in facility-based assessment areas. The agencies also clarified, for purposes of calculating the State metrics and benchmarks, when community development loans, community development investments, and deposits in a bank are included in the State-level metric and benchmark calculations by cross referencing final § ____.28(c).[1215]

[1209] Under the final rule, for a bank that reports deposits data pursuant to final § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. Further, for a bank that does not report deposits data pursuant to final § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

[1210] Final appendix B, section IV, also applies to the multistate MSA and nationwide area evaluations as provided in final § ____.24(d) and (e).

[1211] For a discussion of the final impact and responsiveness review in the Community Development Financing Test, see the section-by-section analysis of § ____.24(b)(3), (c)(2)(iii), (d)(2)(iii), (e)(2)(v).

[1212] *See* final § ____.24(c)(2)(i).

[1213] *See* final § ____.24(c)(2)(ii)(A).

[1214] *See* final § ____.24(c)(2).

[1215] Whether the agencies include community development loans and investments in the State

Continued

The agencies also made clarifying and conforming edits to the State Weighted Assessment Area Community Development Financing Benchmark to simplify the description, to make it easier to understand, and to promote consistency in the weighting methodology across performance tests. Under the final rule, the State Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the State, calculated pursuant to paragraph II.f of final appendix B. The appropriate Federal financial supervisory agency calculates the final State Weighted Assessment Area Community Development Financing Benchmark by averaging all of the bank's Assessment Area Community Development Financing Benchmarks [1216] in a State for the evaluation period, after weighting each pursuant to paragraph II.o of final appendix B.

Under final paragraph II.o of final appendix B, for State evaluations, the appropriate agency calculates the weighted average of Assessment Area Community Development Financing Benchmarks for a bank's facility-based assessment areas in each State by considering the facility-based assessment areas in a State pursuant to final § ____.28(c).

The agencies weight the Assessment Area Community Development Financing Benchmarks in the final rule by the average of the following two ratios:

(1) The ratio measuring the share of the bank's deposits in the facility-based assessment area, calculated by:

(a) summing, over the years in the evaluation period, the bank's annual dollar volume of deposits [1217] in the facility-based assessment area;

(b) summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all facility-based assessment areas in the State; and

(c) dividing the result of the calculation in (a) by the result of the calculation in (b); and

(2) The ratio measuring the share of the bank's loans in a facility-based assessment area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

(a) the bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the facility-based assessment area originated or purchased during the evaluation period; by

(b) the bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all facility-based assessment areas in the State originated or purchased during the evaluation period.

The agencies are also adopting the impact and responsiveness review as part of component two of the State evaluation as proposed with clarifying and conforming revisions discussed in the section-by-section analysis of §§ ____.15 and ____.24(b)(3). In response to the commenters' questions, the agencies note that, under the proposed and final Community Development Financing Test, the agencies would apply the impact and responsiveness review to the evaluation of community development loans and investment for all geographic levels.[1218] The agencies believe that it is appropriate to consider the impact and responsiveness at all geographic levels because it ensures that impactful or responsive community development loans and investments conducted outside of a bank's facility-based assessment areas are considered. Further, given the weighting methodology for the State, multistate MSA, and nationwide area performance scores, the agencies consider a portion of the impact and responsiveness of a community development loan or investment conducted in a facility-based assessment area in the weighted average of facility-based assessment area performance and a portion is considered in the State.[1219]

Section ____.24(c) and (f) State Performance Score and Conclusion Assignment (and Paragraph II.p of Appendix B)

The Agencies' Proposal

The agencies proposed to assign statewide Community Development Financing Test conclusions, as applicable.[1220] Section 15 of proposed appendix B provided that statewide conclusions would reflect two components, with weights on both components tailored to reflect the bank's business model, which would result in a state performance score for the applicable State. Pursuant to the proposal, the two components were: (1) the bank's weighted average assessment area performance score; and (2) the bank's statewide score. The agencies proposed in section 15 of appendix B that they 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.

Under the proposal, the amount of weight that the agencies would apply 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 the FDIC's Summary of Deposits data, as applicable) and retail loans, as defined in the proposal.[1221]

The agencies proposed 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.[1222] For a bank that does most of its retail lending and deposit collection within its facility-based assessment areas, for example, the agencies viewed those facility-based assessment areas as the primary community a bank serves. The

evaluation depends on whether the bank has a facility-based assessment area in the State and whether the State is located in a multistate MSA. For additional discussion, see the section-by-section analysis of § ____.28(c).

[1216] *See* final appendix B, paragraph II.b.

[1217] As provided above in the discussion of final appendix B, section IV, for a bank that reports deposits data pursuant to final § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. For a bank that does not report deposits data pursuant to final § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

[1218] *See* final § ____.24(c)(2)(iii), (d)(2)(iii), and (e)(2)(v).

[1219] Under the final rule, the same is true for the consideration of the impact and responsiveness review under the multistate evaluation in final § ____.24(d) and nationwide area evaluation in final § ____.24(e).

[1220] *See* proposed §§ ____.24(d) and ____.28, proposed appendix B, section 15, and proposed appendix C, paragraph d.

[1221] *See* proposed appendix B, section 15.

[1222] *Id.*

agencies therefore believed the average facility-based assessment area performance deserved a larger portion of the weight in the combined state performance score.

To ensure that the agencies also meaningfully credited any community development loans and investments a bank undertakes outside of its facility-based assessment areas, the agencies proposed to give equal weight to the average assessment area performance and statewide score for banks whose business model is strongly branch-based.[1223] Because community development loans and investments 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, equally weighting these two components effectively would give greater weight to assessment area performance while still meaningfully considering those community development loans and investments that banks conduct outside of their facility-based assessment areas.

On the other end, for banks with retail lending and deposit collection that occurs almost entirely outside of the bank's facility-based assessment areas (such as primarily online lenders), the agencies believed those assessment areas largely do not represent the entire community the bank serves. The agencies, therefore, proposed to weight the statewide score more heavily than the weighted average assessment area performance score for such a bank.[1224] The agencies also proposed that banks with business models in between these two ends would use weights that are correspondingly in between.

Specifically, to determine the relative weighting as described in Table 45, the agencies proposed to use the simple average of: (1) 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 (2) 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.

The agencies further proposed that banks that have a low percentage of deposits and retail loans within their facility-based assessment areas would have a greater emphasis placed on their statewide performance compared to the weighted average of their facility-based assessment area performance.[1225] Conversely, the agencies would place more equal weight on statewide performance and the weighted average of facility-based assessment area performance for banks that have a high percentage of deposits and retail loans within their facility-based assessment areas. Thus, to develop the State Community Development Financing Test conclusion, the agencies proposed the State performance score to be the score that would result from averaging: (1) the bank's weighted average facility-based assessment area performance score; and (2) the bank's statewide score. The agencies would then round the State performance score 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).

The agencies believed that taking into account both the bank's facility-based assessment area performance and its statewide performance would build off of the current approach to considering community development loans and investments in broader statewide and regional areas that include a banks' assessment areas and aimed 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 provides banks the option to 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 facility-based assessment area activities are considered in the State evaluation as well, the proposed approach would give greater emphasis to activities within facility-based assessment areas than to activities outside of assessment areas, but the amount of weight would be tailored to each bank's business model in the state. As a result, the agencies believed the proposal would encourage banks that are primarily branch-based 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, would be evaluated mostly on a statewide basis.

Under the proposal, 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 the FDIC's Summary of Deposits data attributes all deposits to bank branches. The average of the percentage of home mortgage loans, small business loans, and small farm 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. In the proposal, the agencies recognized that this would generally result in a higher weight on the bank's assessment area performance score unless the bank chooses to collect and maintain these data.

Comments Received

Certain commenters offered suggestions for determining Community Development Financing Test performance scores and conclusions. A commenter suggested that in addition to weighting facility-based assessment area performance, the agencies should: (1) set a threshold for smaller facility-based assessment areas that requires that they have a low satisfactory or higher rating to ensure those facility-based assessment areas receive sufficient attention; and (2) require banks with 60 percent or more of their community development loans and investments in facility-based assessment areas to also have a 50 percent weight for facility-based assessment area performance. Another commenter similarly stated that the agencies should place more than the proposed weight on facility-based assessment area performance. Lastly, a commenter stated that if a bank fails in any of its assessment areas, it should receive a rating of ''Needs to Improve'' or below.

Final Rule

The agencies are finalizing the provisions for determining the State performance score and corresponding conclusion as proposed with certain clarifying and conforming revisions.[1226] In considering the importance of facility-based assessment area performance within a State, the agencies determined that it was not appropriate to place additional weight on performance in facility-based assessment areas relative to performance outside of facility-based assessment areas because, as discussed above: (1) the agencies evaluate facility-based assessment areas separately under final § ____.24(b); (2) the agencies consider facility-based assessment area community development financing performance under component one of the State evaluation of the Community

[1223] *Id.*

[1224] *Id.*

[1225] *Id.*

[1226] *See* final § ____.24(c) and (f), and final appendix B, paragraph II.p.

Development Financing Test;[1227] and (3) community development loans and investments in facility-based assessment areas are included in the Bank State Community Development Financing Metric. In the agencies' view, these three levels of consideration for community development loans and investments in facility-based assessment areas provide appropriate emphasis while still allowing banks to receive consideration for loans and investments outside of these areas. Further, the agencies believe that this flexibility will incentivize banks to engage in community development lending and investments in underserved areas that may not be proximate to many bank branches. For a bank that focuses its community development lending and investments on its facility-based assessment areas, performance in facility-based assessment areas and in the State will be equivalent. The agencies believe that the proposed weighting of facility-based assessment area performance[1228] and statewide performance[1229] in determining State performance scores and assigning conclusions emphasizes the importance of banks helping to meet the credit needs of their facility-based assessment areas while still permitting consideration of community development loans and investments outside of those areas. As discussed in the proposal, the agencies believe this approach builds off the current approach to considering community development loans and investments in the broader statewide and regional areas that include a banks' assessment areas and aims to achieve a balance of objectives. Further, this approach creates more certainty for banks regarding whether they will receive consideration for community development loans and investments outside of facility-based assessment areas.

The final rule balances the objectives of encouraging 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 with the ability to pursue impactful community development opportunities that may be located partially or entirely outside of their facility-based assessment areas.[1230] As such, the final rule gives greater emphasis to community development loans and investments within facility-based assessment areas because those loans and investments are included in the State performance score and tailors the amount of weight to each bank's business model in the State. The agencies believe this approach will encourage banks that are primarily branch-based 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, will have greater emphasis on their statewide community development loans and investments.

The agencies also considered the comments about ensuring that smaller facility-based assessment areas receive sufficient attention. The agencies addressed this issue in the final rule through a requirement that large banks with a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State may not receive a rating of ''Satisfactory'' or ''Outstanding'' in the respective State unless the bank received an overall facility-based assessment area or retail lending assessment area conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas and retail lending assessment areas in that State.[1231]

Under the final rule, the appropriate Federal financial supervisory agency calculates a performance score for the State Community Development Financing Test based on the weighted combination of the two components, pursuant to paragraph II.p of final appendix B.[1232] The agency then assigns a conclusion corresponding with the conclusion category that is nearest to the performance score for a bank's performance under the Community Development Financing Test in each State pursuant to final § ____.28(c) as shown in the table below.[1233]

[1227] *See* final § ____.24(c)(1).

[1228] *Id.*

[1229] *See* final § ____.24(c)(2).

[1230] As with the proposal, under the final rule, banks may, but are not required to, engage in community development lending and investment outside of facility-based assessment areas because loans and investments in those areas are included in the statewide evaluation.

[1231] *See* the section-by-section analysis of final § ____.28(b)(4)(ii) and final appendix D, paragraph g.2.ii. As discussed in final appendix D, these requirements also apply to conclusions for multistate MSAs and for the institution. *See also* the section-by-section analysis of § ____.51 (this requirement only applies to facility-based assessment areas for purposes of the first evaluation under this final rule).

[1232] As provided in final appendix B, paragraph II.p, the combined score also applies to the multistate MSA evaluation and the nationwide evaluation, with certain differences for the nationwide area discussed in the section-by-section analysis of final § ____.24(e).

[1233] *See* final appendix B, paragraph II.p.1.

Table 44 of § __.24: Translation of Community Development Financing Test Conclusion in Performance Scores

Performance Score	Conclusion
8.5 or more	Outstanding
6.5 or more but less than 8.5	High Satisfactory
4.5 or more but less than 6.5	Low Satisfactory
1.5 or more but less than 4.5	Needs to Improve
Less than 1.5	Substantial Noncompliance

Specifically, under paragraph II.p.2 of final appendix B, the appropriate Federal financial supervisory agency bases the Community Development Financing Test combined performance score for a State on: (1) component one—the weighted average of the bank's performance scores corresponding to facility-based assessment area conclusions in that State; [1234] and (2) component two—the bank score for metric and benchmark analyses and the impact and responsiveness review.[1235] For component one, the final rule provides that the agency derives performance scores based on a weighted average of the performance scores corresponding to conclusions for facility-based assessment areas in each State, calculated pursuant to section IV of final appendix B. For component two, the final rule provides that for each State, the agency determines a statewide performance score corresponding to a conclusion category (shown in the table below) by considering the relevant metric and benchmarks and a review of the impact and responsiveness of the bank's community development loans and community development investments.[1236]

Using the results of components one and two, the appropriate agency determines a combined performance score corresponding to a conclusion category by taking the weighted average of two components.[1237] The two components the agencies use to determine weighting are: (1) the percentage, calculated using the combination of loan dollars and loan count, of the bank's total originated and purchases closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, as applicable, in its facility-based assessment areas out of all of the bank's originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, as applicable, in the State during the evaluation period; [1238] and (2) the percentage of the total dollar volume of deposits in its facility-based assessment areas out of all of the deposits in the bank in the State during the evaluation period.[1239] The weighting is calculated as provided in the table below (*see* paragraph II.p.2.iii.B of final appendix B).

[1234] *See* final appendix B, paragraph II.p.2.i.
[1235] *See* final appendix B, paragraph II.p.2.ii.
[1236] *See id.*
[1237] *See* final appendix B, paragraph II.p.2.iii.
[1238] *See* final appendix B, paragraph II.p.2.iii.A.*1.*
[1239] *See* final appendix B, paragraph II.p.2.iii.A.*2.* For purposes of this paragraph, ''deposits'' excludes deposits reported under final § ____.42(b)(3)(ii).

Table 45 to § __.24: Component Weights for Combined Performance Score

Average of the percentage of deposits and percentage of loans	Weight on Component 1	Weight on Component 2
Greater than or equal to 80%	50%	50%
Greater than or equal to 60% but less than 80%	40%	60%
Greater than or equal to 40% but less than 60%	30%	70%
Greater than or equal to 20% but less than 40%	20%	80%
Below 20%	10%	90%

The agencies believe that a weighting of 50 percent on the average facility-based assessment area performance score and 50 percent on the statewide score is appropriate for banks whose deposits and retail lending occurs predominantly or entirely within their facility-based assessment areas. As described above, community development loans and investments that benefit the bank's facility-based assessment areas would also contribute to the statewide score, so the agencies believe any weighting on the statewide score of less than 50 percent would not provide meaningful credit for activities that occur outside the bank's facility-based assessment areas. For a branch-based bank that conducts most of its community development financing activity within its facility-based assessment areas, the statewide score would largely, or entirely, reflect the performance inside its facility-based assessment areas. Relatedly, the agencies also believe that a bank whose deposits and retail lending occurs predominantly or entirely within their facility-based assessment areas have the capacity to engage in community development financing activity there, and so a weight of less than 50 percent on the average facility-based assessment area performance score would also be inappropriate.

Starting from that baseline of 50 percent weighting of the statewide score for banks that are predominantly or entirely focused on serving its facility-based assessment areas, the agencies believe that increasing the weight on the statewide score proportionately with the extent of the bank's retail lending and deposit taking outside of its facility-based assessment areas appropriately tailors the weights to individual banks' business models. This proportionate increase in the weight on the statewide score is reflected in the increasing percentages in the weight on component 2 column of Table 45 as the percentage of the bank's loans and deposits from facility-based assessment areas falls. To reduce the complexity of the rule, the agencies are categorizing the weights into five segments as shown in Table 45. The weight on the statewide score grows steadily as the percentage of the bank's retail loans and deposits inside its facility-based assessment areas falls, until banks whose retail lending and deposit taking is predominantly or entirely outside its facility-based assessment areas receive a Community Development Financing Test State performance score based almost entirely on their statewide score. The agencies again note that the statewide score also reflects performance within a bank's facility-based assessment areas, in addition to community development financing activities in other parts of the applicable State.

The State performance score and conclusion provisions include conforming revisions to improve consistency across the final rule, including the use of the combination of loan dollars and loan count in the weighting methodology, conforming revisions to final § ____.24(f)(1) consistent with the revisions to the facility-based assessment area conclusion discussion above, and other formatting and technical changes.

The agencies are also finalizing the State ratings provisions in final § ____.24(f)(2) as proposed.

Section ____.24(d) Multistate MSA Community Development Financing Test Evaluation

Current Approach

The agencies currently evaluate a bank's performance in a multistate MSA when the bank has a main office, branch, or deposit-taking ATM in two or more States in the multistate MSA. The current approach to evaluating community development activities in a multistate MSA is consistent with the process for evaluating performance in a State, discussed above.

The Agencies' Proposal

In § ____.24(c)(3) of the NPR, the agencies proposed evaluating performance under the Community Development Financing Test in a multistate MSA consistent with the approach to evaluating performance in a State. The agencies proposed 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.[1240] The agencies proposed to employ the

[1240] *See* proposed §§ ____.24(d) and ____.28, proposed appendix B, section 15, and proposed appendix C, paragraph d.

same approach for assigning conclusions for States to multistate MSAs, with the same components as the State evaluation.[1241] The proposed multistate MSA conclusion would reflect a weighted average of facility-based assessment area conclusions within the multistate MSA, and would also reflect: (1) a Bank Multistate MSA Community Development Financing Metric; (2) a Multistate MSA Community Development Financing Benchmark; (3) a Multistate MSA Weighted Assessment Area Community Development Financing Benchmark; and (4) an impact review.

Comments Received

The agencies did not receive comments that were specific to the proposed evaluation of community development loans and investments in multistate MSAs.

Final Rule

The agencies are finalizing the proposed multistate MSA Community Development Financing Test evaluation with clarifying and conforming revisions consistent with the State evaluation. The agencies renumbered proposed § ____.24(c)(3) to final § ____.24(d) consistent with the other formatting revisions to final § ____.24. Under final § ____.24(d), the appropriate Federal financial supervisory agency will evaluate banks' community development lending and investments in multistate MSAs, pursuant to final §§ ____.19 and ____.28(c), using the same two components as the State evaluation. Specifically, the agency will evaluate a bank's community development financing performance in a multistate MSA based on the: (1) weighted average of facility-based assessment area performance in the multistate MSA;[1242] and (2) multistate MSA performance.[1243]

Under the final rule, the appropriate agency assigns a conclusion for a bank's performance in each multistate MSA, as applicable, based on a weighted combination of these two components pursuant to final paragraph II.p of final appendix B and the weighting in section IV of appendix B of the final rule. As noted in the proposal, the multistate MSA Community Development Financing Test provisions are consistent with the State Community Development Financing Test provisions and the agencies made additional conforming revisions throughout final § ____.24(d) and paragraphs II.g, II.h, and II.i of final appendix B.

Section ____.24(e) Nationwide Area Community Development Financing Test Evaluation

Current Approach

Currently, the agencies assign institution-level ratings for the applicable performance tests based on a bank's performance in the States and multistate MSAs where the bank has assessment areas. Banks' community development loans and investments are considered at the assessment area-, State-, multistate MSA-, or institution-level depending on whether the loan or investment has a purpose, mandate, or function of serving an assessment area or the broader statewide or regional areas that include a bank's assessment areas.[1244] The agencies also determine the relative significance of performance in the different States and multistate MSAs and factor that performance into the institution-level ratings based on: (1) the significance of the institution's community development loans, investments, and services compared to (a) the institution's overall activities; (b) the number of other institutions and the extent of their lending, investments, and services in the relevant areas; and (c) the lending, investment, and service opportunities in the relevant areas; and (2) demographic and economic conditions in the relevant areas.[1245]

The Agencies' Proposal

In proposed §§ ____.24(c) and ____.28, section 15 of proposed appendix B, and section d of proposed appendix C, the agencies proposed to evaluate a bank's community development lending and investments in the nationwide area and assign Community Development Financing Test conclusions for the institution-level using a similar approach to that for evaluating performance and assigning conclusions at the State level. The proposed approach would use a combination of a weighted average of facility-based assessment area conclusions in the nationwide area and a nationwide area score that reflects: (1) a Bank Nationwide Community Development Financing Metric; (2) a Nationwide Community Development Financing Benchmark; (3) a Nationwide Weighted Assessment Area Community Development Financing Benchmark; and (4) an impact and responsiveness review.

Weighted average of facility-based assessment area performance. The agencies proposed, in § ____.24(c)(4)(i), considering a weighted average of 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 institution-level conclusion.[1246] As with the State evaluation approach, the agencies intended that this approach would emphasize facility-based assessment area performance by directly linking a bank's facility-based assessment area conclusions to the institution conclusion. Under the proposal, 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). The agencies proposed that this resulting score for each facility-based 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 facility-based 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 the FDIC's Summary of Deposits data, as applicable).[1247] Using these weights and scores, the agencies would calculate the weighted average of the facility-based assessment area scores to determine the institution-level performance score. The weighted average approach would ensure that performance in each facility-based assessment area is incorporated into the institution conclusion, with greater emphasis given to the areas where a bank has a greater business presence.

Nationwide area score. The agencies proposed in § ____.24(c)(4)(ii) that examiners would assign a nationwide area score for the institution based on a Bank Nationwide Community Development Financing Metric, the nationwide benchmarks, and a nationwide impact review.

Bank Nationwide Community Development Financing Metric. The agencies proposed that examiners would calculate the Bank Nationwide Community Development Financing Metric[1248] using the same formula for the State metric, including all of a bank's community development loans

[1241] *See* proposed appendix B, section 16.

[1242] *See* final § ____.24(d)(1).

[1243] *See* final § ____.24(d)(2).

[1244] *See, e.g.,* Interagency Large Institution CRA Examination Procedures (April 2014) at appendix.

[1245] *See, e.g.,* Interagency Large Institution CRA Examination Procedures (April 2014).

[1246] *See* proposed § ____.24(c)(4)(i).

[1247] *See* proposed appendix B, section 16.

[1248] *See* proposed § ____.24(c)(4)(ii)(A).

and investments, and deposits in the bank in the numerator and denominator, respectively.

Nationwide Community Development Financing Benchmarks. In proposed § ____.24(c)(4)(ii)(B), the agencies proposed establishing benchmarks that would allow examiners to compare a bank's performance to other banks in similar areas. The proposed benchmarks included a single nationwide benchmark applied to all banks called the Nationwide Community Development Financing Benchmark and a benchmark that was tailored to each bank's facility-based assessment areas called the Nationwide Weighted Assessment Area Community Development Financing Benchmark. The agencies intended the use of two benchmarks to provide additional context and points of comparison in order to develop the nationwide area score.[1249]

Under the proposal, the agencies would develop the proposed nationwide benchmarks in the same way as the proposed statewide benchmarks. The proposed Nationwide Community Development Financing Benchmark included all community development loans and investments reported by large banks in the numerator, and all deposits in those banks in the denominator. Under the proposal, the deposits in the nationwide area would be the sum of: (1) 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 (2) 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 data, over the evaluation period.

The agencies proposed to define the Nationwide Weighted Assessment Area Community Development Financing Benchmark as the weighted average of the facility-based assessment area community development financing benchmarks across all of the bank's facility-based assessment areas and the agencies would weight the benchmark based on the facility-based 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.[1250]

Impact review. Similar to the proposed State evaluation approach, the agencies proposed in § ____.24(c)(4)(ii) and section 15 of appendix B to evaluate the impact and responsiveness of a bank's community development loans and investments at the institution level, using the same impact review approach as described above for facility-based assessment areas and States. The agencies proposed to conduct an institution-level impact review in order to assess the impact and responsiveness of *all* of an institution's community development loans and investments, including those inside and outside of facility-based assessment areas. The agencies considered this to be especially important for the evaluation of a bank that elects to conduct community development loans and investments 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 community development loans and investments to community needs, and would consider the impact review factors, among other information.

Nationwide area score assignment. As provided in section 15 of proposed appendix B, the agencies proposed to assign a nationwide area score that reflected the bank's overall dollar volume of community development loans and community development investments and overall impact and responsiveness of those loans and investments, 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). This nationwide area 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 community development financing activities.

Comments Received

Other than the comments discussed above, the agencies did not receive comments specific to the evaluation of a bank's community development loans and investments in the nationwide area or conclusions at the institution level. However, certain comments discussed above are relevant to these evaluations and conclusions. Specifically, some commenters objected to consideration of community development lending and investment outside of facility-based assessment areas because they believe that consideration of lending and investments in broader geographic areas is not consistent with the CRA statute's focus on local communities. Further, as discussed in the section-by-section analysis of § ____.24(a), many commenters expressed concern with the absence of an investment test as a separate test or a component of the Community Development Financing Test overall.

Final Rule

In final § ____.24(e) (renumbered proposed section § ____.24(c)(4)), the agencies are finalizing the proposed nationwide area evaluation of the Community Development Financing Test with certain revisions. Consistent with the proposal, the final rule includes two components for the nationwide area evaluation. The first component consists of the weighted average of facility-based assessment area performance in the nationwide area. The second component consists of an evaluation of all of the bank's community development lending and investments in the nationwide area—both inside and outside of a bank's facility-based assessment areas. As with the proposal, and discussed in greater detail below, the agencies will base consideration of a bank's nationwide area performance under the second component on a Bank Nationwide Community Development Financing Metric, the two nationwide community development financing benchmarks, and an impact and responsiveness review with conforming revisions consistent with the changes discussed above related to the State and multistate MSA Community Development Financing Test evaluations.

The agencies continue to believe, as discussed above, that it is appropriate to consider community development loans and investments outside of banks' facility-based assessment areas. The agencies believe that the construction of the nationwide area evaluation puts appropriate emphasis on banks' lending and investment in banks' facility-based

[1249] The agencies note that the proposal included Metropolitan and Nonmetropolitan Nationwide Community Development Financing Benchmarks applicable to the evaluation of community development lending and investments in facility-based assessment areas, described as ''national benchmarks.'' The proposed nationwide area Community Development Financing Test evaluation would not use these national benchmarks because it evaluates a bank's community development financing performance in all geographic areas in the nationwide area, irrespective of whether the banks' community development loans or investments are in MSAs or nonmetropolitan areas, and factors in facility-based assessment area performance through the weighted assessment area benchmarks.

[1250] *See* proposed § ____.24(c)(4)(ii)(B)(*2*).

assessment areas while also permitting banks to help meet the credit needs of their entire communities, particularly underserved areas with limited bank presence. This framework is aimed at ensuring that banks reinvest in the communities from which they draw deposits while also eliminating barriers in the current framework that have resulted in a mismatch in the supply and demand of community development financing activities in certain geographic areas.

As discussed above in the section-by-section analysis of § ____.24(a), to respond to commenters concerns about the potential that banks may shift away from conducting community development investments in favor of community development loans, the final rule also includes a Bank Nationwide Community Development Investment Metric and a Nationwide Community Development Investment Benchmark as part of the nationwide area performance considerations for large banks that have assets greater than $10 billion. In the agencies' view, including an investment metric and benchmark for the nationwide area is appropriate because it serves as a check on the level of banks' overall community development investments. The agencies determined that including an investment metric in the evaluation of facility-based assessment areas, States, or multistate MSAs may impose an incentive on banks to make a community development investment instead of a community development loan solely to perform well against the metric as compared to the benchmark, even if that investment was not in the best interest of the particular community or project. By limiting consideration of the Bank Nationwide Community Development Investment Metric and Nationwide Community Development Investment Benchmark to the nationwide area evaluation, banks have the flexibility to engage in the most appropriate type of financing for each community development project while still giving the agencies a view into how a bank's overall community development investment activity compares to its peers.

After considering commenter feedback, the agencies determined that the Bank Community Development Investment Metric and the Nationwide Community Development Investment Benchmark should exclude mortgage-backed securities. Although mortgage-backed securities serve a purpose in creating liquidity and helping banks to meet the credit needs of their communities, these types of community development investments do not involve the complexities associated with certain other community development investments. Further, given the existing markets for mortgage-backed securities, banks may readily engage in these types of investments if appropriate for their business model. For these reasons, the agencies believe that the consideration of community development investments within the nationwide area evaluation should focus on the extent to which banks are making community development investments other than mortgage-backed securities, which may involve competitive challenges, significant lead times, or otherwise be more complex for a bank to make.

The agencies also determined that the Bank Nationwide Community Development Investment Metric as compared to the Nationwide Community Development Investment Benchmark may only contribute positively to a bank's Community Development Financing Test conclusion for the institution.[1251] The agencies considered that there may be circumstances in which banks are not competitive for, or have limited opportunities to make, community development investments in particular geographic areas; however, provided that the agencies determine that banks are helping to meet community development needs overall based on the application of the Community Development Financing Test (exclusive of the investment metric and benchmark comparison), banks should be able to receive the conclusion and rating that the agency determines is appropriate. Nonetheless, the agencies believe the Bank Nationwide Community Development Investment Metric will incentivize banks to meet community needs and opportunities through community development investments because it: (1) adds transparency regarding a bank's level of community development investments; and (2) provides additional information that the agencies can consider positively in assessing a bank's performance under the Community Development Financing Test that may provide a more nuanced perspective on the bank's performance.

Section ____.24(e)(1) Nationwide Area Evaluation—component One

Under final § ____.24(e)(1)—the weighted average of facility-based assessment area performance in the nationwide area—the appropriate Federal financial supervisory agency consider the weighted average of the performance scores corresponding to a bank's conclusions for the Community Development Financing Test for its facility-based assessment areas within the nationwide area, calculated pursuant to section IV of final appendix B.

Section ____.24(e)(2) Nationwide Area Evaluation—Component Two

Under final § ____.24(e)(2)—nationwide area performance—the appropriate Federal financial supervisory agency considers a bank's community development financing performance in the nationwide area using a community development financing metric and benchmarks that consider all community development loans and investments in the nationwide area and, in the case of banks with over $10 billion in assets, a metric and benchmark focused on community development investments in the nationwide area. Component two also includes consideration of the impact and responsiveness of the bank's community development loans and investments.

Specifically, under the final rule, component two includes a Bank Nationwide Community Development Investment Metric in § ____.24(e)(2)(iii). The appropriate agency applies this metric to large banks that had assets greater than $10 billion. The Bank Nationwide Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the deposits located in the nationwide area for the bank. The agency calculates this metric pursuant to paragraph II.m of final appendix B. The formula for calculating the Bank Nationwide Community Development Investment Metric is consistent with the other metrics included in the Community Development Financing Test.

Under final § ____.24(e)(2)(iv), the appropriate agency compares the Bank Nationwide Community Development Investment Metric to the Nationwide Community Development Investment Benchmark that measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all large banks that had assets greater than $10 billion compared to deposits located in the nationwide area for all such banks. The agency calculates this benchmark pursuant to paragraph II.n of final appendix B. The formula for calculating the Nationwide Community

[1251] *See* final § ____.24(e)(2)(iv) and final appendix B, paragraph II.p.2.ii.

Development Investment Benchmark is consistent with the other benchmarks included in the Community Development Financing Test. As noted above, final § ____.24(e)(2)(iv) provides that this comparison may only contribute positively to the bank's Community Development Financing Test conclusion for the institution.

As noted above, in the final rule, paragraph II.p.2.ii of appendix B also provides that in the nationwide area, for large banks with assets greater than $10 billion, the agency considers whether the bank's performance under the Nationwide Community Development Investment Metric, compared to the Community Development Investment Benchmark, contributes positively to the bank's Community Development Financing Test conclusion.

Lastly, the agencies are finalizing the impact and responsiveness review in final § ____.24(e)(2)(v) in the nationwide area as proposed with conforming edits. As noted in the proposal and above, the nationwide area Community Development Financing Test provisions are generally consistent with the State and multistate MSA Community Development Financing Test provisions. The agencies made additional conforming revisions throughout final § ____.24(e) and paragraphs II.j, II.k, II.l of final appendix B.

Section ____.24(e) and (f) Nationwide Area Evaluation and Community Development Financing Test Performance Conclusions and Ratings

The Agencies' Proposal

The agencies proposed that a bank's weighted average assessment area performance score would be averaged with its nationwide area score to produce an institution performance score, with weights on both components tailored to reflect the bank's business model.[1252] As proposed for the calculation of the State score, the amount of weight applied to the facility-based assessment area performance and to the nationwide area performance would depend on the bank's percentage of deposits and retail loans that are within its facility-based assessment areas. Under the proposal, the agencies used weights equivalent to those proposed for calculating the combined State performance score, 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.[1253] The agencies intended the proposed weighting approach for the nationwide area evaluation 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 area 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 area score and on their weighted average of facility-based assessment area conclusions. The agencies proposed that they would then round the institution performance score 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 develop the Institution Community Development Financing Test conclusion.

Comments Received

Other than the comments discussed above regarding the evaluation of community development loans and investments outside of banks' facility-based assessment areas, the agencies did not receive specific comments on the calculation of the institution conclusion.

Final Rule

The agencies are finalizing the institution conclusion provisions for the Community Development Financing Test as proposed with conforming revisions. Final § ____.24(e) provides that the appropriate Federal financial supervisory agency evaluates a bank's community development financing performance in the nationwide area, pursuant to final § ____.19,[1254] using the two components discussed above and assign a conclusion for the institution based on the weighted combination of the two components discussed above and as provided in paragraph II.p of final appendix B and the weighting of conclusions as provided in section IV of final appendix B. As noted in the proposal, the nationwide area Community Development Financing Test provisions are consistent with the State and multistate MSA Community Development Financing Test provisions and the agencies made conforming revisions throughout final § ____.24(e) and paragraphs II.j, II.k, II.l of final appendix B.

Under the final rule, § ____.24(f)(1) provides that the agency assigns performance conclusions for the Community Development Financing Test for the institution pursuant to final § ____.28 and final appendix C. Further, final § ____.24(f)(2) provides that pursuant to final § ____.28 and appendix D, the agency incorporates a bank's Community Development Financing Test conclusions into its institution ratings.

Miscellaneous Comments and Technical and Conforming Changes

Comments Received

The agencies received several comments on miscellaneous portions of the Community Development Financing Test. The agencies also discuss various conforming changes to the Community Development Financing Test below.

A commenter recommended that the agencies not only consider the dollar volume of community development transactions, but also the units or number of transactions undertaken by the bank during any given year or examination cycle. The commenter explained that counting the number of units or transactions closed by the institution in any given cycle can be compared year-to-year and cycle-to-cycle to inform the picture of a bank's community development financing performance. Similarly, a commenter suggested that if the Community Development Financing Test is retained, the agencies should require that a reasonable number of transactions and originations be maintained and considered under the performance test to limit the moral hazard of banks pursuing the largest loans and avoiding rural America.

A commenter also suggested the following modifications to the Community Development Financing Test: (1) calculating the percentage of community development loans and investments that were committed to persistent poverty counties and counties with low levels of financing; and (2) reporting the percentage of community development loans and investments that involved collaboration and partnerships

[1252] *See* proposed appendix B, section 15.

[1253] *See id.*

[1254] The cross-references to final § ____.19 are consistent with similar revisions to the State evaluation in final § ____.24(c) and the multistate MSA evaluation in final § ____.24(d). Unlike those paragraphs, final § ____.24(e) does not cross-reference final § ____.28(c) because those provisions are not applicable to the institution conclusions.

with public agencies and community-based organizations.

Final Rule

The agencies did not add to the final rule a metric measuring the percentage of community development loans and investments that were committed to persistent poverty counties and counties with low levels of financing. The agencies structured the Community Development Test to have different components that serve distinct purposes. Under the final Community Development Financing Test, the impact and responsiveness review is the mechanism for considering community development loans and investments in persistent poverty counties and other underserved geographic areas. The agencies believe that the impact and responsiveness review is the appropriate means of considering these types of loans and investments because it provides an incentive through enhanced consideration as opposed to a comparison across banks. Banks operate in different markets with different business strategies and community needs and opportunities. A such, where some banks may be positioned to engage in community development lending and investment in persistent poverty counties, other banks may not have similar opportunities. Therefore, the suggested metric likely would not provide useful information for the agencies' evaluation of performance under the Community Development Financing Test.[1255]

The agencies similarly did not add a requirement for reporting the percentage of community development loans and investments that involved collaboration and partnerships with public agencies and community-based organizations. The agencies do not believe that this information is necessary for assessing bank performance under the Community Development Financing Test. Further, as discussed above, the agencies determined not to consider the number of transactions under the Community Development Financing Test.[1256]

Other Technical and Conforming Changes

In addition to the changes discussed above, the agencies made several non-substantive technical and conforming changes to the final Community Development Financing Test in final § ____.24 and final appendix B. The agencies' intent in making these changes, along with the other technical, clarifying, or conforming revisions discussed through this section-by-section analysis, was to be responsive to the overarching comments that the proposal was too complex and difficult to understand. First, the agencies reformatted final § ____.24(a) to delineate the different components of the paragraph. The agencies also revised the terminology to be more consistent both within final § ____.24 and throughout the rule. For example, the final rule uses the phrase ''benefits or serves'' in all places where the proposal had used one of those terms or the combined phrase. These and similar types of changes are not intended to have a substantive effect; rather, the agencies intend for these changes to clarify the rule by eliminating unnecessary variation that could introduce ambiguity.

Second, the agencies revised the format of the Community Development Financing Test by restructuring proposed § ____.24(c) to separate the State, multistate MSA, and nationwide area evaluations into distinct paragraphs in final § ____.24.[1257] As discussed above, the agencies also streamlined the description of the metrics and benchmarks throughout final § ____.24 and clarified the calculation of the metrics and benchmarks in final appendix B by describing each step in the calculation separately and adding sample formulas for clarity. The agencies made additional clarifying revisions to final appendix B, including: (1) reformatting and reorganizing the appendix to include sections with subparagraphs; and (2) adding summary paragraphs describing the inputs for the numerators and denominators of the metrics and benchmarks included in final §§ ____.24 and ____.26.

Third, similar to the revisions made to final appendix A to improve clarity and readability, the agencies reorganized final appendix B into four separate sections. These sections are organized by topic and the sections of the final rule to which they relate. The substantive aspects of these sections are discussed above. The sections of final appendix B are as follows:

- *Section I—Community Development Financing Tests—Calculation Components and Allocation of Community Development Loans and Community Development Investments.* This section includes the inputs for the metrics and benchmarks numerators and denominators in final §§ ____.24 and ____.26 and the methods for valuing and allocating community development loans and investments.
- *Section II—Community Development Financing Test in final § ____.24—Calculations for Metrics, Benchmarks, and Combining Performance Scores.* This section includes all the calculations for the metrics and benchmarks in the Community Development Financing Test in final § ____.24. The section also includes methodology for calculating the combined score for facility-based assessment area conclusions, the metrics and benchmarks analyses, and the impact and responsiveness reviews.
- *Section III—Community Development Financing Test for Limited Purpose Banks in final § ____.26—Calculations for Metrics and Benchmarks.* This section of final appendix B relates to the Community Development Financing Test for Limited Purpose Banks and is discussed in the section-by-section analysis of final § ____.26.
- *Section IV—Weighting of Conclusions.* This section applies to the development of conclusions for a bank's performance under the Community Development Financing Test in final § ____.24 and the Community Development Services Test in final § ____.25. The section provides the methodology for weighting the performance scores corresponding to conclusions in each State or multistate MSA, as applicable, pursuant to final § ____.28(c), and the nationwide area.

In summary, the agencies are adopting final § ____.24 and final appendix B with the revisions discussed above.

Section ____.25 Community Development Services Test

Current Approach

The agencies currently evaluate a large bank's provision of community development services, along with retail banking services, as part of the service test.[1258] For intermediate small banks and wholesale and limited purpose banks, the agencies evaluate community development services, community development loans, and community development investments under a single community development test.[1259] Generally, the agencies do not evaluate

[1255] For the agencies to determine if such a metric could usefully inform evaluation of bank performance under the Community Development Financing Test, the agencies would need to analyze data on lending and investments in these areas, which are unavailable at this time.

[1256] *See* the section-by-section analysis of § ____.24(a).

[1257] *See* final § ____.24(c) (State), (d) (multistate MSA), and (e) (nationwide area).

[1258] *See* current 12 CFR ____.24(a).

[1259] *See* current 12 CFR ____.26(c) (intermediate small banks) and ____.25 (wholesale and limited purpose banks).

community development services for small banks.[1260]

The current service test is largely qualitative and evaluates the extent to which a bank provides community development services and the extent to which those services are innovative or responsive to community needs.[1261] Examiners may consider measures including the number of: (1) low- and moderate-income participants; (2) organizations served; (3) sessions sponsored; and (4) bank staff hours dedicated.[1262] The agencies assess innovation and responsiveness by considering whether a community development service requires special expertise and effort by the bank, the impact of a particular activity on community needs, and the benefits received by a community.[1263]

Under the current rule, the agencies consider services performed by a third party on the bank's behalf under the service test if the community development services provided enable the bank to help meet the credit needs of its communities.[1264] Indirect community development services that enhance a bank's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the current service test if those services have not been considered already under the lending or investment test.[1265]

The Agencies' Proposal

The agencies proposed in § ____.25 to separately evaluate a large bank's performance of community development services under the Community Development Services Test. For all large banks, the agencies proposed to evaluate each facility-based assessment area based on (1) the extent to which a bank provides community development services and (2) the impact and responsiveness of those services pursuant to proposed § ____.15.[1266] In addition, the agencies proposed a quantitative metric (the Bank Assessment Area Community Development Service Hours Metric), described further below, for large banks with average assets of more than $10 billion.[1267]

Under the proposal, the facility-based assessment area conclusions would form the basis of conclusions for each State, multistate MSA, and the nationwide area.[1268] For each of these areas, conclusions would be based on two components: (1) a bank's weighted average of its community development services performance in its facility-based assessment areas within a State, multistate MSA, and nationwide area; and (2) an evaluation of its community development services outside its facility-based assessment areas but within the State, multistate MSA, and nationwide area.[1269]

Unlike the current approach,[1270] the proposal did not provide for community development services consideration where a third party (other than an affiliate) performs those services pursuant to an agreement in which the bank pays for those services.[1271] The proposal also included a definition of community development services in proposed § ____.25(d), which is discussed in the section-by-section analysis of § ____.12.

Comments Received

The agencies received many comments on proposed § ____.25. A few commenters generally supported the proposed Community Development Services Test. However, many commenters believed the proposed test would facilitate misplaced examiner discretion and urged the agencies to develop guidelines to ensure consistency. Several commenters stated that the proposed Community Development Services Test is insufficiently robust, with at least one of these commenters asserting the scope of activities is too narrow. In addition, a few commenters expressed concern that the test was inappropriately focused on the number of volunteer hours and not the type or quality of the volunteer activities, and advocated for a qualitative consideration of community development services.

Some commenters suggested that if the agencies do not establish a consolidated community development test (*i.e.,* one performance test that considers community development financing and community development services),[1272] the agencies should strengthen the Community Development Services Test by making the test more closely resemble the ''responsiveness'' consideration proposed in the Retail Services and Products Test. At least one commenter reasoned that the proposed Community Development Services Test has a disproportionately high weight for a limited number of eligible or impactful activities.

Final Rule

The agencies are adopting the Community Development Services Test with substantive, technical, clarifying, and conforming edits discussed below. In addition, the agencies made revisions to the proposed definition of ''community development services'' and moved the definition to final § ____.12, which is discussed in the section-by-section analysis of § ____.12.

As adopted, the Community Development Services Test remains largely qualitative and does not include the proposed Bank Assessment Area Community Development Service Hours Metric. The performance test also maintains the proposed consideration of the impact and responsiveness of a bank's community development services. The agencies believe the final rule provides greater consistency compared to the current rule and is responsive to commenter concerns about the potential for inconsistent application of the tests. For example, final § ____.25(b) and (c) formalize agency considerations in determining the extent to which a bank provides community development services (*e.g.,* the total hours of community development services performed by the bank; the capacities in which bank employees or board members served) and creates a standard set of data points to facilitate the review in final § ____.42(a)(6). In contrast to the current rule, the agencies added clarity by outlining types of community development services deemed impactful and responsive in final § ____.15.[1273]

Further, the agencies believe, based on supervisory experience, that a qualitative evaluation of community development services is appropriate and consistent with how the agencies currently evaluate community development services. Community development services do not lend themselves easily to a metrics-based approach because, as described further below, the evaluation includes consideration of the needs and opportunities available in a particular area, as well as a bank's resources and business model. To limit potentially misplaced discretion and rating

[1260] *See* current 12 CFR ____.26.

[1261] *See, e.g.,* current 12 CFR ____.24(e).

[1262] *See* Q&A § ____.24(e)—2.

[1263] *See id.*

[1264] Q&A § ____.24(e)—1.

[1265] *Id.*

[1266] *See* proposed § ____.25(b).

[1267] *See id.*

[1268] *See* proposed § ____.25(c).

[1269] *See* proposed § ____.25(c) and proposed appendix B, section 16.

[1270] *See* Q&A § ____.24(e)—1.

[1271] *See* proposed § ____.21(c) (outlining when community development services performed by an affiliate may be considered).

[1272] *See* the section-by-section analysis of final § ____.21(a) for discussion on creating a single consolidated community development performance test that evaluates community development loans, investments, and services.

[1273] *See* the section-by-section analysis of final § ____.15 for additional discussion specific to the impact and responsiveness consideration.

inflation, the agencies intend to provide guidance and training to examiners on the Community Development Services Test, such as how to apply the impact and responsiveness review, and when to apply the upward adjustment in final § ____.25(c)(2). In response to commenter feedback regarding responsiveness, the final rule requires community development services evaluated under the Community Development Services Test to support community development, as described in final § ____.13, and to be related to the provision of financial services.[1274]

The agencies did not receive comments on the proposal's exclusion of CRA consideration for community development services performed by a non-affiliate third party. The agencies believe paying such a party to perform service hours does not qualify as ''the performance of volunteer services by a bank's or affiliate's board members or employees.'' However, this sort of activity may qualify as a community development investment as a ''monetary or in-kind donation.'' [1275] Thus, the final rule maintains this exclusion.[1276]

Section ____.25(a) Community Development Services Test

The Agencies' Proposal

The agencies proposed in § ____.25(a) to evaluate a bank's record of helping to meet the community development services needs of the bank's facility-based assessment areas, States, multistate MSA, and nationwide area. The agencies defined community development services in proposed § ____.25(d) and explained that the agencies would consider publicly available information and information provided by the bank, 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.

Comments Received and Final Rule

The agencies received one comment specific to this proposed paragraph. This commenter suggested that the scope of community development services in proposed § ____.25(a) should specifically include that ''[f]or military banks and banks serving military and veteran communities, these community development services may occur on or near military installations and worldwide.'' The agencies do not believe these proposed edits are warranted. As discussed in the section-by-section analysis of § ____.16(d), military banks whose customers are not located within a defined geographic area may delineate a single facility-based assessment area consisting of the entire United States and its territories. For banks that elect this delineation pursuant to final § ____.16(d) and are also subject to the Community Development Services Test, the agencies will evaluate community development services in its facility-based assessment area, which would include military installations within the United States and its territories. The agencies do not include military installations worldwide, consistent with the other parts of the final rule where the agencies only consider activities within the United States and its territories.

The agencies are adopting proposed § ____.25(a) with conforming, clarifying, and technical edits. Specifically, the agencies conformed the language in each introductory paragraph across the performance tests so that the language mirrors the statute by replacing the proposed references to the bank's facility-based assessment areas, States, multistate MSAs, and the nationwide area with ''the entire community.'' [1277] In addition, the agencies eliminated the reference to where to find the definition of community development services within proposed § ____.25 because all definitions are now in final § ____.12.

Similar to the proposed approach in § ____.25(a), the final rule, renumbered as § ____.25(a)(2), provides that the agencies consider information provided by the bank and may consider publicly available information and information provided by government or community sources that demonstrates that a community development service benefits or serves a facility-based assessment area, State, multistate MSA, or the nationwide area. The agencies made clarifying edits to the proposed provision to specify that while the agencies will consider information provided by the bank to determine whether a particular community development service benefits or serves a particular area, the agencies may, at their option, consider publicly available information or information from government or community sources.

Section ____.25(b) Facility-Based Assessment Area Evaluation

The Agencies' Proposal

The agencies proposed in § ____.25(b)(1) to review a bank's provision of community development services by considering one or more of the following types of information: (1) the total number of community development services hours performed by the bank; (2) the number and type of community development services activities offered; (3) for nonmetropolitan areas, the number of activities related to the provision of financial services; (4) the number and proportion of community development services hours completed by, respectively, executives and other employees of the bank; (5) the extent to which community development services are used, as demonstrated by information such as the number of low- or moderate-income participants, organizations served, and sessions sponsored; or (6) other evidence that the bank's community development services benefit low- or moderate-income individuals or are otherwise responsive to community development needs.

For large banks with average assets greater than $10 billion, the agencies proposed in § ____.25(b)(2) a quantitative metric—the Bank Assessment Area Community Development Service Hours Metric—to measure the average number of community development service hours per full-time equivalent employee. The agencies proposed calculating the metric by dividing a bank's aggregate hours of community development services activity during the evaluation period in a facility-based assessment area by the number of full-time equivalent employees in a facility-based assessment area. The proposal did not include a peer benchmark in which to compare the Bank Assessment Area Community Development Service Hours Metric. However, the agencies stated in the proposed rule that the collection and analysis of community development service hours data under the proposed rule might allow for future development of peer benchmarks.

The agencies also proposed to evaluate the impact and responsiveness of the bank's community development services in a facility-based assessment area pursuant to proposed § ____.15.

Comments Received

Commenters offered varying feedback on the proposed evaluation of community development services in facility-based assessment areas,

[1274] *See* the section-by-section analysis of § ____.12 for discussion of the definition of community development services.

[1275] *See* the section-by-section analysis of § ____.12 for discussion on whether community development services performed by a third party may qualify as a ''monetary or in-kind donation'' within the definition of ''community development investment.''

[1276] *See* the section-by-section analysis of § ____.21(b) for discussion on treatment of services performed by affiliates.

[1277] *See* final § ____.25(a)(1).

including, but not limited to, the Bank Assessment Area Community Development Service Hours Metric and whether the benefit associated with using the metric exceeded the burden of collecting and reporting this data point. A few commenters supported the proposed metric, noting, generally, that the metric's value would exceed any burden to the bank, or that the metric imposed limited burden to the bank. A commenter highlighted the metric's ability to provide meaningful comparison at the local level but suggested further refinement to the calculation so that the metric would consider the number of months in the evaluation period. At least a few commenters supporting the metric said that reporting the data would not be burdensome to banks because they already collect these data. Another commenter stressed that the collection of community development services data is fundamental to evaluating performance under the performance test.

Other commenters opposed the Bank Assessment Area Community Development Service Hours Metric. These commenters generally believed the metric's benefit did not outweigh the burden of reporting the additional data. A commenter questioned the utility of the metric where the proposed community development services evaluation would include other non-quantitative bases and examiner discretion. Further, the commenter found the metric duplicative of other parts of the proposed Community Development Services Test, such as the consideration of the number of hours for all community development services performed by a bank as well as the proportion of community development service hours completed by bank executives and other bank employees. Another commenter believed the proposed test without the metric would be sufficient.

In response to the agencies' question in the proposed rule on whether to apply the Bank Assessment Area Community Development Service Hours Metric to all large banks, including those with average assets of $10 billion or less, a few commenters endorsed requiring all large banks to report this metric, with a couple of these commenters also endorsing the application of the metric to intermediate small banks.[1278] One commenter opposed requiring banks with assets $10 billion or less to report the Bank Assessment Area Community Development Service Hours Metric, though it expressed general support for recording volunteer hours.

A few commenters raised concerns about operationalizing the metric, such as challenges related to employees self-reporting and tracking hours, recording the location of a community development services provided virtually, and defining a full-time equivalent employee. A few commenters supported the inclusion of executives in the definition of full-time equivalent employee. Other commenters suggested that the agencies should not discount service hours for part-time employees, or that the metric should exclude ''non-exempt staff'' from the definition of full-time equivalent employment if the final rule requires community development services be related to the provision of financial services. A couple of commenters cautioned that the increasing prevalence of remote working arrangements and back-office locations would make allocating full-time equivalent bank employees to a particular geographic area challenging and could lead to anomalous results.

A few commenters responded specifically on whether the agencies should develop benchmarks and thresholds to compare the Bank Assessment Area Community Development Service Hours Metric once such data are available. In general, some commenters opposed the development of such benchmarks and thresholds because they would be too burdensome, whereas other commenters tended to support developing benchmarks to facilitate comparison across banks. One commenter believed the metric's comparison to a peer benchmark should greatly influence the conclusions.

The agencies also sought feedback on whether to include an additional executive-only metric in which the agencies would assess community development service hours per executive for large banks with assets of over $10 billion. The agencies received only a few comments about this metric, each of which noted that a separate metric for executive service hours would not add any rigor to the performance test.

A couple of commenters suggested prescribed weighting within the facility-based assessment area to promote consistency and rigor. For example, a commenter suggested assigning a 50 percent weight for the Bank Assessment Area Community Development Service Hours Metric and a 50 percent weight for the qualitative factors in proposed § ____.25(b)(1). Another commenter suggested that hours spent volunteering as a board member or in other leadership roles for a community development organization should be weighted more heavily than other community development services because the former requires a greater commitment.

Final Rule

Final § ____.25(b) adopts the proposed qualitative approach to evaluate a large bank's community development services in a facility-based assessment area with substantive, clarifying, and technical changes. As mentioned previously, the final rule does not include the Bank Assessment Area Community Development Service Hours Metric in the Community Development Services Test. Upon consideration of the comments, the agencies believe the metric would have increased the rule's complexity and burden with limited benefit to assessing community development services, particularly since the agencies do not have sufficient data to establish a peer benchmark for comparison with the Bank Assessment Area Community Development Service Hours Metric. The agencies recognize the challenges identified by commenters in defining a full-time equivalent employee and recognize that a bank's full-time equivalent employees may not be an appropriate measure or proxy for the expectation of the amount of community development services a bank should provide. A bank's decision on the number and types of employees (*e.g.,* full-time, part-time, contract, seasonal) could be driven by many factors other than community development services capacity. Relatedly, the agencies asked whether the final rule should include a definition of ''full-time employee.'' This definition is no longer necessary because the final rule does not include the proposed Bank Assessment Area Community Development Service Hours Metric, which used this term.

The final rule does not include an executive-only metric in response to commenter feedback that the metric would not add rigor to the test. Correspondingly, the agencies removed a related consideration—the number and proportion of community development services hours performed by executives and other bank employees—from the list of considerations when evaluating a bank's provision of community development services in a facility-based assessment area.[1279]

[1278] The proposed rule did not include the term ''intermediate small bank.''

[1279] *See* proposed § ____.25(b)(1)(iv). Final § ____.12 requires that all community development services be related to the provision of financial

The agencies streamlined and reorganized the list of considerations in proposed § ____.25(b)(1). The final rule does not include the proposed consideration—the number of activities related to the provision of financial services in nonmetropolitan areas—because this concept is inherent in the definition of community development services in final § ____.12.[1280] Further, the agencies condensed the proposed considerations in § ____.25(b)(1)(v) and (vi) into final § ____.25(b)(4). Proposed § ____.25(b)(1)(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—provided examples of the catch-all provision in proposed § ____.25(b)(1)(vi). Thus, final § ____.25(b)(4) incorporates both concepts without an intended change in meaning. Final § ____.25(b)(4) provides that the review of community development services in a facility-based assessment area may include ''[a]ny other evidence demonstrating that the bank's community development services are responsive to community development needs, such as the number of low- and moderate-income individuals that are participants, or number of organizations served.''

The agencies made other conforming edits to track the data collection and maintenance requirements in final § ____.42(a)(6), which requires the collection and maintenance of community development services data regarding the capacity in which a bank employee or board member served.[1281] The final rule explicitly identifies this consideration in § ____.25(b)(2). The aligning of this provision to the data collection and maintenance requirements in the final rule results in replacing ''executive'' with ''board member.'' Bank executives remain included in the term ''employee,'' and the agencies clarified that consideration of the capacity served also applies to board members. In addition, proposed § ____.25(b)(1)(ii) would have included the number and type of community development services offered. Consistent with the terminology in data collection and maintenance in the final rule,[1282] the agencies clarified in final § ____.25(b)(1) that the agencies may consider, as appropriate, the number of community development services attributable to each type of community development described in § ____.13(b) through (l). Finally, the agencies changed the outline levels to clarify that the impact and responsiveness review in final § ____.15 may be among the considerations in assigning a conclusion for a facility-based assessment area.[1283]

The final rule does not prescribe a specific weighting for the Community Development Services Test evaluation of each facility-based assessment area. Without the proposed Bank Assessment Area Community Development Service Hours Metric, the commenter suggestions for weighting the metric compared to other considerations in the facility-based assessment area are no longer necessary. The agencies considered establishing weighting within the performance test or otherwise reducing examiner discretion but determined that examiner discretion is appropriate. For example, it is difficult to conclude, as suggested by a commenter, that hours volunteering as a board member for an organization that supports community development is always more impactful and responsive than hours volunteering in a non-leadership capacity. Instead, the agencies believe that they should base the impact and responsiveness of a community development service on the needs of a particular community. Examiner discretion in this test is also consistent with current practice and consistent with the final Community Development Financing Test and the Retail Services and Product Test.[1284]

Section ____.25(c) State, Multistate MSA, or Nationwide Area Evaluation

Section ____.25(d) Community Development Services Test Performance Conclusions and Ratings

The Agencies' Proposal

The proposal provided that the facility-based assessment area conclusions would form the basis of conclusions at the State, multistate MSA, and nationwide area.[1285] Pursuant to proposed § ____.25(c) and paragraph 16 of proposed appendix B, for each of these areas, the agencies would develop conclusions based on two components: (1) a bank's weighted average of its community development services performance conclusions in its facility-based assessment areas within a State, multistate MSA, or the nationwide area, as applicable under § ____.18; and (2) an evaluation of a bank's community development services outside its facility-based assessment areas but within the State, multistate MSA, and nationwide area. The agencies recognized that the current rule includes beneficial flexibility that can also result in uncertainty about which community development services will qualify for CRA consideration. For example, under the current approach, if examiners determine that a bank conducted a community development service in a broader statewide or regional area that does not benefit an assessment area and that the bank has not been responsive to the needs of its assessment areas, the bank will not receive consideration for that activity.[1286] This aspect of the current approach caused uncertainty for banks because they would not know if examiners had determined they were responsive to the needs of their assessment areas until the point of their CRA examination, after the bank had engaged in the activities considered in the examination. With the proposed rule, the agencies intended to achieve a balance between prioritizing facility-based assessment area performance, and providing certainty that the agencies would consider community development services in other areas.

Under proposed § ____.25(c), the agencies would base weighting under the first component on the average of two numbers: the bank's share of retail loans within the facility-based assessment area compared to the applicable geographic area (State, multistate MSA, or nationwide area); and a bank's share of deposits within the facility-based assessment area compared to the applicable geographic area.[1287] Paragraph 16 of proposed appendix B provided the calculations for weighting conclusions in a State, for a multistate MSA, and for the institution, respectively. In a State, the agencies would weight a 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 would be based upon, respectively, the dollar volumes of deposits and loans in each facility-based assessment area compared with,

services. *See* the section-by-section analysis of § ____.12 for discussion of the definition of community development services.

[1280] *See* proposed § ____.25(b)(1)(iii).

[1281] Final § ____.42(a)(6)(i)(E).

[1282] *See* final § ____.42(a)(6).

[1283] *See* final § ____.25(b)(5).

[1284] *See also* discussion above under Community Development Services Test—In General.

[1285] *See* proposed § ____.25(c).

[1286] *See* Q&A § ____.12(h)—(6).

[1287] *See also* proposed appendix B, section 16.

respectively, the statewide dollar totals of deposits and loans within facility-based assessment areas of that State. Put another way, the proposal provided that the agencies would weight conclusions at the State-level by averaging: (1) the dollar volume of deposits in a facility-based assessment area within the State divided by the dollar volume of deposits in the bank in that State; and (2) a bank's dollar volume of retail loans in a facility-based assessment area within the State divided by the dollar volume of retail loans in that State. The agencies would use the same approach for weighting conclusions for the multistate MSA and institution.

The second component in proposed § ____.25(c)(2) provided that any upward adjustment of the performance score derived from the weighted average of the facility-based assessment area performance (*i.e.,* component one) would be based on an evaluation of community development services performed outside the facility-based assessment area. That evaluation could include: the number, hours, and type of community development service activities; the proportion of activities related to the provision of financial services, as described in proposed § ____.25(d)(3); and the impact and responsiveness of these activities.[1288]

Finally, proposed § ____.25(e)(1) provided that the agencies assign community development services conclusions at the facility-based assessment area, the State, multistate MSA, and institution level, as provided in proposed § ____.28 and appendix C. Proposed § ____.25(e)(2) provided that the agencies incorporate those conclusions into its State, multistate MSA, and institution ratings.

Comments Received

A commenter expressed concern with the lack of guidelines for potential upward adjustments based on community development services performed outside of facility-based assessment areas. This commenter recommended establishing a minimal level of service that must be performed outside a facility-based assessment area to be eligible for an upward adjustment, and recommended prohibiting banks with a ''Needs to Improve'' or ''Substantial Noncompliance'' in its facility-based assessment areas from receiving this upward adjustment. In addition, this commenter said the performance of community development services outside of facility-based assessment areas should clearly exceed the performance within facility-based assessment areas as measured by hours per employee or impact.

Final Rule

The agencies adopt final § ____.25(c) as proposed with technical and conforming edits. To ensure consistency with final § ____.25(b), the agencies replaced the considerations list in proposed § ____.25(c)(2) with a reference to the similar factors in final § ____.25(b)(1) through (5). This change adds a catch-all provision (described further in the section-by-section analysis of § ____.25(b)) to ensure the agencies may consider other evidence demonstrating that the bank's community development services outside facility-based assessment areas are responsive to community development needs. In addition, the replacement of the consideration list in proposed § ____.25(c)(2) with final § ____.25(c)(2) removes consideration of the proportion of community development services related to the provision of financial services[1289] because the final rule requires all community development services to be related to the provision of financial services (*see* the section-by-section analysis of § ____.12).

Consistent with the proposal, the final rule permits an upward adjustment based on the consideration of community development services outside of a bank's facility-based assessment area; however, banks subject to final § ____.25 are not required to provide such services outside their facility-based assessment areas.[1290] Consideration of community development services in areas outside of the facility-based assessment area recognizes impactful community development opportunities that serve areas with high unmet community development needs, including those areas in which few banks have a facility-based assessment area or a concentration of loans subject to final § ____.22.

The final rule does not impose additional limitations or restrictions on when the upward adjustment may be applied, as suggested by a few commenters. In general, banks perform community development services in areas where employees or board members are located (*i.e.,* main office and branches), which is also generally where a facility-based assessment area must be delineated. Thus, the agencies do not believe additional limitations or restrictions are necessary.

The agencies also made conforming edits to clarify that the agencies evaluate performance in the nationwide area but conclude at the institution level. The final rule removes two errant references to proposed § ____.18, the consideration of community development services outside of a bank's facility-based assessment areas, in proposed § ____.25(c) introductory text and (c)(1). The reference to this consideration, renumbered as final § ____.19, should be limited to component two in final § ____.25(c)(2). The weighting of the conclusions remains substantively comparable to the proposed weighting in paragraph 16 of proposed appendix B but includes clarifying edits in final appendix B. See the section-by-section analysis of § ____.24(c) and (d) for additional discussion on the Weighting of Conclusions in section IV of final appendix B, which also applies to the final Community Development Financing Test.

The agencies adopt the proposed conclusions and ratings provision as final § ____.25(d) with technical and conforming edits. Final § ____.25(d)(1) provides that the agencies will assign conclusions under this test in each facility-based assessment area, State, or multistate MSA, and institution, pursuant to final § ____.28 and paragraph e of final appendix C. In addition, final § ____.25(d)(1) includes conforming edits to clarify that the agencies may consider performance context as provided in final § ____.21(d) when assigning conclusions.[1291] Final § ____.25(d)(2) provides that the agencies incorporate conclusions under this performance test into the State or multistate MSA ratings, as applicable, and its institution rating pursuant to final § ____.28 and appendix D.

Section ____.26 Limited Purpose Banks

Current Approach

Under current § ____.25, the agencies evaluate a wholesale or limited purpose bank's community development loans, community development investments, and community development services under one community development test.[1292] The agencies give consideration to the number and dollar amount of community development loans, community development investments, and community development services,[1293] both inside a bank's assessment areas or in a broader statewide or regional area that includes the bank's assessment areas, and outside

[1288] *See* proposed § ____.25(c)(2).

[1289] *Compare* proposed § ____.25(c)(2)(ii), *with* final § ____.25(c)(2).

[1290] *See* final § ____.25(c)(2).

[1291] *See* the section-by-section analysis of § ____.21(d) for additional discussion.

[1292] *See* current 12 CFR ____.25(a).

[1293] *See* current 12 CFR ____.25(c)(1).

of its assessment areas if the needs of the bank's assessment areas are adequately addressed.[1294] The qualitative factors include the innovativeness or complexity of these activities, the bank's responsiveness to credit and community development needs, and the extent to which investments are not routinely provided by private investors.[1295] In addition, the evaluation under the current test considers performance context, including, but not limited to, a bank's capacity and constraints and the performance of similarly situated lenders.[1296] A wholesale or limited purpose bank may provide examiners with any information it deems relevant to the evaluation of its community development lending, investment, and service opportunities in its assessment areas.[1297]

The Agencies' Proposal

The agencies proposed in § ____.26 to maintain a wholesale or limited purpose bank designation and that these banks would be evaluated under the proposed Community Development Financing Test for Wholesale or Limited Purpose Banks.[1298]

Final Rule

As discussed in the section-by-section analysis of § ____.12, the final rule eliminates the proposed definition of ''wholesale bank'' and revises the proposed definition of ''limited purpose bank'' to encompass banks generally considered either ''limited purpose banks'' or ''wholesale banks'' under the current or proposed regulations. The final rule replaces references to wholesale banks in the proposal with limited purpose banks. The final rule maintains the option for a bank to request designation as a limited purpose bank with evaluation pursuant to the Community Development Financing Test for Limited Purpose Banks in final § ____.26. This test employs qualitative and quantitative factors similar to current examination procedures. In addition, the institution-level conclusion will consider a community development financing metric and certain benchmarks, as well as a community development investment metric and benchmark.

The agencies received several comments on various aspects of proposed § ____.26 from a diverse group of commenters.[1299] These comments, and the final rule, are discussed in detail below.[1300]

Section ____.26(a) Bank Request for Designation as a Limited Purpose Bank

Current Approach

To receive a designation as a wholesale or limited purpose bank under the current rule, current § ____.25(b) provides that a bank shall file a request in writing to the appropriate Federal financial supervisory agency at least three months prior to its desired designation. If approved, the designation remains in effect until the bank requests revocation of the designation or until one year after the appropriate agency notifies the bank that its designation has been revoked.[1301]

The Agencies' Proposal

The agencies proposed in § ____.26(a) to maintain the current designation provision with technical edits. The proposal maintained the option to file a written request to be designated as a wholesale or limited purpose bank.[1302] An approved designation would remain in effect until the bank requests revocation or until one year after the bank was notified that the appropriate Federal financial supervisory agency has revoked the designation on its own initiative.[1303]

Comments Received and Final Rule

A few commenters asked that the agencies clarify that those banks designated as wholesale or limited purpose banks under the current rule do not need to reapply to receive such a designation under the new framework. The agencies confirm that banks currently designated as wholesale or limited purpose banks do not need to reapply under the final rule. As is the case under the current rule, the appropriate Federal financial supervisory agency may notify a bank that the designation has been revoked pursuant to final § ____.26(a) if the agency determines the bank no longer qualifies for the limited purpose bank designation, or the bank may request revocation.[1304] The agencies did not receive other comments specific to proposed § ____.26(a), and therefore adopt § ____.26(a) as proposed with technical and conforming edits, including a nomenclature change from ''wholesale or limited purpose banks'' to ''limited purpose banks.'' [1305]

Section ____.26(b) Performance Evaluation

Current Approach

The current community development test for wholesale or limited purpose banks in § ____.25 evaluates community development loans, community development investments, and community development services under one performance test. Wholesale or limited purpose banks have flexibility to satisfy their CRA obligation by engaging in any combination of community development lending, investments, or services, but are not required to engage in each activity.[1306] Consequently, in theory, a wholesale or limited purpose bank could receive a ''Satisfactory'' rating by performing only community development services. In practice, under the current rule, the agencies' supervisory experience suggests it would be unusual for a bank to receive a ''Satisfactory'' rating based solely or even primarily on community development services. Based on the agencies' supervisory experience, more commonly, community development loans and community development investments are the predominant activities that determine community development ratings for wholesale or limited purpose banks.

The Agencies' Proposal

The agencies proposed to evaluate a wholesale or limited purpose bank's community development loans and community development investments under the Community Development Financing Test for Wholesale or Limited Purpose Banks in proposed § ____.26.[1307] Wholesale or limited purpose banks could request additional consideration for community development services that would qualify under the proposed Community Development Services Test, which the appropriate Federal financial supervisory agency could consider to adjust the bank's institution rating from

[1294] *See* current 12 CFR ____.25(e)(1) and (2).

[1295] *See* current 12 CFR ____.25(c)(2) and (3).

[1296] *See* current 12 CFR ____.21(b).

[1297] *See* Q&A § ____.21(b)(2)–1.

[1298] *See* proposed § ____.26.

[1299] A few commenters supported maintaining existing guidance for wholesale and limited purpose banks from the Interagency Questions and Answers. The agencies plan to review the applicability of existing Interagency Questions and Answers during the transition period.

[1300] *See supra* note 145.

[1301] *See* current 12 CFR ____.25(b).

[1302] *See* proposed § ____.26(a).

[1303] *See id.*

[1304] Banks designated as wholesale banks under the current regulation will automatically be considered limited purpose banks under the final rule unless the appropriate Federal financial supervisory agency notifies the bank that the designation has been revoked pursuant to final § ____.26(a) or the bank requests revocation.

[1305] *See* the section-by-section analysis of § ____.12 for additional discussion on the nomenclature change.

[1306] *See* Q&A § ____.25(f)—1.

[1307] *See* proposed § ____.26(c).

''Satisfactory'' to ''Outstanding.''[1308] Thus, under the proposal, wholesale or limited purpose banks would not be able to rely solely on community development services to obtain a ''Satisfactory'' rating.

Comments Received

A few commenters raised concerns related to the elimination of the ability of wholesale banks to rely on community development services to achieve a baseline ''Satisfactory'' rating. These commenters opined that this change may require wholesale banks to make significant changes to their business models or seek a costly strategic plan. One of these commenters stated that the agencies neglected to consider the safety and soundness implications of eliminating the ability of wholesale banks to rely on community development services to achieve a ''Satisfactory'' rating. Further, this commenter argued that the agencies failed to provide a reasoned analysis for the policy change and failed to weigh wholesale banks' reliance interests on the ability to use community development services to achieve a ''Satisfactory'' rating compared to the agencies' policy objectives. In particular, this commenter questioned why wholesale banks would not be afforded the same ability as large banks to rely on community development services to achieve a baseline ''Satisfactory'' rating.

Some commenters responded directly to the question in the proposed rule on whether wholesale or limited purpose banks should 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, as proposed, or whether wholesale or limited purpose banks that wish to receive consideration for community development services should be required to opt into the proposed Community Development Services Test. A few commenters supported consideration of community development services without having to opt into the Community Development Services Test. One of these commenters supported the consideration of community development services for wholesale or limited purpose banks regardless of a bank's institution rating under the modified Community Development Financing Test. Another of these commenters suggested the agencies should clarify that the performance of community development services is not required for wholesale or limited purpose banks to receive an overall rating of ''Outstanding'' if that bank otherwise demonstrates outstanding community development financing performance.

In contrast, a few commenters disagreed with the proposed approach to consider community development services if a wholesale or limited purpose bank requests consideration. These commenters believed that the agencies should evaluate community development services for all banks and eliminate the provision that allows requesting additional consideration. One of these commenters warned that the proposal would increase subjectivity and could reduce nationwide community development services.

Final Rule

The agencies adopt in final § ____.26(b)(2)(i) the proposed treatment of community development services for limited purpose banks. Under this approach, limited purpose banks have the option to submit community development services for consideration; however, these banks will not be able to rely solely or primarily on community development services to obtain a ''Satisfactory'' rating under the final Community Development Financing Test for Limited Purpose Banks. The agencies acknowledge commenter concerns that final § ____.26 may restrict some flexibility available to limited purpose banks under the current rule; however, the agencies' supervisory experience indicates it would be unusual for a wholesale or limited purpose bank under the current rule to achieve a ''Satisfactory'' rating by relying solely or primarily on community development services, as opposed to community development lending or investments. Moreover, the treatment of community development services in final § ____.26(b)(2)(i) achieves the agencies' longstanding goal of emphasizing community development loans and investments. Understanding that limited purpose banks are not subject to the Retail Lending Test, the agencies place greater emphasis on community development loans and investments to ensure equity across business models. The agencies do not believe that there is a safety and soundness implication related to the inability of a limited purpose bank to rely on community development services to achieve a ''Satisfactory'' rating. Consistent with the proposal, the final rule in § ____.21(f) does not require a bank to originate or purchase loans or investments or to provide services that are inconsistent with safe and sound banking practices.

The agencies acknowledge the final rule's different treatment of community development services between limited purpose banks and large banks. The final rule provides that the agencies evaluate a large bank's community development services regardless of performance under the Community Development Financing Test in final § ____.24, whereas the agencies consider a limited purpose bank's community development services if that bank requests consideration and only where the institution rating would otherwise be ''Satisfactory.'' The agencies do not believe limited purpose banks are disadvantaged by this distinction. The consideration of community development services for limited purpose banks can only positively affect the institution rating, but in order to prioritize community development loans and investments, the agencies limited the application of this consideration to banks that would otherwise have a ''Satisfactory'' institution rating. In contrast, the rule does not apply an expectation that limited purpose banks conduct community development services. For large banks, which generally have business models better structured to perform community development services due to larger branch networks and more employees, there is an expectation that they perform community development services, and therefore the evaluation can negatively affect a large bank's institution rating.

The agencies considered the comments related to whether a bank should be required to opt into the Community Development Services Test to receive consideration for community development services. Under such a scenario, the agencies would evaluate a limited purpose bank pursuant to the Community Development Services Test, which could negatively affect the bank's conclusions and ratings. The agencies decline to require limited purpose banks seeking consideration for community development services to opt into the Community Development Services Test because the agencies want to encourage performance of community development services without creating the expectation that these banks must perform community development services. Because limited purpose banks generally have a smaller branch network and limited branch staff to perform community development services compared to large banks, the agencies adopt the proposed approach for community development services—a limited purpose bank need not opt into the Community Development Services

[1308] *See* proposed § ____.26(b)(2).

Test, but it may request, at its option, additional consideration for community development services if it would otherwise receive a ''Satisfactory'' rating at the institution level.[1309] The agencies limit the consideration to banks that would otherwise receive a ''Satisfactory'' rating to prioritize community development loans and investments.

The agencies confirm that submitting community development services for consideration is not necessary for a limited purpose bank to receive an ''Outstanding'' rating where that bank's community development financing performance under final § ____.26 by itself is otherwise ''Outstanding.''

In addition, the agencies clarified that a limited purpose bank may receive additional consideration at the institution level for providing low-cost education loans to low-income borrowers, regardless of the limited purpose's bank's overall institution rating.[1310] The agencies made this revision to ensure consistency with the CRA statute, which provides that for all banks, regardless of bank type, the agencies shall consider, as a factor, such low-cost education loans.[1311]

Section ____.26(c) Community Development Financing Test for Limited Purpose Banks—In General

The Agencies' Proposal

Proposed § ____.26(c) provided for the evaluation of wholesale and limited purpose banks based on the banks' record of helping to meet the community development financing needs in facility-based assessment areas, States, multistate MSAs, and the nationwide area through the banks' provision of community development loans and community development investments. Further, the agencies would consider information provided by the bank and could consider, as needed, publicly available information and information provided by government or community sources. The agencies proposed that community development loans and investments should be allocated pursuant to section 14 of proposed appendix B, which would be consistent with the allocation provisions under the Community Development Financing Test in proposed § ____.24.

Comments Received and Final Rule

The agencies did not receive comments specific to the proposed scope provision in § ____.26(c). The agencies, therefore, adopt this provision with technical and conforming edits. Specifically, as with final §§ ____.24 and ____.25, the final rule removes the proposed references to the bank's facility-based assessment areas, States, and multistate MSAs in which the bank has facility-based assessment areas, as applicable, and the nationwide area, including consideration of performance context to conform the language to the statute and across the introductory paragraphs in the final performance tests. The final rule moves the proposed language on what documentation the agencies will or may consider to paragraph I.b of appendix B of the final rule, where the allocation discussion is more fully described. Final § ____.26(c)(2) updates the cross-reference to the allocation method in paragraph I.b of appendix B, which is the same allocation method as the Community Development Financing Test in final § ____.24. See the section-by-section analysis of § ____.24(a) for additional discussion of comments and the final rule related to the allocation method. Finally, the final rule updates headings and terminology for clarity and consistency.

Section ____.26(d) Facility-Based Assessment Area Evaluation

Section ____.26(e) State or Multistate MSA Evaluation

The Agencies' Proposal

For each facility-based assessment area, the agencies proposed to evaluate a wholesale or limited purpose bank based on the total dollar value of a bank's community development loans and community development investments (*i.e.,* community development financing activity) that serve the facility-based assessment area for each year and a review of the impact of those activities in the facility-based assessment area under proposed § ____.15.[1312] As discussed in more detail below, the facility-based assessment area conclusions would form the basis of the conclusion at the State, multistate MSA, and nationwide area level, along with review of the bank's community development financing activity that serves the State or multistate MSA during the evaluation period.[1313]

For each State or multistate MSA conclusion, the agencies proposed to assign a conclusion based on a combination of two components: (1) a wholesale or limited purpose bank's community development financing performance in its facility-based assessment areas in the State or multistate MSA area; and (2) the dollar value of community development financing performance that serves the State or multistate MSA during the evaluation period, and a review of the impact of these activities in the State or multistate MSA under § ____.15.[1314] Unlike the Community Development Financing Test in proposed § ____.24, the proposed Community Development Financing Test for Wholesale or Limited Purpose Banks did not include prescribed weighting for considering these two components, and the proposed evaluation in a facility-based assessment area, State, or multistate MSA did not include a metric. The agencies proposed the Wholesale or Limited Purpose Bank Community Development Financing Metric for the nationwide area only (as opposed to the facility-based assessment area, State, or multistate MSA) because of the difficulties associated with apportioning bank assets to specific facility-based assessment areas, States, or multistate MSAs.

The agencies sought feedback on how to increase certainty in the evaluation of a wholesale or limited purpose bank's community development financing performance for a facility-based assessment area, including whether to apply a metric and what the denominator should be.

Comments Received

In response to the agencies' request for feedback on whether to apply a metric and what the denominator should be, a few commenters supported establishing a metric for facility-based assessment areas. One of these commenters suggested the agencies use a variation of the OCC's procedure for allocating Tier 1 Capital across assessment areas. Similarly, another commenter stated that a model currently exists within CRA whereby a percentage of a bank's Tier 1 Capital that is dedicated to community development investment activity is used as a benchmark for performance. The commenter believed this approach would not be complicated. A few commenters advocated for using deposits in the denominator in response to this question.

One commenter that supported including a metric for facility-based assessment areas also supported establishing a benchmark. This commenter suggested that for banks with over $10 billion in assets, the benchmark could be based on the share

[1309] *See* final § ____.26(b)(2)(i).

[1310] *See* final § ____.26(b)(2)(ii).

[1311] *See* 12 U.S.C. 2903(d).

[1312] *See* proposed § ____.26(d).

[1313] *See* proposed § ____.26(e)(1) and (f)(1).

[1314] *See* proposed § ____.26(e).

of the bank's deposits it collects from a facility-based assessment area multiplied by the bank's institution community development financing benchmark. For banks with assets of $10 billion or less, the commenter suggested that the benchmark should be based upon the share of the U.S. population (or alternatively, the share of the U.S. low- and moderate-income population) residing in the facility-based assessment area, multiplied by the bank's community development financing benchmark.

Final Rule

The final rule adopts § ____.26(d) and (e) as proposed with certain technical and conforming edits, including reorganizing text, adding paragraph headers, and clarifying the text. The agencies evaluate in each facility-based assessment area a bank's dollar volume of community development loans and investments that benefit or serve the facility-based assessment area and the impact and responsiveness review of these loans and investments.[1315] In each State or multistate MSA, the agencies evaluate and assign a conclusion based on the facility-based assessment area conclusion and the dollar volume of the limited purpose bank's community development loans and investments that serve the State or multistate MSA and the impact and responsiveness review of these loans and investments.[1316] Also, consistent with the proposal, the final rule does not include a metric for the evaluation of the facility-based assessment area, State, or multistate MSA because a limited purpose bank's total assets cannot be easily apportioned to those areas.

The agencies considered alternatives suggested by commenters to establish a metric with another denominator, such as capital or deposits, which would allow for the application of a metric at a level other than the nationwide area. However, the agencies determined that these alternatives were not appropriate for several reasons. First, the agencies do not believe capital would be an appropriate denominator to evaluate limited purpose banks in any area.[1317] A bank's capital levels are driven by several factors that do not relate to CRA, such as lower risk tolerance or higher risk exposure. In this way, capital would not be an accurate or consistent measure of a bank's capacity to meet its community's needs. Second, the agencies concluded that a denominator of deposits is not an appropriate or useful measure because at least some limited purpose banks accept deposits on a limited basis or not at all, as discussed in detail in the section-by-section analysis of § ____.26(f) below. Without a metric for facility-based assessment areas, States, or multistate MSAs, there is limited benefit to establishing a corresponding benchmark. Thus, the agencies are not establishing a metric or benchmark to evaluate community development financing performance in an area other than the nationwide area for limited purpose banks.

Section ____.26(f) Nationwide Area Evaluation

Nationwide Area Evaluation—In General

Proposed § ____.26(f) provided for the evaluation of community development financing performance of a wholesale and limited purpose bank in a nationwide area based on that bank's community development financing performance in all of its facility-based assessments areas, the Wholesale or Limited Purpose Bank Community Development Financing Metric, and a review of the impact of the bank's nationwide community development activities. Section 18 of proposed appendix B provided additional detail on how the agencies would calculate the Wholesale or Limited Purpose Bank Community Development Financing Metric. The agencies did not propose a benchmark in which to compare the Wholesale or Limited Purpose Bank Community Development Financing Metric. The agencies received numerous comments on various aspects of this proposed provision, which are discussed below along with the final provision.

Limited Purpose Bank Community Development Financing Metric—Numerator

The Agencies' Proposal and Comments Received

Proposed § ____.26(f) provided that the numerator of the Wholesale or Limited Purpose Bank Community Development Financing Metric measured the average total dollar value of a bank's community development loans and community development investments over the evaluation period as specified in section 18 of proposed appendix B.[1318] A commenter requested clarification that the numerator would be measured consistent with how non-wholesale and limited purpose banks are measured, as set forth in paragraph 1 of proposed appendix B.[1319]

Final Rule

The final rule provides that the metric's numerator measures the dollar volume of a limited purpose bank's community development loans and community development investments that benefit or serve all or part of the nationwide area, and updates the cross-reference to paragraph III.a of final appendix B.[1320] As described more fully in the section-by-section analysis of § ____.24(a)(3) and section I of appendix B, the final rule more clearly describes how the agencies will value different forms of community development loans and community development investments.[1321] In addition, the final rule confirms the inputs to the numerator are the same for the metrics in final §§ ____.24 and ____.26.[1322]

Limited Purpose Bank Community Development Financing Metric—Denominator

The Agencies' Proposal and Comments Received

The denominator of the Wholesale or Limited Purpose Bank Community Development Financing Metric in proposed § ____.26(f) consisted of the bank's quarterly average total assets.[1323] The agencies reasoned that the unique business models of wholesale and limited purpose banks, particularly the fact that at least some wholesale and limited purpose banks accept deposits only on a limited basis or not at all, necessitate a different denominator from large banks.

A majority of those commenting on the denominator supported using total assets, rather than deposits, in the denominator. One of these commenters

[1315] *See* final § ____.26(d).

[1316] *See* final § ____.26(e).

[1317] The agencies acknowledge that examiners, in some cases, may have considered capital as an informal measure of a wholesale or limited purpose bank's community development financing capacity, as was asserted by a few commenters. However, such practice was neither consistently applied across agencies, nor was it consistently applied within any agency.

[1318] *See* proposed appendix B, paragraph 8.i.

[1319] Proposed appendix B, section 1, provided, in relevant part, that the annual community development financing activity for purposes of proposed § ____.24 included: (1) the dollar amount of all community development loans originated and community development investments made in that year; (2) the dollar amount of any increase in an existing community development loan that is renewed or modified in that year; and (3) 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.

[1320] *See* final § ____.26(f)(2)(i).

[1321] *See* final appendix B, paragraph I.a.1.i.

[1322] *See id.*

[1323] *See* proposed § ____.26(f)(2) and proposed appendix B, section 18.

agreed that total assets is a better measure of the capacity of wholesale and limited purpose banks to perform community development financing activities. Another commenter stated that if assets are not used, the absolute dollar amount of community development financing activity loses meaning since wholesale and limited purpose banks will have differing amounts of assets and thus differing capacities to engage in community development financing activities. A few other commenters stated that deposits as the denominator may not work well for all wholesale and limited purpose banks, particularly those that do not collect deposits on a large scale. Another commenter identified a potential discrepancy related to the denominator of the proposed Wholesale or Limited Purpose Bank Community Development Financing Metric where there is a reference to weighting by deposits in proposed appendix B.[1324]

A few commenters recommended the denominator be based on ''CRA-eligible assets.'' One of these commenters explained that although they supported the elimination of the use of a deposits-based metric for wholesale and limited purpose banks, a denominator of total assets may result in a metric that fails to account for broad differences in business models. The commenters supporting use of CRA-eligible assets suggested excluding foreign assets, central bank placements, and short-term extensions of credit from total assets. These commenters conveyed that these particular assets do not increase a bank's capacity to provide community development financing. One of these commenters remarked that it has been the agencies' supervisory practice to exclude certain assets like central bank placements from the denominator used to determine some wholesale or limited purpose banks' CRA obligations under the current community development test. This commenter also identified the exclusion of foreign deposits from the denominator of the Community Development Financing Metric for large banks in proposed § ____.24 as evidence that the agencies recognize that CRA obligations should not be tied to a bank's foreign business activity.

A few commenters supported deposits as the denominator for the metric. One of these commenters believed that deposits—in particular, domestic deposits—would be a more accurate measure of the capacity of wholesale banks, given their limited retail lending business, and that using deposits would be consistent with the Community Development Financing Metric for large retail banks.

Without providing details, a few commenters also stated that the complex method proposed to calculate balances quarterly to achieve additional credit could be simplified and still materially represent CRA performance of these banks.

Final Rule

After considering the comments, the agencies determined that assets, rather than deposits or another measure, represent a more appropriate and consistent measure of community development financing capacity for limited purpose banks. The agencies have determined that a denominator based on either deposits or ''CRA-eligible assets'' would not represent a useful measure of the expectation of community development financing volume for a limited purpose bank. Some limited purpose banks accept deposits on a limited basis or not at all, which would result in an artificially low community development financing expectation. Further, limiting the denominator to CRA-eligible assets would defeat the goals of the Limited Purpose Bank Community Development Financing Metric. Although the agencies recognize that not all bank assets would or could be used for community development (*e.g.,* fixed assets or reserve requirements), the goal of the metric is to create a standard measure of what percentage of the bank's assets were loaned or invested in community development. To the extent the metric is not representative of a particular bank's performance, the final rule provides examiners with discretion in drawing conclusions from the metric and the metric's comparison to the benchmarks, as described below.

Moreover, the agencies do not believe that foreign assets and short-term credit should reduce a bank's capacity to engage in community development loans or investments, or reduce a bank's expectation of the amount of such lending or investing. The agencies also do not believe that the exclusion of foreign deposits from the Community Development Financing Metric's denominator in final § ____.24 suggests that the agencies recognize that CRA obligations should not be tied to a bank's foreign business activity. The exclusion of foreign deposits from the definition of deposits in final § ____.12 should not be compared to the inclusion of foreign assets in the denominator of the Limited Purpose Bank Community Development Financing Metric. First, the metrics in final § ____.24 have a denominator of ''deposits,'' which, for the majority of banks subject to those metrics, has an exclusion narrower than all foreign deposits.[1325] Second, the exclusion from the definition of deposits is tied to a category in the Call Report definition of deposits. The commenter did not specify what category ''foreign assets'' would represent, nor do the agencies believe there is an asset category in the Call Report comparable to foreign government deposits that would warrant a similar exclusion.

In regard to the assertion from a commenter that current supervisory practice excludes certain assets like central bank placements from determining wholesale or limited purpose banks' community development lending and investment capacity, the agencies acknowledge that in some cases examiners may have considered assets as an informal measure of a wholesale or limited purpose bank's community development capacity and may have excluded certain assets from the informal measure; however, such practice was not consistently applied across or within agencies. The selection of assets for the denominator of Limited Purpose Bank Community Development Financing Metric aims to provide that missing consistency across and within the agencies.

Therefore, the agencies adopt a denominator for the Limited Purpose Bank Community Development Financing Metric in final § ____.26(f)(2) based on assets, as proposed, with conforming and non-substantive changes. Specifically, the final rule references ''assets,'' as opposed to the proposal's ''total assets,'' which conforms to the new definition of assets in final § ____.12. In addition, final § ____.26(f)(2) updates the reference for calculating the metric to the applicable appendix provision to paragraph III.a of final appendix B. As provided in the final rule, the denominator continues to be a bank's annual dollar volume of assets for each year in the evaluation period.[1326] Annual dollar volume of assets continues to be calculated by

[1324] Specifically, this commenter noted that proposed appendix B, paragraph 18.iii references proposed appendix B, paragraph 16.iii, which provides weighting by total assets. However, proposed appendix B, paragraph 18.iii otherwise indicates weighting by deposits.

[1325] The denominator excludes domestically held deposits of foreign governments or official institutions, or domestically held deposits of foreign banks or other foreign financial institutions. *See* the section-by-section analysis of § ____.12 (defining ''deposits'').

[1326] *See* final § ____.26(f)(2) and final appendix B, paragraph III.a.3.

averaging the assets for each quarter in the calendar year.[1327]

In summary, the final rule includes clarifying edits to the numerator and denominator of the Limited Purpose Bank Community Development Financing Metric in final § ____.26(f) as well as technical and conforming edits consistent with above discussions.

Limited Purpose Bank Community Development Financing Benchmarks

The Agencies' Proposal

The proposal did not include benchmarks associated with the proposed Wholesale or Limited Purpose Bank Community Development Financing Metric; however, the agencies asked in the proposed rule whether a benchmark should be established to measure a wholesale or limited purpose bank's community development financing performance at the institution level. If so, the agencies also asked whether the proposed Wholesale or Limited Purpose Bank Community Development Financing Metric should be compared to the Nationwide Community Development Financing Benchmark applicable to all large banks or whether the agencies should establish a benchmark tailored to wholesale and limited purpose banks. The agencies explained that a tailored benchmark would be based on the community development financing activity of all wholesale and limited purpose banks compared to assets of all wholesale and limited purpose banks.

Comments Received

A few commenters supported a tailored benchmark, as described by the agencies, in which wholesale and limited purpose banks would be grouped to establish a benchmark. This group of commenters believed the approach would ensure a more representative peer comparison and a more accurate evaluation of a wholesale and limited purpose bank's CRA performance.

Most commenters on this topic opposed applying the nationwide community development financing benchmark to wholesale and limited purpose banks and instead favored a benchmark tailored by business model if the agencies include a benchmark in the final rule. Many of these commenters highlighted the significant differences of business models compared to large banks and the significant differences in business models among those banks approved as wholesale and limited purpose banks. For example, a commenter said it would be inappropriate to implement a benchmark that would compare community development financing activities of a custody bank with those of a credit card bank. Another commenter stated that using the nationwide metric applicable to all large banks would undermine the intention of the agencies to create a framework that recognizes differences in business models.

A small number of commenters opposed the establishment of a benchmark of any kind in § ____.26. One such commenter opined that it would be difficult to establish a meaningful and fair benchmark for wholesale or limited purpose banks because the population of these banks is relatively small and their business models varied.

Prior to establishing any benchmark for wholesale and limited purpose banks, a couple of commenters urged the agencies to collect and evaluate appropriate data. In this way, these commenters suggested that the data would allow agencies to determine whether peer comparisons should be confined to other wholesale and limited purpose banks or whether a comparator can include all large banks.

Final Rule

The agencies are adopting a final rule that compares the Limited Purpose Bank Community Development Financing Metric to two benchmarks—the Nationwide Limited Purpose Bank Community Development Financing Benchmark and the Nationwide Asset-Based Community Development Financing Benchmark.[1328] The Nationwide Limited Purpose Community Development Financing Benchmark measures the dollar volume of limited purpose banks' community development loans and community development investments reported pursuant to final § ____.42(b) that benefit and serve all or part of the nationwide area compared to assets for those limited purpose banks, calculated pursuant to paragraph III.b of final appendix B.[1329] Specifically, the agencies will divide: (1) the sum of limited purpose banks' annual dollar volume of community development loans and community development investments reported pursuant to final § ____.42(b) that benefit or serve all or part of the nationwide area for each year in the evaluation period; by (2) the sum of the annual dollar volume of assets of limited purpose banks that reported community development loans and community development investments pursuant to final § ____.42(b) for each year in the evaluation period.[1330]

The Nationwide Asset-Based Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area of all banks that reported pursuant to final § ____.42(b) compared to assets of those banks, calculated pursuant to paragraph III.c of final appendix B.[1331] Specifically, the agencies will divide: (1) the sum of the annual dollar volume of community development loans and community development investments of all banks that reported pursuant to final § ____.42(b) that benefit or serve all or part of the nationwide area for each year in the evaluation period; by (2) the sum of the annual dollar volume of assets of all banks that reported community development loans and community development investments pursuant to final § ____.42(b) for each year in the evaluation period.[1332]

The agencies believe that benchmarks would be a useful tool to evaluate performance. The agencies also recognize the varied business models among limited purpose banks and agree that a single benchmark may not be a strong comparator or accurate representation of the amount of community development financing activity that should be performed by each bank. Thus, the agencies adopt two benchmarks, both of which will serve as comparators or reference tools and will be considered along with performance context and the impact and responsiveness review. These benchmarks are not intended to be thresholds that a bank must meet or exceed to obtain a ''Satisfactory'' or higher rating. For this same reason, the agencies do not believe it is necessary to postpone implementation of the benchmark to collect additional data.

The agencies decline to establish a benchmark for each business model. Currently, the population of limited purpose banks and wholesale banks is limited. A further subdivision of those banks by business model would create categories with very few banks from which to construct the benchmarks, which would not create a robust comparison.

[1327] *See* final appendix B, paragraph I.a.2.ii.

[1328] *See* final § ____.26(f)(2)(ii)(A) and (B).

[1329] *See* final § ____.26(f)(2)(ii)(A).

[1330] *See* final appendix B, paragraph III.b.

[1331] *See* final § ____.26(f)(2)(ii)(B).

[1332] *See* final appendix B, paragraph III.c.

Limited Purpose Bank Community Development Investment Metric and Benchmark

The Agencies' Proposal, Comments Received, and Final Rule

The proposed Community Development Financing Test for Wholesale Banks and Limited Purpose Banks did not include an investment-related metric or benchmark; however, a number of commenters that addressed the proposed Community Development Financing Test in § ____.24 were concerned that the structure of that performance test provided insufficient incentive to make community development investments.[1333] In response to those comments, and as described further in the section-by-section analysis of § ____.24(e), the final rule includes an investment metric and benchmark—the Bank Nationwide Community Development Investment Metric and Nationwide Community Development Investment Benchmark—in the final Community Development Financing Test.[1334] To maintain consistency with the Community Development Financing Test applicable to large banks, the agencies adopt a similar investment metric and benchmark in the Community Development Financing Test for Limited Purpose Banks that is applicable to limited purpose banks with assets greater than $10 billion.[1335] For limited purpose banks with assets greater than $10 billion as of December 31 in both of the prior two calendar years, the final rule provides that the agencies will consider the Limited Purpose Bank Community Development Investment Metric and the Nationwide Asset-Based Community Development Investment Benchmark in evaluating the nationwide area.[1336] Further, the comparison of the Limited Purpose Bank Community Development Investment Metric to the Nationwide Asset-Based Community Development Investment Benchmark may only contribute positively to the bank's Community Development Financing Test for Limited Purpose Banks conclusion for the institution.[1337] See the section-by-section analysis of final § ____.24(e) for a discussion of why the agencies limited this comparison to a positive contribution.

The Limited Purpose Bank Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the bank's assets, calculated pursuant to paragraph III.d of final appendix B.[1338] Specifically, the agencies calculate the Limited Purpose Bank Community Development Investment Metric by dividing: (1) the sum of the bank's annual dollar volume of community development investments, excluding mortgage-backed securities, that benefit or serve the nationwide area for each year in the evaluation period; by (2) the sum of the bank's annual dollar volume of assets for each year in the evaluation period.[1339]

The agencies compare the Limited Purpose Bank Community Development Investment Metric to the Nationwide Asset-Based Community Development Investment Benchmark, which measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all banks that had assets greater than $10 billion, compared to assets for those banks, calculated pursuant to paragraph III.e of final appendix B.[1340] Specifically, the agencies calculate the Nationwide Asset-Based Community Development Investment Benchmark by dividing: (1) the sum of the annual dollar volume of community development investments, excluding mortgage-backed securities, of all banks that had assets greater than $10 billion, as of December 31 in both of the prior two calendar years, that benefit or serve all or part of the nationwide area for each year in the evaluation period; by (2) the sum of the annual dollar volume of assets of all banks that had assets greater than $10 billion, as of December 31 in both of the prior two calendar years, for each year in the evaluation period.

The Nationwide Asset-Based Community Development Investment Benchmark includes all banks, including limited purpose banks and banks subject to an approved strategic plan, with assets greater than $10 billion. Because there is a limited number of limited purpose banks with assets greater than $10 billion, the agencies determined it is necessary to include all banks with assets greater than $10 billion to ensure a robust benchmark.

Section ____.26(g) Community Development Financing Test for Limited Purpose Banks Performance Conclusions and Ratings

The Agencies' Proposal

Proposed § ____.26(g) provided that the agencies assign conclusions for a wholesale or limited purpose bank's community development financing performance in each facility-based assessment area, State, multistate MSA, and the nationwide area, as provided in proposed § ____.28 and appendix C. Further, the agencies proposed that these conclusions would be incorporated into the State, multistate MSA, and institution ratings. Although the proposed Community Development Financing Test for Wholesale or Limited Purpose Banks did not include a specific reference to performance context, proposed § ____.21(d) provided that the agencies may consider performance context information in applying the performance tests to the extent that performance context is not considered as part of the tests.

Comments Received and Final Rule

A few commenters addressing the performance test, in general, underscored the importance of performance context. These commenters specified that the agencies should ensure that the final rule does not rely solely on the proposed Wholesale or Limited Purpose Bank Community Development Financing Metric, but rather should apply a broader view that considers the unique and varying circumstances under which wholesale and limited purpose banks operate.

In response to commenter requests for additional clarity on performance context, the agencies clarified in final § ____.26(g)(1) that the agencies may consider the performance context as provided in final § ____.21(d) when assigning conclusions.[1341] Other than the comments on performance context, the agencies did not receive comments on this paragraph. Therefore, the agencies adopt § ____.26(g) as proposed with the additional clarifying edit that the agencies may consider performance context in assigning conclusions as well as technical and conforming edits.

[1333] *See* the section-by-section analysis of § ____.24(e).

[1334] *See* final § ____.24(e)(2)(iii) and (iv).

[1335] *See* final § ____.26(f)(2)(iii) and (iv).

[1336] *See* final § ____.26(f)(2)(iii) and (iv).

[1337] *See* final § ____.26(f)(2)(iv)(A).

[1338] *See* final § ____.26(f)(2)(iii).

[1339] *See* final appendix B, paragraph III.d.

[1340] *See id.*

[1341] *See* the section-by-section analysis of § ____.21(d) for additional discussion.

Section ____.27 Strategic Plan

Section ____.27(a) Alternative Election

Current Approach

Currently, the strategic plan option is available to all types of banks,[1342] although it has been used mainly by nontraditional banks [1343] 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. The current CRA regulations require the agencies to assess a bank's record of helping to meet the credit needs of its assessment areas under a strategic plan if: the bank has submitted the plan for regulatory approval; the plan has been approved; the plan is in effect; and the bank has been operating under an approved plan for at least one year.[1344]

The Agencies' Proposal

The agencies proposed retaining the strategic plan option as an alternative method for evaluation under the CRA,[1345] and requested feedback on whether the option should continue to be available to all banks. The agencies proposed that banks electing to be evaluated under a plan would continue to be required to request approval for the plan from the appropriate Federal financial supervisory agency.[1346] The agencies proposed to add clarity to the existing rule by including that the agencies 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 plan.

Comments Received

Most commenters addressing the strategic plan option agreed that a strategic plan option should remain available to all banks, particularly for branchless banks and banks with unique business models. A few commenters did not support the proposed strategic plan option. One of the commenters stated that the option should only be available to those banks that provide evidence that they would fail the ''traditional'' CRA examination process through no fault of their own. Another commenter objected to the strategic plan option and recommended phasing it out entirely. This commenter argued that the strategic plan option adds a level of complexity to the CRA framework and noted that it is unclear why the option should be made available when the proposed plan requirements have the same assessment area requirements and performance test standards that would apply to any other bank. One other commenter recommended that the agencies either eliminate or significantly improve the strategic plan option in the proposal.

Final Rule

The agencies are adopting in the final rule the proposed strategic plan option as an alternative method of evaluation in § ____.27(a) with one technical change. Specifically, the final rule removes the requirement in proposed § ____.27(a)(1) that a bank submit ''the plan to the [Agency] as provided for in this section,'' as duplicative.[1347] The agencies believe it is unnecessary to include a separate requirement in final § ____.27(a), given that ''Submission of a draft plan'' is a required element of § ____.27(f) and must be performed prior to plan approval (*see* the section-by-section analysis of § ____.27(f)). As a result of this change, proposed § ____.27(a)(2) through (4) is renumbered in the final rule as § ____.27(a)(1) through (3).

The agencies believe that the strategic plan option should continue to be available to any bank if the bank sufficiently justifies that the appropriate Federal financial supervisory agency should evaluate it under a plan rather than the performance tests that would apply in the absence of an approved plan. The agencies believe that it is appropriate to use strategic plans to evaluate banks with business models that are not conducive to evaluation under the performance tests that would apply in the absence of an approved plan. These may include, for example, banks that do not offer—or only nominally offer—product lines as defined in the rule, do not maintain traditional delivery systems, or only offer niche products to a targeted market.

The agencies have considered the recommendation from a few commenters to eliminate the strategic plan as an option for evaluating a bank's performance under the CRA and have decided to retain the option. Even though banks that elect evaluation under a plan would be subject to the same performance tests that would apply in the absence of an approved plan, the agencies believe the strategic plan option is appropriate because it can afford a bank the opportunity to offer modifications or additions that would more meaningfully reflect a bank's record of helping meet the credit needs of its community, so long as the bank also justifies why its business model is outside the scope of, or is inconsistent with, one or more aspects of the otherwise applicable performance tests, as discussed further in the section-by-section analysis of § ____.27(d). In response to the commenter that believed the strategic plan option needed to be improved in order for it to continue to be offered, the agencies note that they made significant revisions to this option in the final rule to ensure that it is clear when the performance tests that would apply in the absence of an approved plan are appropriately applied and represent a meaningful measure of the bank's CRA performance, while allowing tailored modifications and additions for those few banks that maintain a business model that is outside the scope of, or is inconsistent with, one or more aspects of the performance tests.

Lastly, the agencies do not believe a bank should need to fail or provide evidence that it would fail the performance tests before submitting a request for evaluation under an approved strategic plan. The agencies have been careful to adopt a set of performance tests that the agencies believe are tailored to provide a meaningful evaluation of the vast majority of banks under the CRA. However, the agencies also recognize that there is a population of banks that maintain unique business models and whose record of serving their communities would be more appropriately evaluated under a plan. Although it has been the agencies' experience that banks that do not perform satisfactorily under the current performance tests and standards are more likely to choose the strategic plan option, the agencies believe it would be inappropriate to establish this as a criterion for a bank to elect the option. The agencies believe that the incorporation of the performance tests in a plan pursuant to § ____.27(c)(2), clearer justification requirements pursuant to § ____.27(d)(1), and clearer justification elements pursuant to § ____.27(d)(2), will prevent widespread adoption of the strategic plan option as

[1342] *See* current 12 CFR ____.21(a)(4) and ____.27(a).

[1343] 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.

[1344] *See* current 12 CFR ____.27(a)(1) through (4).

[1345] *See* proposed § ____.27(a).

[1346] *See id.*

[1347] *See* proposed § ____.27(a)(1).

a way for banks to avoid a metrics-based evaluation approach.

Section ____.27(b) Data Requirements

Current Approach and the Agencies' Proposal

Currently, the agencies' approval of a plan does not affect the bank's obligation, if any, to report data as required by current § ____.42.[1348] The agencies did not propose any substantive changes to current § ____.27(b) pertaining to the data reporting requirements of a bank evaluated under an approved plan.

Comments Received

A few commenters addressed the agencies' proposed data requirements for banks evaluated under an approved plan. One commenter stated that the agencies' proposal effectively eliminates the strategic plan option by defaulting to a rigid one-size-fits-all by requiring, among other things, the same data collection and reporting requirements that would otherwise apply to the bank. Another commenter recommended adding language to the proposed data reporting requirements that would allow banks to request exemptions for data requirements through the plan submission process.

Final Rule

The agencies are adopting § ____.27(b) as proposed with a retitling to reflect a technical change. While proposed as ''data reporting,'' the agencies are retitling this paragraph as ''data requirements'' to reflect that banks that do not operate under a plan not only have data reporting obligations, but requirements to collect and maintain the data as well.

The agencies believe that the benefits of capturing consistent data (regardless of whether a bank is under a strategic plan) outweigh the burden to banks electing the strategic plan option of collecting, maintaining, and reporting the data. Also, as banks under a plan are generally subject to the same performance tests that would apply in the absence of an approved plan, the availability of data remains a critical element of the plan evaluation process. As not all data in final § ____.42 are required to be reported, the agencies are making a technical change in final § ____.27(b) to add that the obligation to *collect and maintain* data required by final § ____.42, in addition to obligation to report data, is not affected by the agency's approval of a plan.

Similarly, the agencies have determined not to allow exemptions from the data requirements for banks evaluated pursuant to a strategic plan. The agencies have considered commenter feedback that the maintenance of data under the plan limits the flexibility of the strategic plan option; however, the agencies believe the data provide them with the necessary tools to effectively evaluate the bank's performance under the applicable performance tests incorporated into the strategic plan, as it does with respect to the performance tests generally. Further, the agencies do not believe there is a scenario under which the data under final § ____.42 would not provide value to the plan evaluation process. Finally, the required data collection, maintenance, and reporting preserves the bank's ability to revert to evaluation under the performance tests in final §§ ____.22 through ____.26, ____.29, and ____.30, as appropriate, in the event the bank desires to terminate the plan during the term due to a change in circumstances.

Section ____.27(c) Plans in General

Current Approach

Currently, plans may have a term of no more than five years and any multi-year plan must include annual interim measurable goals under which the agencies would evaluate the bank's performance.[1349] A bank with more than one assessment area may prepare either a single plan for all of its assessment areas or multiple plans for one or more of its assessment areas.[1350] Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution, and activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.[1351]

The Agencies' Proposal

Consistent with the current rule, the agencies proposed in § ____.27(c)(1) that plans have a term of no more than five years and any multi-year plan must include annual interim measurable goals under which the agencies would evaluate the bank's performance. The agencies also proposed in § ____.27(c)(2) that a bank with more than one assessment area could prepare: (1) 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 (2) 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.[1352]

Lastly, in proposed § ____.27(c)(3), the agencies specified the requirements for the treatment of activities of a bank's operations subsidiaries or operating subsidiaries, as applicable, and other affiliates. First, proposed § ____.27(c)(3)(i) clarified that the activities of the bank's operations subsidiaries or operating subsidiaries must be included in its plan or be evaluated under the performance tests that would apply in the absence of an approved plan, unless the subsidiary is already subject to CRA requirements. Second, proposed § ____.27(c)(3)(ii) provided that at the bank's option: activities of other affiliates may be included in a plan as long as those activities are not claimed by another institution subject to the CRA; affiliated banks could prepare a joint plan if the plan provides measurable goals for each institution; and banks may allocate affiliate activity among institutions, as long as the activities are not claimed by more than one institution subject to the CRA. Finally, proposed § ____.27(c)(3)(iii) stated that the allocation methodology among affiliate institutions must reflect a reasonable basis and must not be designed solely to artificially enhance any bank's performance.

Comments Received

The agencies did not receive specific comments on the term of a strategic plan or the requirement for interim measurable goals for multi-year plans. Commenters also did not provide specific feedback on whether banks should prepare single plans or separate plans for different assessment areas or include affiliate activities in their strategic plans.

The agencies did, however, receive several comments on their proposal to require that a bank evaluated under an approved plan delineate retail lending assessment areas. One commenter opposed being required to delineate retail lending assessment areas under the strategic plan option altogether. Several other commenters supported banks having the ability to negotiate and justify whether to delineate retail lending assessment areas with the appropriate Federal financial supervisory agency. A commenter

[1348] *See* current 12 CFR ____.27(b).

[1349] *See* current 12 CFR ____.27(c)(1).

[1350] *See* current 12 CFR ____.27(c)(2).

[1351] *See* current 12 CFR ____.27(c)(3).

[1352] *See* proposed § ____.27(c)(2)(i) and (ii).

supported retail lending assessment area delineations for a bank under a strategic plan based on concentrations of lending without a particular numerical threshold. Another commenter indicated that intermediate banks pursuing the strategic plan option should have the same requirement for delineating retail lending assessment areas as large banks. Another commenter agreed that, while there may be situations where it is appropriate for a strategic plan bank to be evaluated in facility-based assessment areas and retail lending assessment areas, a more flexible approach should be encouraged. Similarly, a commenter also requested that, to increase flexibility, strategic plan banks should be allowed to choose the geographies they serve beyond facility-based assessment areas.

Final Rule

The agencies are finalizing proposed § ____.27(c) with several modifications in each of the four areas covered in this paragraph, including substantial reorganization to provide additional clarity.[1353]

The agencies received no comments regarding the term of plans in proposed § ____.27(c)(1) and are finalizing this provision as proposed with respect to the requirement to limit the length of a plan term to no more than five years; however, the requirement in proposed § ____.27(c)(1) that a multi-year plan must include annual interim measurable goals has been removed to reflect the fact that goals are not expected with respect to every evaluation component of the performance test, as plans may also include performance criteria and other measurements that correspond to unmodified performance tests and are not tied to specific goals. Nevertheless, the agencies continue to expect annual measurable goals with respect to any components that are established in conjunction with eligible modifications and additions to the performance tests as explained further in the section-by-section analysis of § ____.27(g).

Although no comments were directed specifically at this area, the agencies are also finalizing proposed § ____.27(f)(1), renumbered in the final rule as § ____.27(c)(2), pertaining to the requirement that a bank include the same performance tests in a plan, as required in § ____.27(g)(1), with certain technical changes and restructuring for additional clarity. While originally proposed in the plan content section under § ____.27(f), the principle that a bank's plan must include the same performance tests that would apply in the absence of an approved plan, subject to certain eligible modifications and additions, was moved to final § ____.27(c), which discusses plans in general, given that it serves as a foundational tenet of the strategic plan option. This provision references the plan content provision as discussed in more detail in the section-by-section analysis of § ____.27(g), where the requirement to include a performance test, any adjustments, optional evaluation components, modifications, and additions to the performance tests allowed by the agencies are memorialized.

Under the current regulation, many banks that have chosen to utilize the strategic plan option have done so as their banks conduct a significant volume of activities outside of their assessment area(s). As the performance tests adopted in the final rule expand the consideration of loans, investments, services, and products outside of the facility-based assessment areas, the agencies believe that many of the banks that are currently operating under plans may no longer need to utilize the strategic plan option. Even for banks that will continue to pursue the strategic plan option because they possess a business model that is outside the scope of, or is inconsistent with, one or more aspects of the performance tests that would apply in the absence of an approved plan, the agencies believe those banks should continue to be evaluated under the aspects of the performance tests that the agencies would otherwise apply to the bank.

Importantly, proposed § ____.27(f)(1) also included a requirement that the plan specify how many of the bank's activities were outside the scope of otherwise applicable performance tests 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. This aspect of the proposal was adopted in the final rule as § ____.27(d) with clarifying revisions and conforming changes, and is explained in more detail below in the section-by-section analysis of that section.

The agencies are finalizing proposed § ____.27(c)(2), renumbered in the final rule as § ____.27(c)(3), pertaining to the preparation of a plan for banks with multiple assessment areas, with revisions to clarify and streamline the language in the final rule. More specifically, final § ____.27(c)(3)(i) continues to permit banks to prepare a single plan or develop separate plans for its facility-based assessment areas, retail lending assessment areas, outside retail lending area, or other geographic areas (such as the State, multistate MSA, or the institution level overall) that would be evaluated in the absence of an approved plan.

The final rule also adopts new § ____.27(c)(3)(ii) to clarify that any of these geographic areas that are not included in the approved plan but would be evaluated in the absence of a plan, will be evaluated pursuant to the performance tests that would apply in the absence of an approved plan. For example, a large bank that maintains one facility-based assessment area and two retail lending assessment areas could seek and obtain approval for a strategic plan that covers only the facility-based assessment area. In this case, the two retail lending assessment areas would be evaluated pursuant to the Retail Lending Test without any modifications or additions. The agencies believe adding this provision to the final rule will provide a bank with multiple assessment areas clarity on how the agencies will apply the applicable performance tests in areas outside of the plan. This also addresses commenters' sentiment that the agencies adopt a more flexible approach by allowing a strategic plan to cover some but not all bank assessment areas.

Further, in response to commenter feedback suggesting that banks should be able to justify the exclusion or elimination of retail lending assessment areas altogether, the agencies believe that banks that opt to be evaluated under an approved plan must be evaluated under the same geographic areas (facility-based assessment areas, retail lending assessment areas, outside retail lending area, States, and multistate MSAs, if applicable) the bank would be evaluated if it had not chosen to operate under an approved plan.

In response to commenters' feedback that the threshold for establishing retail lending assessment areas should be adjusted for banks under a plan, the agencies believe it is more equitable to maintain parity in the treatment of banks, whether operating under a plan or not. The agencies do not believe there is a reason for treating banks operating under a strategic plan differently than other banks if they meet the requirements for delineating a retail lending assessment area. Retail lending assessment areas are already limited to large banks that meet minimum loan reporting thresholds in these areas; therefore, the agencies believe that in these circumstances the evaluation of banks' performance for these geographies would be valuable. It should also be noted that the threshold

[1353] *See supra* note 145.

for establishing retail lending assessment areas in general was modified upon consideration of commenter feedback as explained in more detail in the section-by-section analysis of § ____.17.

The agencies received no comments regarding proposed § ____.27(c)(3), renumbered in the final rule as § ____.27(c)(4), pertaining to the treatment of activities of a bank's operations subsidiaries or operating subsidiaries and other affiliates for a bank evaluated under a plan, and are finalizing as proposed with several technical changes. Specifically, consistent with the proposal, final § ____.27(c)(4)(i) requires activities of an operations subsidiary or operating subsidiary to be included in the bank's plan (unless the subsidiary is a bank that is independently subject to CRA). However, final § ____.27(c)(4)(ii) provides separate provisions for other affiliate activities: final § ____.27(c)(4)(ii)(A) clarifies that a bank may include loans, investments, services, and products of any affiliate in their plan (as long as they are not included in the CRA performance of any other bank); and final § ____.27(c)(4)(ii)(B) addresses joint plans for affiliated banks. Affiliated banks may develop joint plans provided they specify how the applicable performance tests and eligible modifications and additions apply to each bank. The final rule also clarifies that the consideration of affiliate activities under a plan must be consistent with the general restrictions in final § ____.21(b)(3), such as the bank's need to collect, maintain, and report data on affiliate activities, as applicable. Finally, the agencies are finalizing, with technical changes, proposed § ____.27(c)(3)(iii), renumbered in the final rule as § ____.27(c)(4)(ii)(C), pertaining to the methodology for allocating affiliate loans, investments, services, and products for a bank evaluated under a plan. The final rule requires that, with respect to a bank affiliate's loans, investments, services, and products included in a bank's plan, or a joint plan of affiliated banks: (1) the loans, investments, services, and products may not be included in the CRA performance evaluation of another bank; and (2) the allocation of affiliates' loans, investments, services, and products to a bank, or among affiliated banks, must reflect a reasonable basis for the allocation and may not be for the sole or primary purpose of inappropriately enhancing any bank's CRA evaluation.

Section ____.27(d) Justification and Appropriateness of Plan Election

The Agencies' Proposal

Proposed § ____.27(f)(1), required banks that elect to be evaluated under a strategic plan to include the same performance tests and standards that would otherwise be applied under the proposed rule, unless the bank is substantially engaged in activities outside the scope of these tests. The agencies also proposed to require banks to specify in their draft plan 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.

Comments Received

A few commenters addressed this aspect of the agencies' proposal. A commenter stated that the agencies' proposal effectively eliminates the strategic plan option by defaulting to rigid one-size-fits-all assessment area delineation requirements (including retail lending assessment areas), data collection and reporting requirements, and performance standards that would otherwise apply to the bank unless it provides an acceptable rationale for alternative consideration (such as being substantially engaged in activities outside the scope of these performance tests). Relatedly, a few commenters indicated that the agencies should provide additional information on the justification that would be required to pursue the strategic plan option.

Final Rule

In response to commenters requesting that the agencies provide clarity on the justification required to pursue a strategic plan option, the agencies are adopting new § ____.27(d), which addresses the requirement that the draft plan provide a justification regarding how the bank's activities are outside the scope of, or are inconsistent with, the performance tests that would apply in the absence of an approved plan, and why being evaluated pursuant to a plan would more meaningfully reflect its record of helping to meet the credit needs of its community than if it were evaluated in the absence of a plan. In the final rule, § ____.27(d) more comprehensively explains how a bank can justify its use of the strategic plan option. More specifically, § ____.27(d)(1) requires that the plan must include justifications for each of the following aspects of the plan due to the bank's business model if included in the bank's plan: optional evaluation components; eligible modifications or additions to the applicable performance tests; additional geographic areas; and the ratings and conclusions methodology (*see* the section-by-section analysis of § ____.27(g)).[1354]

Further, § ____.27(d)(2) in the final rule clarifies that each justification must specify the following elements:

- Why the bank's business model is outside the scope of, or inconsistent with, one or more aspects of the performance tests that would apply in the absence of a plan. In order for a bank to eliminate or modify any aspect of the otherwise applicable performance tests and be evaluated under different standards than those banks that are not operating under a plan, the agencies believe it is important that the bank supports how their business model is inconsistent with the performance tests;
- Why evaluating the bank pursuant to any aspect of a plan in § ____.27(d)(1) would be more meaningful than if it was evaluated in the absence of an approved plan. Beyond demonstrating how one or more aspects of the otherwise applicable performance tests are inconsistent with their business model, the agencies believe it is also critical to support how any optional evaluation components, eligible modifications or additions, additional geographic areas, and rating and conclusions methodologies that are laid out in the plan offer a superior evaluation than the performance tests that would apply in the absence of a plan; and
- Why the optional performance components and eligible modifications or additions in the plan meet the standards of § ____.27(g)(1) and (2) as applicable. This aspect of the justification makes it clear that the bank must provide a justification for each optional performance component and eligible modification or addition that is made part of the plan.[1355]

For example, with respect to the last element, if a plan consisted of modifications and additions in the form of (1) adjusted performance test weightings, (2) the addition of a review of open-end home mortgage lending under the Retail Lending Test, and (3) established goals related to the bank's community development financing metric under the Community Development Financing Test, the draft plan must include justifications for each of these three modifications and additions.

In response to commenter feedback regarding the rigidity of the performance

[1354] *See* final § ____.27(d)(1)(i) through (iv).

[1355] *See* final § ____.27(d)(2)(i) through (iii).

standards and other aspects of the proposed rule in the absence of an acceptable rationale for alternative consideration, the agencies believe that the final rule benefits from a more consistent approach to evaluating banks with multiple performance tests that correspond to the size and business model of the large variety of banks found throughout the nation. While the strategic plan option was designed to offer flexibility for banks with unique business models, the agencies believe that a robust justification provision fosters parity and consistency in the CRA evaluation of banks of all sizes. Further, the agencies believe this provision provides greater clarity for banks and agency supervisory staff, and ensures that strategic plan banks are held to the same standards as non-strategic plan banks.

Section ____.27(e) Public Participation in Initial Draft Plan Development

Current Approach

Currently, the regulation has three public participation requirements for a bank to complete during the development of a plan. First, the bank must informally seek suggestions from the public in the assessment area(s) covered by the plan while developing the plan.[1356] Second, once the plan is initially developed, the bank must formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan.[1357] Finally, during the formal public comment period, the bank must make copies of the plan available for review by the public at no cost in all bank offices in any assessment area covered by the plan, as well as provide copies upon request for a reasonable fee to cover copying and mailing, if applicable.[1358]

The Agencies' Proposal

The agencies proposed in § ____.27(d)(1) to continue to require a bank to informally seek input from members of the public in its facility-based assessment areas covered by the plan while developing the plan. The agencies also proposed in § ____.27(d)(2) that, once a bank had developed a draft plan, the bank would be required to submit the initial draft plan for publication on its appropriate Federal financial supervisory agency's website, as well as publish the draft plan on their own website if the bank has a 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) for a period of at least 30 days. The proposal also clarified that the draft plan should include instructions to the public on how they could submit comments both electronically and at a postal address.[1359] Proposed § ____.27(d)(3) continued to require banks to make copies of the plan available during the formal comment period at all offices in areas covered by the plan and upon request for a reasonable copying and mailing fee.

Lastly, the agencies sought feedback regarding whether the agencies should announce pending plans in the same manner as they announce upcoming CRA examination schedules and completed CRA examinations and ratings.

Comments Received

Most commenters were generally supportive of the agencies' proposal, with some commenters offering modifications or alternatives. A commenter expressed the view that a bank should be given the option of whether to post its plan notice and draft plan on its website or to publish the notice in at least one print newspaper or digital publication of general circulation. Other recommendations concerning publishing plans included suggestions that the agencies circulate plans over email to ensure a high level of community engagement and avoid incorporating any more restrictive announcements, postings, or requirements into the final rule for strategic plans.

One commenter stated that banks should make an affirmative effort to engage community-based organizations led by people of color and women as well as a range of advocacy organizations working on behalf of communities and should document how many and which of these organizations they engaged. Several other commenters indicated that a bank should be able to give greater weight to input received on a draft plan from organizations serving or located in regions represented within the plan.

Final Rule

The agencies are finalizing proposed § ____.27(d), renumbered in the final rule as § ____.27(e), pertaining to the public participation requirements, with a revision to expand the timeframe for formally soliciting public comment and several technical and clarifying changes. While the current and proposed rule allowed for a 30-day period for the bank to formally solicit public comments on the initial draft plan, the agencies believe that the public participation component of the plan development process is critical and that additional time is appropriate to ensure that members of the public have the time to review the initial draft plan and provide informed input to a bank. Consistent with the desire to increase public participation in the plan development process, the agencies are expanding the formal public comment period to 60 days.[1360]

While a few commenters advocated for more flexibility or for the agencies to limit any new announcement or posting requirements, the agencies believe the proposed modifications that add requirements to post initial draft plans on the appropriate Federal financial supervisory agency's website and bank's website, if the bank maintains one, are necessary as this is the most convenient and efficient way for most members of the public to become aware of and access initial draft plans. As discussed in the proposal, the expansion of the availability of initial draft plans online is important, as it has been the agencies' experience that plans rarely garner public comments when distributed solely through notifications in the local newspaper.

The agencies are also adopting in the final rule a new requirement in § ____.27(e)(1)(ii)(A) and (B), which requires banks with websites to publish their initial draft plans on their website and for all banks (including those with websites) to publish notice in at least one newspaper of general circulation in each facility-based assessment area. Although the agencies did not propose requiring banks with a website to also provide notice in a print newspaper, the agencies believe this change is consistent with the agencies' objective to promote transparency and enhance public participation with respect to draft plans and to acknowledge that notice in a newspaper is how the rule has made the public aware of plans for decades under the current regulation and there may be stakeholders that continue to rely on that form of notice.[1361] The agencies believe that further distribution through other mechanisms, as recommended by commenters (such as through email),

[1356] *See* current 12 CFR ____.27(d)(1).

[1357] *See* current 12 CFR ____.27(d)(2).

[1358] *See* current 12 CFR ____.27(d)(3).

[1359] *See id.*

[1360] *See* final § ____.27(e)(1)(ii).

[1361] *See* current 12 CFR ____.27(d)(2).

would not be practical and would cause unnecessary burden without sufficient benefit.

Further, while the agencies sought feedback on the advantages and disadvantages of announcing pending or draft plans using the same means the agencies use to announce upcoming examination schedules or completed CRA examinations and CRA ratings, the agencies received no comments directly addressing this issue. After weighing the benefits and burden of announcing initial draft plans, the agencies determined that announcing initial draft plans (for example, through an agency press release) would be impractical, as it would need to occur in real time in order to be useful given the 60-day comment period. As discussed previously, the final rule includes a requirement to publish initial draft plans on the bank's and appropriate agency's website, and community groups and other members of the public have demonstrated an ability to monitor the agencies' websites to access other similar information to participate in the CRA feedback process (such as announcements of pending bank applications).

With respect to proposed § ____.27(d)(1), a technical change was made to the language, which suggested that seeking informal suggestions was limited to members of the public in the bank's facility-based assessment areas. In final § ____.27(e)(1)(i), the reference to facility-based assessment areas was removed to make clear that it may be appropriate for banks to seek informal input from other members of the public depending on the circumstance, such as organizations that serve public stakeholders nationally or in retail lending assessment areas. Also, the agencies do not believe that that they should dictate specifically how a bank should seek input or suggestions from members of the public. While commenters suggested that the regulation should state an affirmative obligation to engage with or place greater weight on input from certain types of organizations (such as those led by women or people of color, or organizations that serve the region covered by the plan), the agencies believe that each bank and its public stakeholders are unique; therefore, it would be inappropriate for the agencies to dictate from whom and how banks solicit and consider public input in conjunction with plan development.

The final rule also clarifies the public engagement requirements for military banks.[1362] In addition to the website publishing requirements under final § ____.27(e)(1)(ii)(A), and instead of the newspaper publishing requirements in final § ____.27(e)(1)(ii)(B), the final rule requires that a military bank publish notice in at least one print newspaper of general circulation targeted to members of the military, if available. Otherwise, the military bank must publish notice in a digital publication targeted to members of the military.

Lastly, final § ____.27(e)(1)(iii) provides that a bank must include on its website and in a newspaper notice, a means by which members of the public can electronically submit and mail comments to the bank on its initial draft plan.[1363] Also, the agencies are finalizing proposed § ____.27(d)(3), renumbered as § ____.27(e)(2), with minor clarifying technical changes, with no change in meaning intended. Consistent with the current rule,[1364] during the formal public comment solicitation period, a bank must make copies of the initial draft plan available for review at no cost in any facility-based assessment area covered by the plan, and provide copies of the plan upon request for a reasonable fee to cover copying and mailing.

Section ____.27(f) Submission of a Draft Plan

Current Approach

Currently, the regulation requires a bank to submit its plan to its appropriate Federal financial supervisory agency at least three months prior to the proposed effective date of the plan and to include a description of its efforts to seek suggestions from the public, any written comments received, and the initial draft plan (if it was revised in light of the comments received).[1365]

The Agencies' Proposal

The agencies proposed to maintain the requirements in current § ____.27(e) with additional clarifications regarding some aspects of those requirements. Consistent with the current rule, proposed § ____.27(e) required the same three-month submission timeframe from banks prior to the proposed effective date of the plan. The proposal also maintained the current requirement that the submission of the plan include a description of the bank's efforts to seek suggestions from the public but clarified that this must include who was contacted and how the information was gathered. Lastly, the proposal also expanded the request for any written comments to include more broadly any written or other input on the plan that was received by the public and the initial draft plan if it was revised in light of the input.

Comments Received

The agencies received one comment addressing this aspect of the proposal. Specifically, a commenter indicated that the information a bank submits should also include a comprehensive list of the comments and recommendations it received and the bank's response to this input.

Final Rule

The agencies are finalizing proposed § ____.27(e), renumbered in the final rule as § ____.27(f), with several technical changes to reflect the timing requirements in days and to more clearly identify the materials that a bank must submit to the appropriate Federal financial supervisory agency in conjunction with the draft plan. Consistent with other timing requirements in the final rule that are based on calendar days, the three-month timeframe for submission of the plan before it is proposed to become effective has been changed to a substantially equivalent 90 days. Also, consistent with the other documentation to support public participation in the proposal (*e.g.,* description of efforts to seek public input, written and other public input received, initial draft plan before it was revised in light of public input), the agencies added the following to the list of items that must be submitted in conjunction with a draft plan, as applicable: proof of notice notification; any written comments or other public input received; an explanation of any relevant changes made to the initial plan in light of public input received; and an explanation for why any suggestions or concerns received by the public regarding the plan were not addressed.[1366] These changes are responsive to the commenter that addressed this aspect of the proposal, as the final rule requires the bank to submit any written or other input received and to add explanations of how this input was or was not integrated into the plan, which will serve as the bank's response to this input. As discussed previously, the agencies believe public participation is critical to the plan development process, and the additional items added to accompany the plan submission allow the agencies to ensure that the requirements under final § ____.27(e) are met, and to better

[1362] *See* final § ____.27(e)(1)(ii)(C).

[1363] *See* final § ____.27(e)(1)(iii).

[1364] *See* current 12 CFR ____.27(d)(3).

[1365] *See* current 12 CFR ____.27(e).

[1366] *See* final § ____.27(f)(1) through (4).

understand how public input was considered and integrated into the plan.

Section ____.27(g) Plan Content

Current Approach

The current regulation requires a bank to specify measurable goals in its plan for helping meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies (*i.e.,* census tracts) and individuals, through lending, investment, and services, as appropriate.[1367] A bank must address all three performance categories and, unless the bank has a wholesale or limited purpose designation, shall emphasize lending and lending-related activities.[1368] Further, the current regulation permits banks to submit additional information to its appropriate Federal financial supervisory agency on a confidential basis, provided the goal plans are sufficiently specific to enable the appropriate Federal financial supervisory agency and the public to judge the merits of the plan.[1369]

The current regulation also requires a bank to specify measurable goals in its plan that constitute ''satisfactory'' performance and to optionally establish goals that constitute ''outstanding'' performance.[1370] If the bank submits goals for both levels of performance and the appropriate agency approves the plan, the agency will consider the bank eligible for an ''outstanding'' rating. If the bank does not substantially meet the plan goals, the bank also has the option to elect in its plan to have its performance evaluated under the performance test or standards that would otherwise apply in the absence of a plan.[1371]

The Agencies' Proposal

The agencies proposed revisions to current § ____.27(f), including substantive and technical changes. In proposed § ____.27(f)(1), the agencies required that a bank's draft plan include the same performance tests and standards that would otherwise be applied under the CRA regulations, unless the bank is substantially engaged in activities outside of the scope of the performance tests. The proposal required that the draft plan 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 the bank's 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.

Proposed § ____.27(f)(2) required that the draft plan incorporate measurable goals for all geographical areas that would be included pursuant to the performance tests and standards that would otherwise apply in the absence of approved plan.

Proposed § ____.27(f)(3)(i) required a bank, pursuant to these tests and standards, to specify measurable goals in its draft plan for helping to meet the following, as applicable:

- 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;
- retail services and products needs of its facility-based assessment areas and at the institution level that are covered by the draft plan;
- community development financing needs of its facility-based assessment areas, States, multistate MSAs, and nationwide areas that are covered by the draft plan; and
- 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.

In a bank's draft plan, the agencies proposed that a bank must consider public comments and its capacity and constraints, product offerings, and business strategy in developing goals in these four performance test areas.[1372] The proposal also required that the bank's draft plan include 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 the plan's measurable goals are responsive to the characteristics and credit needs of, as applicable, the assessment areas and geographic areas served by the bank, considering public comment and the bank's capacity and constraints, product offerings, and business strategy.[1373]

In developing measurable goals related to retail lending, the agencies proposed that a bank incorporate measurable goals in its draft plan for each major product line. However, banks have the option to develop additional goals that cover other lending-related activities based on the bank's specific business strategy.[1374] Moreover, proposed § ____.27(f)(3)(v) provided that if the bank's plan goals related to retail lending do not incorporate the Retail Lending Test's metric-based methodology, the bank must explain why incorporation of the methodology is not appropriate. Further, for banks that would otherwise have community development loan and community development investment requirements, proposed § ____.27(f)(3)(vi) required that a bank include an explanation as to why measurable goals do not incorporate, as applicable, the metric-based methodology in the Community Development Financing Test or the Community Development Financing Test for Wholesale or Limited Purpose Banks as described in proposed §§ ____.24 and ____.26, respectively, or the community development performance standards for intermediate banks as provided in proposed § ____.29(b)(2).

The agencies proposed in § ____.27(f)(4) to retain the current regulatory language with respect to a bank's ability to submit additional information regarding the plan to the agencies on a confidential basis. Further, the agencies proposed similar language to the current regulation that requires banks to specify in its plan measurable goals that constitute ''Satisfactory'' performance and provides them the option to specify goals for ''Outstanding'' performance. Lastly, in proposed § ____.27(f)(6), the agencies continued to provide the option for banks to be evaluated under the performance tests and standards that would otherwise apply in the absence of a plan if the bank failed to substantially meet its plan goals.

Comments Received

Many commenters agreed that flexibility, particularly with regard to assessment areas, performance tests and standards, and the establishment of goals, should be maintained. These commenters did not share the concern expressed by other commenters that banks could use the strategic plan option to avoid more stringent CRA requirements, noting that appropriate guardrails, such as public comment and regulatory approval, would be in place.

At least one commenter believed the proposed regulatory text would discourage banks from selecting the strategic plan option, stating this could result in changing the bank's business strategy. To avoid this unintended consequence, this commenter recommended deleting the word ''substantially,'' and instead include language that a different approach may

[1367] *See* current 12 CFR ____.27(f)(1)(i).
[1368] *See* current 12 CFR ____.27(f)(1)(ii).
[1369] *See* current 12 CFR ____.27(f)(2).
[1370] *See* current 12 CFR ____.27(f)(3).
[1371] *See* current 12 CFR ____.27(f)(4).
[1372] *See* proposed § ____.27(f)(3)(ii).
[1373] *See* proposed § ____.27(f)(3)(iii).
[1374] *See* proposed § ____.27(f)(3)(iv).

be more appropriate for a bank's business model. In addition, when referencing that a plan must address all performance tests and standards that would otherwise be applied, the commenter requested that the agencies retain the language under the current regulations that ''a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy.''

A number of commenters expressed concern that the agencies' strategic plan option proposal lacks flexibility and, thereby, defeats the original purpose of plans. Some of these commenters recommended that the agencies preserve the flexible features afforded plans under the current CRA regulations. In particular, these commenters identified assessment areas, in-scope products, measurable goals, and test weights as current areas of flexibility. Some of these commenters made recommendations, including that the agencies: explicitly state in the final rule that not all performance tests would be required for banks where they are not applicable and that banks that are primarily consumer lenders be allowed to include consumer loans under their plans; provide flexibility for weighting the four main performance tests at the institution level for all strategic plan banks if the final rule does not provide that accommodation for all banks; and clarify whether banks may continue to use self-executing provisions that allow certain changes to take effect upon the occurrence of a particular event. Another commenter believed that the proposed changes to the plan would shift its focus from meeting community needs, including community development investments and community engagement, to meeting strict tests and monitoring generic benchmarks.

Final Rule

In response to comments that advocated for greater flexibility in the development of plans, the agencies made significant revisions aimed to clarify the plan content requirements in proposed § ____.27(f), renumbered as final § ____.27(g). These revisions also ensure that there are guardrails to prevent banks from opting out of a ''more stringent'' evaluation under the applicable default performance tests, including to retain parity among banks not evaluated under an approved strategic plan and those that are. The agencies believe the revisions in the final rule provide stakeholders with more objective rules under the strategic plan option that define when the standard performance tests apply and when eligible additions and modifications are allowed and appropriate. Also, while proposed § ____.27(f) consistently referenced ''draft plan'' when addressing plan content requirements, final § ____.27(g) omits the term ''draft'' to clarify that these plan content requirements also apply to approved plans. As a draft plan is developed solely for the purpose of obtaining agency approval, all of the requirements of final § ____.27(g) would apply at the draft stage as well.

Proposed § ____.27(f)(1) provided that ''[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,'' and must specify how these activities are outside the scope of the performance tests and why being evaluated under a plan would be more appropriate. As explained above, the concepts in proposed § ____.27(f)(1) were restructured in the final rule and are now discussed in final § ____.27(c) and (d), which detail plans in general and the justification and appropriateness of plan election, respectively (*see* the section-by-section analysis of § ____.27(c) and (d)). As a result, final § ____.27(g) requires that the plan must meet the requirements of final § ____.27(g), as well as those outlined in final § ____.27(c) and (d). In response to the commenter that expressed concern that the proposed regulatory text would force a bank to change its business model, the agencies believe the revisions proposed in § ____.27(f) provide sufficient flexibility to accommodate different business models. By requiring justifications for any modifications and additions and relating them to areas where the performance tests that would apply in the absence of an approved plan are outside the scope of, or are inconsistent with, the bank's business model, the agencies believe that they have provided sufficient flexibility while also providing guardrails to prevent a bank from inappropriately eliminating performance tests for which it has the capacity to deliver results.

Final § ____.27(g)(1) adopts the language that was proposed in § ____.27(f)(3)(iii) to require the draft plan to focus on the credit needs its entire community, including low- and moderate-income individuals, families, and households; low- and moderate-income census tracts; and small businesses and small farms, and to describe how the plan is responsive to the characteristics and credit needs of its facility-based assessment areas, retail lending assessment areas, outside retail lending area, and other geographic areas served by the bank with a technical edit. The reference in proposed § ____.27(f)(3)(iii) explaining how the plan's measurable goals are responsive to these areas was revised to reflect that the bank's responsiveness can be demonstrated by any component of the plan, including those components that are not tied to measurable goals. This provision, in conjunction with the variety of eligible modifications and additions permitted under final § ____.27(g)(2), is responsive to the commenter that expressed concern that the strategic plan option would shift focus from meeting credit needs to a strict adherence to the tests and benchmarks.

In final § ____.27(g)(1), the agencies are also clarifying that a bank must specify the components in the plan for helping meet various needs, as applicable, in the various geographical areas served by the bank. These needs are similar to the ones that were delineated in proposed § ____.27(f)(3) and include those related to retail lending, retail banking services and retail banking products, community development loans, community development investments, and community development services. However, the language was amended from the proposal to reflect that the plan must specify any components of the draft plan that help meet these needs—not only measurable goal components.

Also, upon consideration of perspectives of commenters that had concerns that the strategic plan option would be used to avoid more stringent CRA requirements and those that urged the maintenance of flexible criteria under the option (including giving banks the ability to eliminate a performance test, if not applicable), the agencies added more specificity to the requirements in final § ____.27(g)(1)(i) through (iv) that detail the components that a bank must include in its plan depending on the size of the bank and the bank's product offerings. The agencies believe these provisions clarify the agencies' proposal and keep the bank accountable for results under the applicable performance tests that can be reasonably applied to the bank, while offering appropriate flexibility when the bank's business model is outside the scope of, or is inconsistent with, one or more of the performance tests that would apply in the absence of an approved plan, which include limited circumstances that may justify the elimination of a performance test.

For instance, in order to assess its efforts in helping meet retail lending needs, final § ____.27(g)(1)(i) requires a bank that originates or purchases loans in a product line evaluated under the Retail Lending Test in final § ____.22 or originates or purchases loans evaluated pursuant to the Small Bank Lending Test in final § ____.29(a)(2) to include the applicable test in its strategic plan. A large bank that offers residential mortgage loans that would be considered under the Retail Lending Test would need to include that performance test in its plan. In contrast, a bank that originates consumer loans, and does not originate any other loans considered under the Retail Lending Test, would not be required to include the Retail Lending Test in its plan. Also, a large bank would not need to include in its strategic plan the Retail Services and Products Test if it does not maintain any delivery systems [1375] or the Community Development Services Test in a facility-based assessment area where the large bank has no employees.[1376] It is important to note that all banks (other than small banks that have no community development requirements under § ____.29) must include the otherwise applicable community development test in their plan,[1377] as the agencies do not believe there are circumstances where these banks do not have the capacity to deliver some volume of community development investments or loans. Also, final § ____.27(g)(1)(ii) through (iv) make it clear that any bank can add a component of a performance test that relates to a need that is not covered in the performance tests that would apply in the absence of an approved plan. For example, although large banks generally are required to include community development services, delivery systems, credit products or programs, and deposit products, any other bank may also include a component of these in its plan. Additionally, a small bank could add goals related to community development loans and community development investments to its plan. While these banks would not be required to perform in these areas under the performance tests that would apply in the absence of an approved plan, a bank may wish to add these components to compensate for the elimination or modifications of other performance test components in their plan.

In response to commenters that urged flexibility regarding the development of plans and the agencies' desire to add clarity regarding the requirements in final § ____.27(g)(1) related to the elimination or additions to the applicable performance tests, the agencies are adopting new § ____.27(g)(2) to detail the eligible modifications or additions that may be made to the components within the performance tests that would apply in the absence of an approved plan if justified under final § ____.27(d). Similar to final § ____.27(g)(1), final § ____.27(g)(2)(i) through (iv) detail the modifications and additions that the rule would allow in the four areas of retail lending, retail banking services and products, community development loans and investments, and community development services. For instance, with respect to retail lending, small banks may be able to support the omission of the loan-to-deposit or assessment area concentration performance criteria pursuant to § ____.29, as well as add annual measurable goals for its retail lending activity.[1378] As an example, a small bank that originates residential mortgage lending throughout the country (with a nominal concentration of loans in its facility-based assessment area) may be able to justify the elimination of the assessment area concentration performance criterion and develop goals that correspond to its geographic and borrower distribution in nationwide residential mortgage lending. For a bank otherwise evaluated under the Retail Lending Test, in its plan, a bank may add additional products outside those that are considered pursuant to final § ____.22 (*e.g.,* closed-end home mortgage loans, small business loans, small farm loans, and automobile loans).[1379] For example, this flexibility allows a bank to be evaluated with respect to its consumer loan products. As an additional example, a large bank could add open-end home mortgage lending with accompanying goals that would be considered under the plan in addition to the major product lines that are already required pursuant to § ____.22.

When adding measurable goals related to additional products or sub-products, final § ____.27(g)(2)(i)(B)(*2*) permits the bank to apply different product weights that allow for averaging together the performance across the added products in combination with the other standard major product lines required to be evaluated under the Retail Lending Test or including those loan products in the numerator of the Bank Volume Metric. For example, if a bank justifies the addition of open-end home mortgage loans under the Retail Lending Test in its plan to be evaluated in conjunction with its product lines, the bank could treat the open-end home mortgage loans as an additional product line and calculate a weighted average based on a combination of loan dollars and loan count across all major product lines consistent with section VII of final appendix A.

Under the plan option, final § ____.27(g)(2)(i)(B)(*3*) also allows the bank to use alternative weighting when combining the borrower and geographic distribution analyses. Under the Retail Lending Test, these two measures each account for 50 percent of the recommended conclusion unless there are no low- and moderate-income census tracts; however, under a plan, a bank may adjust these weightings for a specific product line if it can justify why the standard weighting does not represent the most appropriate evaluation of these criteria. For example, an intermediate bank may be able to support lowering the weight of the geographic distribution measure (and therefore increase the weighting of the borrower distribution measure) related to performance in a facility-based assessment area that is comprised of 60 census tracts and only one census tract is considered low- or moderate-income. In this circumstance, it may be appropriate to adjust weighting to account for the lack of economic diversity in the geographic areas that make up the bank's assessment area.

Additional modifications and additions are allowed for retail banking services and retail banking products pursuant to final § ____.27(g)(2)(ii) if a bank can provide sufficient justification. First, a large bank may add a measurable goal for any component of the Retail Services and Product Test.[1380] For example, a bank may establish a goal to maintain branches in low- and moderate-income census tracts within its sole facility-based assessment area that mirror or exceed the corresponding percentages of households in those tracts. Second, a large bank may remove a component of the Retail Services and Products Test in limited circumstances. For example, if the bank does not offer any remote service facilities, the bank could remove that component from the test.[1381] Third, pursuant to final

[1375] *See* final § ____.27(g)(1)(ii)(A).

[1376] *See* final § ____.27(g)(1)(iv)(A).

[1377] *See* final § ____.27(g)(1)(iii)(A) through (C).

[1378] *See* final § ____.27(g)(2)(i)(A)(*1*) and (*2*).

[1379] *See* final § ____.27(g)(2)(i)(B)(*1*).

[1380] *See* final § ____.27(g)(2)(ii)(A).

[1381] *See* final § ____.27(g)(2)(ii)(B).

§ ____.27(g)(2)(ii)(C), large banks may assign specific weights to the applicable components of the test to reach a conclusion. In final § ____.23, there are no defined weightings to consider in formulating conclusions or ratings for the Retail Services and Products Test; however, a bank may establish weightings that clarify how the existing and modified components are combined to arrive at conclusions or ratings under the plan. Finally, as only large banks must comply with the Retail Services and Products Test, final § ____.27(g)(2)(ii)(D) clarifies that banks other than large banks may include retail banking services and retail banking products components and accompanying measurable goals in their plans at their option. For instance, an intermediate bank could establish a goal for delivering Bank On-certified accounts to consumers in its facility-based assessment area to compensate for modifications it made with respect to the Retail Lending Test.

Additional modifications and additions are allowed for community development loans and community development investments pursuant to final § ____.27(g)(2)(iii). First, a bank ''may specify annual measurable goals for community development loans, community development investments, or both.'' [1382] This provision requires that any measurable goals in this area must be based on a percentage or ratio of the bank's community development loans and community development investments, presented either on a combined or separate basis, relative to the bank's capacity (typically reflected as deposits or assets), accounting for the community development needs and opportunities in an applicable geographic area. For instance, while the final rule does not establish specific thresholds to evaluate a bank's community development financing metric relative to comparable benchmarks for the Community Development Financing Test, a large bank could set an annual goal in the form of a target percentage (based on the benchmark or some other reasonable measure). For instance, a large bank could establish an annual goal of 1.25 percent for its Bank Assessment Area Community Development Financing Metric, which would mean the bank's community development loans and community development investments were 1.25 percent of the bank's deposits in that assessment area. Alternatively, the bank could establish an annual goal for this metric as a percentage of the corresponding benchmark, such as 125 percent of the Assessment Area Community Development Financing Benchmark. A bank could also establish measurable goals for all or just a particular type of a bank's community development loans or community development investments. As another example, a large bank could establish annual measurable goals based on the dollar volume of its purchase or maintenance of LIHTC investments relative to the bank's deposits. Other modifications in this area include using assets (in lieu of deposits) as an alternative denominator [1383] or additional benchmarks [1384] to evaluate a community development financing metric. For example, if a large bank can justify why the deposits figure used in calculating the metric does not adequately capture the bank's capacity to make investments and loans in its facility-based assessment areas, the bank could propose to use a metric that is calculated using the bank's assets. Lastly, as the small bank performance evaluation does not include any criteria related to a community development financing requirement, final § ____.27(g)(2)(iii)(D) clarifies that small banks may include a community development loan or community development investment component and accompanying measurable goals in their plans.

With respect to community development services, final § ____.27(g)(2)(iv)(A) allows a bank to specify annual measurable goals for these activities. While any reasonable measure can be used if justified, this section provides examples of goals that could include the number of activities or the number of activity hours against some measure of bank capacity, such as full-time equivalent employees. Also, since only large banks are subject to the Community Development Services Test, final § ____.27(g)(2)(iv)(B) clarifies that banks other than large banks may, at their option, include a community development services component and accompanying goals in their plan.

As many of the performance tests assign weights to various components of the tests (including the geographical areas, products, and criteria), the final rule contains language to outline the circumstances under which adjustments to weighting are allowed with justification under final § ____.27(d). As discussed previously, weighting of products and borrower and geographic analyses under to the Retail Lending Test are addressed in final § ____.27(g)(2)(i)(B)(*2*) and (*3*), respectively.

With respect to geographical weighting, final § ____.27(g)(2)(v) allows a bank to specify alternative weights for averaging test performance across assessment areas or other geographical areas with justification based on the bank's level of activity and capacity in specific geographic areas. For example, while facility-based assessment area weighting is typically calculated as an average of loans and deposits, an intermediate bank may propose an alternative weighting for its facility-based assessment areas if there are anomalies in the geographical distribution of its deposits (as calculated by the FDIC's Summary of Deposits data). For instance, a bank with a large warehouse lending operation may maintain all of its associated escrow deposits, which represent the majority of its deposits, in one branch. If, as a result, the assessment area that corresponds to this branch receives disproportionate weight in assessing the bank's lending performance, the bank may be able to justify an alternative weighting methodology in its plan.

With respect to combining the various applicable performance tests to develop ratings in States and multistate MSAs, as applicable, and for the institution under the plan, final § ____.27(g)(2)(vi)(A) allows a bank to request an alternative weighting method. This alternative weighting provision would also apply to combined assessment area conclusions developed for the purposes of determining whether a large bank met the 60 percent standard specified in final § ____.28(b)(4)(ii)(B). In making these clarifications, the agencies have considered commenter feedback advocating for flexibility under the strategic plan option. Similar to the current rule,[1385] the alternative test weighting method must emphasize retail lending, community development financing, or both, as well as be responsive to the characteristics and credit needs of a bank's assessment area(s), public comments, and the bank's capacity and constraints, product offerings, and business strategy. Under the final rule, however, if an alternative test weighting methodology is requested, a bank must compensate for decreasing the weight under one performance test by committing to enhance its efforts to help meet the credit needs of its community under another performance test.[1386] For example, if a large bank that conducted limited retail lending activity submitted

[1382] *See* final § ____.27(g)(2)(iii)(A).

[1383] *See* final § ____.27(g)(2)(iii)(B).

[1384] *See* final § ____.27(g)(2)(iii)(C).

[1385] *See* current 12 CFR ____.27(f)(1)(ii).

[1386] *See* final § ____.27(g)(2)(vi)(B).

a draft plan that reduced the weight of the Retail Lending Test from 40 percent to 20 percent with a corresponding increase in the weight of the Community Development Financing Test to 60 percent, the agencies would expect the plan to include enhancements for its performance under the Community Development Financing Test taking this increased performance test weight into consideration. The bank should explain its rationale for why its performance under a test with an increased weight meets the required standard. In an example involving increased weight for the Community Development Financing Test, as noted above, the bank could describe its performance relative to relevant benchmarks provided under that performance test (such as by setting ''Satisfactory'' goals for the community development financing metric that exceeded the benchmark by a specific percentage).

The agencies received differing views on the geographic coverage of plans in proposed § ____.27(f)(2), feedback which was also discussed in regard to final § ____.27(c)(3)(ii). As discussed previously, all of these comments related to the proposal for banks to include retail lending assessment areas in their plan if these areas would otherwise be required in the absence of an approved plan. While a few commenters favored allowing banks to justify or negotiate away the requirement to include retail lending assessment areas, the other commenters that addressed this issue supported the inclusion of these areas. After considering these comments, the agencies are finalizing proposed § ____.27(f)(2), renumbered as § ____.27(g)(3), pertaining to the requirement that a bank may not eliminate the evaluation of its performance in any geographic area that would be included in its performance evaluation in the absence of an approved plan (including retail lending assessment areas and the outside retail lending area). In addition, several technical changes and expanded language are included to explain that performance evaluation components and goals may be added to the plan for additional geographic areas and to address how retail lending assessment area designations that change subsequent to the approval of the plan will be handled. As the requirement for designating a retail lending assessment area is limited to a subset of large banks that are not exempted under final § ____.17(a)(2), which addresses whether a bank has more than 80 percent of its lending inside of its facility-based assessment areas, and that also meets the specified lending thresholds for closed-end home mortgage loans or small business loans,[1387] the agencies believe that it is appropriate for these banks to be evaluated in these areas in their plans. This also maintains parity among large banks, whether they are evaluated under a strategic plan or not. As discussed previously, final § ____.27(c)(3)(i) requires that a bank's plan incorporate each assessment area (including both facility-based and retail lending) and other geographic areas (such as an outside retail lending area, States, multistate MSAs, or nationwide) that would otherwise be evaluated in the absence of an approved plan. This language was modified from proposed § ____.27(f)(2) in that it removes the reference to requiring measurable goals, consistent with the fact that a bank's performance under a plan may be evaluated exclusively on a performance component that is not guided by a goal.

In the proposal, the agencies sought feedback on whether intermediate banks electing to be evaluated under a plan should be allowed to delineate retail lending assessment areas, whether small banks electing to be evaluated under a plan should be allowed to delineate retail lending assessment areas and outside retail lending areas, and what criteria should apply to small and intermediate banks delineating such assessment areas under a plan. The agencies did not receive any comments in response; however, the agencies believe this issue should be addressed in the final rule. The final rule adopts new § ____.27(g)(3)(i), which clarifies that evaluation components and accompanying goals may be added to a plan at the bank's option. For example, a small bank may opt to incorporate retail lending goals for areas outside of its facility-based assessment areas. If additional performance evaluation components with accompanying goals are included with the plan, a bank must specify the geographic areas where those components and goals apply.[1388]

With respect to retail lending assessment areas that are identified in a plan but are no longer required due to the large bank not meeting the associated lending thresholds under final § ____.17, the agencies will not review performance in that area for any applicable year in which the threshold is not met.[1389] Conversely, if a retail lending assessment area is not required at the time of plan approval, but would otherwise be established during the term of an approved plan due to a bank's increased lending meeting the thresholds, the bank would not be required to amend an existing plan to establish those geographies as a new retail lending assessment area.

The agencies have also considered commenter feedback recommending that the agencies clarify whether banks may continue to use self-executing provisions that allow certain changes to take effect upon the occurrence of a particular event. While it is noted that the concept of a ''self-executing provision'' is not discussed in the current, proposed, or final rule, the agencies do not believe that a specific clarification with respect to such provisions would be necessary because the standards in § ____.27 are sufficiently flexible to permit them assuming the other requirements are met (including that an adequate justification is supported and the self-executing provision is consistent with the eligible modifications and additions). As an example, a bank may establish in its plan that any new facility-based assessment areas delineated during the plan term would be subject to performance tests that would otherwise apply in the absence of a plan.

The agencies did not receive comments regarding the submission of confidential information with the draft plan and are adopting proposed § ____.27(f)(4), renumbered in the final rule as § ____.27(g)(4), as proposed. Additionally, no comments were received regarding proposed § ____.27(f)(5), renumbered in the final rule as § ____.27(g)(5), related to the requirement that a bank specify measurable goals that constitute ''Satisfactory'' performance with the option to specify goals that constitute ''Outstanding'' performance (if the bank wants to be eligible for an ''Outstanding'' rating). The agencies are finalizing this section as proposed, with a technical change to reflect that this only applies to modified or additional performance evaluation components with accompanying goals, as not all performance test components will have goals associated with them.

The agencies are not finalizing proposed § ____.27(f)(6), which would have allowed a bank to elect in its draft plan evaluation of the bank's performance under the performance tests that would otherwise apply in the absence of an approved plan if the bank failed to meet substantially its plan goals for a ''Satisfactory'' rating. While no comments were received on this

[1387] *See* final § ____.17.

[1388] *See* final § ____.27(g)(3)(iii).

[1389] *See* final § ____.27(g)(3)(ii).

provision, given that the final rule requires the inclusion of any applicable performance tests under the strategic plan option (provided a bank cannot provide a justification for not including one of the test as provided in final § ____.27(g)(1)), the agencies do not believe there is a need for this provision, as the bank's poor performance under the plan would likely mirror its performance under the performance tests that would apply in the absence of a plan. A plan is approved by the agency under the premise that the plan represents a more meaningful reflection of a bank's record of helping to meet the credit needs of its community than if it were evaluated in the absence of an approved plan. If a bank no longer considers the plan to be a more meaningful reflection of the bank's record, the agencies believe the bank should terminate its plan and revert to an evaluation under the performance tests that would apply in the absence of a plan.

Lastly, although not included in the proposed plan content section, the agencies are adopting new final § ____.27(g)(6) to clarify that the bank must specify a conclusions and ratings methodology in its plan. This addition is necessary given the agencies' shift from a purely goals-based performance evaluation to one that is flexible and recognizes that plans accommodate the performance tests under final § ____.21. As plans must include the performance tests required under § ____.27(g)(1) (which may not have goals associated with the evaluation components) in combination with eligible modifications and additions to those tests with accompanying goals, the plans need to specify how the appropriate Federal financial supervisory agency will combine these components to arrive at conclusions at each applicable geographic area level and ratings in each State or multistate MSA, as applicable, and at the institution level.

Pursuant to final § ____.27(g)(6), a bank must specify in its plan how all of the plan elements covered in § ____.27(g)(1) through (5) will be considered in conjunction with any other applicable performance tests not included in the approved plan. For example, if an intermediate bank that opted into the strategic plan option were to add evaluation components that relate to the opening of Bank On deposit accounts for low- and moderate-income individuals and the maintenance of delivery systems in targeted census tracts, the plan would need to establish annual measurable goals related to each component consistent with § ____.27(g)(5), and could also provide adjusted performance test weighting that accounts for the retail banking services and retail banking products components. For instance, if justified under final § ____.27(d), the plan could establish a 45 percent weight under the Retail Lending Test, a 45 percent weight under the Intermediate Bank Community Development Test (or, alternatively, the Community Development Financing Test as provided in § ____.24), and 10 percent weight on the retail banking services and retail banking products components.

Final § ____.27(g)(6) clarifies that conclusions and ratings are assigned pursuant to the general conclusions and ratings requirements in § ____.28 and that more specific guidance regarding assigning conclusions and ratings is detailed, respectively, in paragraph g of final appendix C [1390] and in paragraphs f and g of final appendix D.[1391] Final § ____.27(g)(6)(i) further clarifies that performance context information as provided in § ____.21(d) may also be considered in assigning conclusions under the plan.

A new paragraph g was added to final appendix C to clarify that the appropriate agency will assign conclusions in each of these applicable geographical areas. This became necessary as the proposal contemplated a strictly goal-based structure to formulating ratings for banks under the strategic plan option and did not include a discussion of this performance evaluation method in appendix C, which addresses performance test conclusions. However, as plans must include the performance tests that would apply in the absence of an approved plan pursuant to final § ____.27(c)(2)(i), conclusions for each facility-based assessment area, retail lending assessment area, outside retail lending area, State, and multistate MSA, as applicable, and the institution will be formulated under the respective performance tests. In assigning the conclusions under the performance tests and any optional evaluation components, the appropriate agency will consider the annual measurable goals (for ''Satisfactory'' performance and, if identified in the plan, for ''Outstanding'' performance) and the conclusion methodology required under final § ____.27(g)(6).[1392]

Paragraph g of final appendix C explains further that, for elements of the plan that correspond to the otherwise applicable performance tests, the plan should include a conclusions methodology that is generally consistent with paragraphs b through f of appendix C. For example, if a large bank included the Community Development Financing Test in its plan without any modifications or additions, the conclusions for that performance test must be formulated using the same methodology detailed in paragraph d of final appendix C. However, if that same bank's plan included an eligible modification under the Community Development Services Test (*e.g.,* establishing annual measurable goals for community development service hours relative to the number of full-time employees), the plan must include a conclusions methodology that accounts for those goals and generally aligns with the methodology detailed in paragraph e of final appendix C. For instance, a bank could establish a range of goals that align with the five conclusion categories (and corresponding performance scores) for each facility-based assessment area that would be used to assign the conclusion in lieu of the qualitative evaluation that is performed in each of these areas under the Community Development Services Test. Under this methodology, the goal thresholds could inform conclusions under the performance test corresponding with the conclusion category nearest to the performance score as follows: ''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); or ''Substantial Noncompliance'' (0 points).

With respect to the formulation of ratings, the agencies proposed to approve ''Satisfactory'' goals and, if identified in the plan, ''Outstanding'' goals, and would determine if the bank met these goals to assess a bank's performance under the plan.[1393] Consistent with the removal of a strictly goals-based plan evaluation structure, paragraph f of appendix D was revised significantly and finalized to state that the agency evaluates the bank's performance under an approved plan consistent with the ratings methodology specified in the plan pursuant to final § ____.27(g)(6). Similar to the banks rated under any of the other evaluation methods, ratings are a product of performance test conclusions discussed under final appendix C with an adjustment for any optional evaluation components that a bank chooses to add to an approved plan.

Lastly, paragraph f of final appendix D clarifies that the appropriate agency assigns a rating under the plan rating

[1390] *See* final § ____.27(g)(6)(i).

[1391] *See* final § ____.27(g)(6)(ii).

[1392] *See* final appendix C, paragraph g.

[1393] *See* proposed appendix D, paragraph f.

methodology using one of the following categories: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

Section ____.27(h) Draft Plan Evaluation

Current Approach

Current § ____.27(g) require the agencies to act upon a plan within 60 calendar days after receipt of a complete plan and the following materials required under current § ____.27(e): a description of the bank's informal efforts to seek suggestions from the public; any written public comments received; and, if the plan was revised in light of these comments, the initial plan as released for public comment.[1394] If the appropriate Federal financial supervisory agency fails to act within this time period and does not extend it for good cause, the plan is deemed approved. The appropriate agency evaluates the plan goals in consideration of the results of the public participation process.[1395]

The agency evaluates a plan's measurable goals based on: the extent and breadth of lending or lending-related activities; the amount and innovativeness, complexity, and responsiveness of the bank's community development investments; and the availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.[1396]

The Agencies' Proposal

The agencies proposed in § ____.27(g)(1) to extend the time period for acting on a complete plan and the accompanying material required under current § ____.27(e) to 90 calendar days, and preserved the automatic approval of plans that are not acted upon within that time frame unless extended by the agencies for good cause. In proposed § ____.27(g)(2), the agencies clarified that they would consider the following when evaluating the bank's draft plan's goals: public involvement in formulating the 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); written public comments; and any bank responses to these comments.

Proposed § ____.27(g)(3) outlined the criteria that the agencies would use to evaluate the draft plan's measurable goals. The agencies clarified the evaluation would include the appropriateness of these goals and information provided in proposed § ____.27(e) and (f) and would be based on the bank's capacity, product offerings, and business strategy. Similar to the current regulation, the criteria included the following, as appropriate: the extent and breadth of retail lending or retail lending-related activities to address credit needs; the dollar amount and qualitative aspects of the bank's community development loans and community development investments in light of the corresponding needs; the availability of bank retail products and the effectiveness of the bank's systems for delivering retail banking services; and the number, hours, and type of community development services performed by the bank and the extent to which these services are impactful.

Lastly, while the proposal required the posting of draft plans on the appropriate Federal financial supervisory agency's and bank's websites, the agencies asked for feedback on whether the approved plans should also be posted on those websites.

Comments Received and Final Rule

The only comment on this section related to a commenter that requested banks be permitted to post approved plans on the bank's website at the bank's option. The agencies are finalizing proposed § ____.27(g), renumbered as § ____.27(h), largely as proposed with revisions as explained in more detail below, including a revision to the paragraph's header from *Plan approval* to *Draft plan evaluation* to more broadly capture the areas covered by final § ____.27(h).

The agencies are adopting the timing requirements in proposed § ____.27(g)(1), renumbered in the final rule as § ____.27(h)(1), for submitting a plan to the agencies with one modification. Consistent with the proposal, the final rule establishes a 90 calendar-day timeframe for the agencies to review a complete draft plan and other required materials once received from the bank. However, rather than establishing an automatic approval for plans that are not acted upon within the 90-day period, the final rule requires the appropriate Federal financial supervisory agency to communicate to the bank the rationale for the delay and an expected timeframe for a decision on the draft plan. This revision in the final rule (removing the automatic approval) acknowledges both the importance of the agencies making an affirmative decision on the plan and that some plans may require more than the 90-day timeframe to evaluate. Under the current and proposed regulation, the agencies maintained the ability to extend the evaluation time period for good cause; however, it has been the agencies' experience that extensions were rarely, if ever, needed once a complete plan was received. The agencies will strive to provide a decision on all plans within the 90-day timeframe; however, removal of the automatic approval will ensure that the agencies will complete the evaluation of each plan, while requiring communication of the rationale and expected timeframe for any delays on plan approval decisioning beyond the typical timeframe.

The agencies did not receive any comments related to the consideration of public participation in the evaluation of the plan and are finalizing § ____.27(g)(2), renumbered in the final rule as § ____.27(h)(2), as proposed with several technical changes and the addition of a new provision. More specifically, final § ____.27(h)(2)(i) removes the language ''the nature of the public input'' and ''whether the bank revised the draft plan in light of public input,'' as specific examples of public participation information the agencies would consider in evaluating the plan. The agencies considered this language duplicative as these considerations are already addressed more broadly in final § ____.27(h)(2)(ii) and (iii). Further, final § ____.27(h)(2)(ii) and (iii) reflect the agencies' commitment to public input such that all forms of public input (and the bank's corresponding responses) that are available during the plan development and evaluation process will be considered—not just written comments. Finally, although not proposed, the agencies are adopting new final § ____.27(h)(2)(iv) to clarify that the agencies will consider whether to solicit additional public input or require the bank to provide any additional response to public input already received. As stated previously, the agencies believe that the public participation process is a critical element of the plan evaluation process; therefore, they believe it is appropriate to solicit additional public comment or bank responses if they find the public participation obligation has not been fully satisfied prior to the submission of the draft plan.

The agencies did not receive any comments related to the specific criteria for evaluating the plan and are finalizing proposed § ____.27(g)(3), renumbered as § ____.27(h)(3), with several technical changes and additions to conform to previously discussed

[1394] *See* current 12 CFR ____.27(g)(1).

[1395] *See* current 12 CFR ____.27(g)(2).

[1396] *See* current 12 CFR ____.27(g)(3).

revisions to the structure of the strategic plan option. First, the language in the proposal related to evaluating a draft plan's measurable goals and the appropriateness of those goals has been removed to acknowledge the fact that a plan, while it may include goals related to its eligible modifications and additions, must also generally include the performance tests that would apply in the absence of a plan, which are not all goals-based. In lieu of the references to goals, the agencies revised the final rule to add two additional criteria that the agencies must consider in the evaluation of a plan: the extent to which the plan meets the standards in § ____.27 [1397] and the extent to which the plan has provided a justification under § ____.27(d).[1398] Rather than restating all of the plan criteria that are established in the various provisions of § ____.27, the agencies believe it is more effective and efficient to make a reference to the entire section to make it clear that all of the standards introduced in the section are considered under the approval criteria. Also, consistent with the agencies' desire to limit the strategic plan option only to those banks where the applicable performance tests would not provide a meaningful evaluation of the bank and to create parity with other banks that do not avail themselves of the option, the agencies have clarified in the final rule that the justification under § ____.27(d) will be an evaluation criterion.

The remaining four plan evaluation criteria[1399] proposed in § ____.27(g)(3)(i) through (iv), renumbered in the final rule as § ____.27(h)(3)(ii), are finalized with clarifying edits. These criteria are differentiated from the criteria outlined in final § ____.27(h)(3)(i) in that they are evaluated, as applicable, depending on the performance tests that would apply in the absence of a plan and whether the bank has added an optional evaluation component. Each of these criteria are considered in conjunction with relevant performance context information pursuant to § ____.21(d) and relate to the performance test areas: retail lending; retail banking services and retail banking products; community development loans and community development investments; and community development services. In the final rule, the agencies added an updated reference to the applicable performance tests at the conclusion of each of the corresponding provisions. For example, the retail lending criterion[1400] provides a reference to the two sections, §§ ____.22 and ____.29, that detail the evaluation standards for retail lending for small, intermediate, and large banks.

While the proposal did not include a provision that specifically addressed the plan decision-making process, the agencies are adopting new § ____.27(h)(4) to better clarify the circumstances under which the agencies will approve or deny a draft plan that has been submitted by a bank. Simply, final § ____.27(h)(4)(i) confirms that the appropriate Federal financial supervisory agency may approve a plan after considering the criteria in final § ____.27(h)(3) and if it determines that an adequate justification for the plan and each aspect of the plan in § ____.27(d) has been provided. The paragraph also details the circumstances under which the appropriate agency may deny a request for a plan or part of a plan.[1401] These circumstances include: the agency making a determination that there is a lack of an adequate justification pursuant to § ____.27(d); the evaluation under the plan would not provide a more meaningful reflection of the bank's record of helping to meet the credit needs of its community; the plan does not demonstrate responsiveness to public comment or otherwise fails to meet the requirements of § ____.27; or the bank does not provide information requested by the agency that is necessary to make an informed decision on the draft plan.

The agencies received limited feedback on whether an approved plan should be published on a bank's and the appropriate agency's websites; however, the agencies are adopting new final § ____.27(h)(5) which requires the appropriate agency to publish approved plans on its website. The agencies believe that most stakeholders find it more convenient to access information online and further believe posting this information on the appropriate agency's websites will further the agencies' goal of increasing public participation in, and awareness of, the strategic plan process. While the only commenter suggested that publishing the approved plan on the bank's website should be optional, pursuant to § ____.43(b)(4) of the final rule, the approved plan must be included in the bank's public file. As explained in more detail in the section-by-section analysis of § ____.43 (content and availability of the public file), the agencies are finalizing revisions that require banks that maintain a website to include all information in the public file on the bank's website.[1402] Therefore, as part of a bank's requirement to maintain its public file on the bank's website, if the bank maintains one, a bank will be required to post an approved strategic plan on the bank's website if the bank maintains one.

Section ____.27(i) Plan Amendment

Current Approach

Current § ____.27(h) provides that during the term of a plan, a bank may request the appropriate Federal financial supervisory agency to approve an amendment to the plan on the grounds that there has been a material change in circumstance since the plan was previously approved. Any amendment to a plan must be developed in accordance with the public participation requirements in current § ____.27.

The Agencies' Proposal

The agencies proposed to revise the CRA regulations to be more transparent about when plan amendments would be required. In proposed § ____.27(h), the agencies provided 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 and products, community development financing, or community development services.[1403]

The agencies also proposed that 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.[1404] Lastly, the agencies proposed that any amendment to a plan must be developed in accordance with the public participation requirements in § ____.27(e).[1405]

Comments Received and Final Rule

No comments were received with respect to the circumstances under which plan amendments are required, although a commenter requested that the agencies clarify whether banks would be required to delineate retail

[1397] *See* final § ____.27(h)(3)(i)(A).

[1398] *See* final § ____.27(h)(3)(i)(B).

[1399] *See* final § ____.27(h)(3)(ii)(A) through (D).

[1400] *See* final § ____.27(h)(3)(ii)(A).

[1401] *See* final § ____.27(h)(4)(ii)(A) through (E).

[1402] *See* final § ____.43(c)(1).

[1403] *See* proposed § ____.27(h)(1).

[1404] *See* proposed § ____.27(h)(2).

[1405] *See* proposed § ____.27(h)(3).

lending assessment areas before a pre-existing plan's expiration.

The agencies are finalizing proposed § ____.27(h)(1), renumbered as § ____.27(i)(1), with retitling of this provision and one technical change. More specifically, this provision was retitled *Mandatory plan amendment* to clarify that these are the circumstances under which an amendment is required and to differentiate it from the bank's discretion to optionally amend its plan pursuant to final § ____.27(i)(2). Also, the proposal required a plan amendment if a material change in circumstance impeded the bank's ability to substantially meet approved goals;[1406] however, as goals are not a required element of each component of the plan in the final rule, the language was changed to reflect circumstances that impede the bank's ability to perform at a satisfactory level under the plan. This change acknowledges that a plan may need to be amended for circumstances that not only adversely impact a bank's ability to meet any goals associated with an approved plan, but also could impede its ability to perform satisfactorily under the performance tests, which are not always goals based. The agencies believe plan amendments are necessary if either of the conditions in final § ____.27(i)(1)(i) or (ii) exist.

The only commenter regarding this provision inquired as to whether a bank would be required to delineate a retail lending assessment area under the strategic plan option created during the term of a pre-existing approved plan. While not contemplated in the proposal or specifically addressed in the final rule, an amendment may be necessary when a facility-based assessment area changes (for example, when a bank adds a new assessment area that encompasses a branch it opens in a new MSA in which it previously did not have a presence). When facility-based assessment areas are added or changed significantly during the term of an approved plan, an amendment would be necessary unless the existing plan already appropriately addresses how new facility-based assessment areas are to be evaluated during the term of the plan. With respect to the commenter's question regarding the addition of new retail lending assessment areas that are established after plan approval, but during the term of the plan, final § ____.27(i) does not require the bank to amend its plan to evaluate any new retail lending assessment areas, as discussed previously in the section-by-section analysis of § ____.27(g)(3). Therefore, in the absence of a discussion of the treatment of new retail lending assessment areas in the approved plan, the agencies would not evaluate a large bank's performance in these areas pursuant to § ____.22(a). This approach allows for certainty in the evaluation of the plan and would be less burdensome, as it would not necessitate amendments to the plan if the retail lending assessment areas were to fluctuate on an annual basis. An approved plan would already include the overall evaluation framework for examiners to consider at the time of the evaluation—including the applicable performance tests, optional evaluation components, and any eligible modifications and additions. Lastly, any of the bank's lending outside of facility-based assessment areas or active retail lending assessment areas that are included in the approved plan could still be captured in the bank's outside retail lending area, as applicable.

The agencies did not receive any comments regarding the elective revision of a plan in proposed § ____.27(h)(2) and are adopting it as proposed, renumbered as § ____.27(i)(2), with retitling and a technical change. Consistent with the language used throughout the paragraph, the heading of this provision was changed from *Elective revision of plan* to *Elective plan amendment.* Additionally, proposed § ____.27(h)(2)(ii), which required a bank to provide an explanation for any elective plan amendment, was moved to a newly created § ____.27(i)(3) to more broadly establish the requirements for all amendments—whether mandatory or elective. The agencies believe that this new provision will provide greater clarity regarding bank requirements with respect to all plan amendments. In addition to providing an explanation for why an elective plan amendment is necessary and appropriate, the final rule also requires a bank to explain any material circumstances that necessitated an amendment pursuant to final § ____.27(i)(1)(i) or (ii). The final rule also adopts new § ____.27(i)(3)(ii) to clarify that any amendment, whether mandatory or elective, must comply with all relevant requirements of the section.

Lastly, the agencies are not finalizing § ____.27(h)(3), pertaining to the public participation considerations with respect to a plan revision because this provision was unnecessary given the inclusion of new final § ____.27(i)(3)(ii). Because plan amendments must comply with all relevant requirements of this section, this would include the public participation provisions. Therefore, proposed § ____.27(h)(3) is not needed under the final rule. The agencies acknowledge that some plan amendments are very limited and do not benefit materially from a full public participation process as required by final § ____.27(e). Also, consistent with stakeholder feedback in the proposal, some stakeholders suggested minor changes through an amendment should only require approval by the appropriate agency, while a major change would require public comment in addition to approval. To address these comments, new § ____.27(i)(3)(ii) allows the agencies to use their discretion to waive a requirement of the strategic plan provisions, such as the public participation requirements under final § ____.27(e). As a result, prior to submitting a plan amendment for approval, banks should contact their appropriate Federal financial supervisory agency to seek guidance on whether the bank must complete the public participation requirements of the final rule in advance of the submission.

Section ____.27(j) Performance Evaluation Under a Plan

Current Approach

Under the current CRA regulation, the agencies approve a bank's measurable goals and assess a bank's performance under paragraph (e) of current appendix A,[1407] which prescribes that the agencies approve "satisfactory" measurable goals that adequately help meet the credit needs of the bank's assessment area(s). If the plan identifies separate measurable goals that substantially exceed the levels approved as "satisfactory," the agencies will approve those goals as "outstanding." The agencies assess the bank's performance based on whether it substantially achieves these goals. Alternatively, if the bank fails to substantially meet the goals for a satisfactory rating, the appropriate 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 has elected to be evaluated otherwise as provided in § ____.27(f)(4).

The Agencies' Proposal

The agencies proposed to approve the goals and assess performance under a plan as provided in proposed appendix D.[1408] Further, in determining whether a bank has substantially met its plan goals, the agencies proposed to consider the number of unmet goals; the degree to which the goals were not met; the

[1406] *See* proposed § ____.27(h)(1)(i).

[1407] *See* current 12 CFR ____.27(i).

[1408] *See* proposed § ____.27(k)(1).

importance of those unmet goals to the plan as a whole; and any circumstances beyond the control of the bank.[1409] Paragraph f of proposed appendix D provided guidance substantially similar to that identified in paragraph (e) of appendix A in the current regulation, as detailed above.

The agencies also requested comment on whether they should continue to evaluate strategic plan banks based on whether they have ''substantially met'' their plan goals and, if so, what criteria should be applied.

Comments Received

A few commenters addressed the agencies' request for feedback regarding whether the ''substantially met'' standard used to assess performance under a plan should be maintained and, if so, how it should be defined. A commenter stated that the standard for measuring plan goals should be rigorous and applied to each goal with a 95 percent attainment standard. Furthermore, if attainment is not achieved on 67 percent of its goals, the commenter stated that the bank should fail its exam and be required to submit an improvement plan. Another commenter recommended incorporating a rating system that emulates the default CRA ratings framework. Both of these commenters suggested that an improvement plan should be required if the bank did not substantially meet its stated goals. A few commenters indicated the standard was adequate and that there should be no prescribed evaluation weights for strategic plans.

Final Rule

Under the final rule, the header for proposed § ____.27(i), renumbered as § ____.27(j), was revised from *Plan assessment* to *Performance evaluation under a plan* to better clarify that this paragraph covers the evaluation of the bank under an approved plan rather than an assessment of the plan itself.

Based on the comments received and the aforementioned changes in plan requirements, particularly a departure from required goals for all components of the plan, the agencies are finalizing proposed § ____.27(i)(1), renumbered as § ____.27(j)(1), with revisions to correspond with the general restructuring of this section. First, the language in final § ____.27(j)(1) is changed to reflect that a bank's performance is no longer based exclusively on approved goals and is now based on the applicable performance tests, any optional evaluation components, and the eligible modifications and additions to the applicable performance tests set forth in the bank's plan. As discussed previously, goals may still be a component of a plan but will now be considered in conjunction with performance tests.

The agencies are also finalizing proposed § ____.27(i)(2), renumbered in the final rule as § ____.27(j)(2), with several modifications. First, the agencies removed the reference to the ''substantially met'' language when referring to the evaluation of plan goals. Since the strategic plan option under the final rule is no longer exclusively based on measurable goals, a determination on whether a bank ''substantially met'' its plan goals is not necessarily the primary consideration when a bank's performance is assessed under an approved plan. Further, since goals are not required for each plan evaluation component and each plan will rely on the achievement of goals to a different degree (including the potential that no goals are added to a plan), the establishment of a required attainment standard (such as 95 percent of plan goals), as suggested by a few commenters, would not be appropriate. As a result, final § ____.27(j)(2) was revised to indicate that the agencies will consider the factors listed in this provision to the extent that the bank has established goals and does not meet its satisfactory goals in one or more of them. The agencies finalized three of the four consideration factors that were proposed in § ____.27(i)(2). More specifically, when determining the effect of unmet goals on a bank's CRA performance, the final rule includes consideration of the degree to which the goals were not met; the importance of those unmet goals to the plan as a whole; and any circumstances beyond the control of the bank.[1410] The proposal to include ''number of unmet goals'' was removed as a consideration factor, consistent with the previously discussed restructuring of the strategic plan option away from the exclusive use of goals to evaluate a bank's performance under the plan.

The agencies decline to adopt the commenters' suggestion that an improvement plan be required if the bank did not substantially meet its stated goals. Since final § ____.43(b)(5) (content and availability of the public file) requires that 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 agencies believe this provision covers the suggested ''improvement plan'' made by commenters.

Similar to the proposal,[1411] final § ____.27(j)(3) provides guidance for assessing and rating the performance of a bank evaluated under a plan in appendix D. In addition to the general rating information in paragraph a of final appendix D that applies to all banks (including those evaluated under an approved plan), the information for assessing ratings specific to the strategic plan option is maintained in paragraph f of final appendix D. As discussed previously, the paragraph provides that the appropriate Federal financial supervisory agency evaluates a bank's performance under a plan consistent with the rating methodology specified in the plan pursuant to final § ____.27(g)(6). Finally, to the extent it meets the size requirements therein, a bank evaluated under the strategic plan option is subject to the minimum performance test conclusion requirements in paragraph g of final appendix D that would apply to the bank in the absence of an approved plan.

Section ____.28 Assigned Conclusions and Ratings

Consistent with the CRA statute, the current CRA regulations provide that the agencies assign a bank an institution rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' in connection with a CRA examination.[1412] The agencies also assign ratings for a bank's performance in each State in which the bank maintains one or more branches or other facilities that accept deposits and in each multistate MSA in which the bank maintains branches or other facilities that accept deposits in two or more states within the multistate MSA.[1413] Prior to reaching these overall ratings, the agencies assign performance test ratings at the State, multistate MSA, and institution level for each applicable performance test (*i.e.,* lending, investment, and service tests; community development test; small bank performance standards). With one exception, the current rating scale used for performance test ratings mirrors that

[1409] *See* proposed § ____.27(h)(2).

[1410] *See* final § ____.27(j)(2)(i) through (iii).

[1411] *See* proposed § ____.27(i)(1).

[1412] 12 U.S.C. 2906(b)(2), implemented by current 12 CFR ____.28(a). The narrative descriptions of the ratings for performance under each evaluation method are in appendix A to the current CRA regulations. *See also* Q&A appendix A to part ____—Ratings.

[1413] 12 U.S.C. 2906(d). If the agencies assign a bank a rating for a multistate MSA, any rating assigned for a State does not take into account the bank's performance in the multistate MSA.

of the four statutory institution-level ratings. For large banks, however, the agencies bifurcate the ''Satisfactory'' rating for each of the three performance tests into ''High Satisfactory'' and ''Low Satisfactory.''[1414] In addition, the agencies separately summarize conclusions regarding the institution's performance in each MSA and the nonmetropolitan portion of each State.[1415]

Current examination procedures allow for assessment areas to be reviewed pursuant to either a full-scope or a limited-scope review. Full-scope reviews employ both quantitative and qualitative factors, while limited-scope reviews are primarily quantitative and generally carry less weight in determining the overall State, multistate MSA, or institution rating.[1416] The agencies primarily base a bank's component ratings on the bank's performance in each assessment area examined using full-scope examination procedures. For large banks, performance conclusions in assessment areas not examined using the full-scope procedures are expressed as ''exceeds,'' ''is consistent with,'' or ''is below'' the institution's performance in the relevant MSA or nonmetropolitan portion of the State, in the State, or overall, as applicable.[1417] For small banks and intermediate small banks, examiners consider facts and data related to the institution's activities to ensure that performance conclusions in assessment areas not examined using the full-scope procedures are ''not inconsistent with'' the conclusions based on the assessment areas that received full-scope reviews.[1418]

Under the current approach, the agencies use a fact-specific review to determine whether an overall institution CRA rating should be downgraded due to evidence of discriminatory or other illegal credit practices including, but not limited to, evidence of violations of laws listed in current § ____.28(c)(1).[1419]

Proposed § ____.28 described how conclusions and ratings would be assigned under the proposed CRA framework using a consistent, quantifiable approach. The proposal distinguished between ''conclusions''—which generally referred to the bank's performance on a particular performance test for each assessment area; each State and multistate MSA, as applicable; and the institution—and ''ratings''—which generally referred to a bank's overall CRA performance across performance tests for each State and multistate MSA, as applicable, and the institution. Generally, under the proposed framework, the agencies would develop conclusions for a bank's performance on each applicable performance test for: each assessment area; each State and multistate MSA, as applicable; and the institution. Subject to test-specific variations as described in the section-by-section analysis of §§ ____.22 through ____.26, ____.29, and ____.30, the agencies generally proposed to assign both a conclusion (*e.g.,* ''Low Satisfactory'') and a performance score (*e.g.,* 5.7) based on a bank's performance under a particular performance test. To determine an intermediate bank or large bank rating for the State, multistate MSA, or the institution, the agencies proposed to aggregate a bank's performance scores for each applicable performance test, with specific weights assigned to the performance score of each performance test. Unlike under the current approach, the proposed CRA framework did not provide for limited-scope reviews.

Numerous commenters weighed in on the provisions related to assigned conclusions and ratings in proposed § ____.28.

Final § ____.28 generally adopts the proposed framework for assigned conclusions and ratings discussed above, with revisions discussed in the more detailed section-by-section analysis below.

Section ____.28(a) Conclusions

Under the current CRA regulations, the agencies assign performance test ratings for the performance tests that apply to the bank at the institution level. The agencies also assign performance test ratings at the State and multistate MSA level and summarize conclusions regarding a bank's performance in each MSA and the nonmetropolitan portion of each State with an assessment area.[1420]

Under final § ____.28(a), ''conclusions'' generally refer to bank performance on a particular performance test for a specific geographic area (*e.g.,* assessment areas, States, and multistate MSAs, as applicable) and the institution overall. The agencies assign conclusions and associated test performance scores for the performance of a bank in each State and multistate MSA, as applicable, and for the institution based on a weighted average of assessment area conclusions, as well as consideration of additional performance test-specific factors at each level.[1421] These performance scores are mapped to conclusion categories to provide performance test conclusions for specific geographic areas and the institution overall. As explained below, the agencies are finalizing § ____.28(a) with edits to specify how the agencies will assign conclusions for banks operating under a strategic plan, the geographic areas where the agencies will assign conclusions, consistent with the statute, and other clarifying edits.

The Agencies' Proposal

Proposed § ____.28(a)(1) provided that, other than for a small bank evaluated under the small bank performance standards in proposed § ____.29(a), the agencies would assign one of five conclusions for a bank's performance under the respective performance tests that apply to the bank: ''Outstanding''; ''High Satisfactory''; ''Low Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.'' Under proposed § ____.28(a)(2), for small banks evaluated under the small bank performance standards in proposed § ____.29(a), 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. Proposed appendix C, as well as proposed appendix E for small banks and intermediate banks, specified how the agencies would develop conclusions for each performance test that applies to a bank, as discussed in the section-by-section analysis of §§ ____.22 through ____.26, above, and ____.29 and ____.30, below.

Comments Received

The agencies received a few comments regarding proposed § ____.28(a), all of which related to the proposed bifurcation of the ''Satisfactory'' conclusion category into ''High Satisfactory'' and ''Low

[1414] *See* Q&A § ____.28(a)—3; current appendix A, paragraph (b); Interagency Large Institution CRA Examination Procedures.

[1415] *See* Interagency Large Institution CRA Examination Procedures; Interagency Intermediate Small Institution CRA Examination Procedures; Interagency Small Institution CRA Examination Procedures.

[1416] *See id.*

[1417] Interagency Large Institution CRA Examination Procedures.

[1418] Interagency Small Institution CRA Examination Procedures; Interagency Intermediate Small Institution CRA Examination Procedures.

[1419] *See* current 12 CFR ____.28(c).

[1420] *See* 12 U.S.C. 2906(b), (d).

[1421] *See* the section-by-section analyses of §§ ____.22 through ____.26, ____.29, and ____.30 for detailed discussion of how the agencies develop conclusions and performance scores for each performance test. The section-by-section analyses of §§ ____.15 and ____.21, respectively, also discuss the impact and responsive review for community development loans, investments, and services and the agencies' consideration of performance context.

Satisfactory'' conclusions. A few commenters expressly supported the proposal to assign conclusions of ''High Satisfactory'' and ''Low Satisfactory.'' In contrast, another commenter stated that the agencies did not articulate a sufficient justification for bifurcating the ''Satisfactory'' conclusion category into ''High Satisfactory'' and ''Low Satisfactory.'' This commenter stated that a single ''Satisfactory'' category is sufficient for community bank examinations and reporting purposes; therefore, if ''High Satisfactory'' and ''Low Satisfactory'' conclusions are retained, they should only apply to the very largest banks. Alternatively, a few commenters suggested assigning conclusions of ''High Satisfactory'' or ''Satisfactory'' within the ''Satisfactory'' range because ''Low Satisfactory'' has a negative connotation and will unnecessarily subject banks with ''Low Satisfactory'' conclusions to criticism and a misperception about their satisfactory performance in serving the needs of their customers and communities.

Final Rule

In final § ___.28(a), the agencies are adopting the proposal with clarifying revisions, including to the structure of proposed § ___.28(a). Specifically, final § ___.28(a)(1) addresses State, multistate MSA, and institution test conclusions and performance scores. The agencies are adopting final § ___.28(a)(1)(i), renumbered from proposed § ___.28(a)(1), with clarifying revisions. Specifically, final § ___.28(a)(1)(i) provides that, in general, for each of the applicable performance tests pursuant to final §§ ___.22 through ___.26 and ___.30, the agencies assign conclusions and associated test performance scores of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the performance of a bank in each State and multistate MSA, as applicable pursuant to § ___.28(c), and for the institution.[1422] As reflected in paragraph b of final appendix C, this includes a small bank that opts to be evaluated under the Retail Lending Test in § ___.22. Final § ___.28(a)(1)(ii), consistent with proposed § ___.28(a)(2), provides that the agencies assign conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the performance of a small bank evaluated under the Small Bank Lending Test in final § ___.29(a)(2) in each State and multistate MSA, as applicable pursuant to § ___.28(c), and for the institution. The agencies are also adopting new § ___.28(a)(1)(iii) in the final rule, which provides that the agencies assign conclusions for the performance of a bank operating under a strategic plan pursuant to § ___.27 in each State and multistate MSA, as applicable pursuant to § ___.28(c), and for the institution in accordance with the methodology of the bank's strategic plan and final appendix C. *See* the section-by-section analysis of § ___.27 for additional information.

After consideration of the comments, the agencies are finalizing the proposed bifurcation of the ''Satisfactory'' conclusion category into ''High Satisfactory'' and ''Low Satisfactory'' conclusions for all banks except small banks evaluated under the Small Bank Lending Test in final § ___.29(a)(2). The proposed ''High Satisfactory'' and ''Low Satisfactory'' conclusions will allow the agencies to better differentiate between performance on the higher end or on the lower end of the ''Satisfactory'' range, as compared to developing conclusions with only four categories, including a single ''Satisfactory'' category. Further, applying the same conclusion categories to all banks, except small banks evaluated under final § ___.29(a)(2), will allow the agencies to apply a quantifiable method of assigning conclusions and ratings consistently and uniformly (*i.e.,* assigning a ''High Satisfactory'' conclusion a performance score of ''7'' and a ''Low Satisfactory'' conclusion of performance score of ''6'' and weighting conclusions as prescribed) to these banks.

The agencies did not adopt commenter suggestions to rename the ''Low Satisfactory'' conclusion category as ''Satisfactory'' because the agencies believe that the bifurcated ''Satisfactory'' conclusion category is well understood to reflect performance within a satisfactory range, and because changing this long-standing terminology could cause confusion.

The agencies are also adopting final § ___.28(a)(2), a new provision, to clarify that, pursuant to 12 U.S.C. 2906, the agencies will provide conclusions separately for metropolitan areas in which a bank maintains one or more domestic branch offices (defined in the statute to mean any branch office or other facility of a regulated financial institution that accepts deposits, located in any State[1423]) and for the nonmetropolitan area of a State if a bank maintains one or more domestic branch offices in such nonmetropolitan area. The agencies added this provision to provide a cross-reference to this statutory requirement in the final rule.

Section ___.28(b) Ratings

Similar to the current CRA regulations, final § ___.28(b) describes how the agencies will assign ratings for each State and multistate MSA, as applicable, and for the institution using the four rating categories established by statute. As proposed, however, the agencies have updated the ratings framework to assign performance scores to each applicable performance test that are combined using a prescribed weighting methodology to assign ratings, and that are subject to adjustment based on additional considerations, discriminatory or other illegal credit practices, and past performance, as applicable.

Many commenters provided comments on the current rating framework and identified issues they perceived with the current approach. Specifically, many commenters stated that there is ratings inflation under the current CRA framework, noting that 98 percent of banks receive at least a ''Satisfactory'' rating, with 90 percent of banks receiving a ''Satisfactory'' rating, specifically. A few of these commenters noted that it was implausible that such a large number of banks were performing in the same manner, with a commenter stating that this was impossible given that racism and discriminatory lending persist. A few commenters suggested that the agencies should address these concerns by incorporating additional quantitative tools into the performance tests, improving examination rigor, or increasing objectivity in performance measures. In contrast, a commenter disagreed with the idea that CRA is flawed because of the high percentage of banks that receive at least a ''Satisfactory'' rating, emphasizing that the ratings reflect that most banks are community banks that treat their customers and communities fairly and do not discriminate.

Many commenters also conveyed that the rating system under the current regulations does not effectively capture distinctions in performance. These commenters appeared to believe that more distinction would result in more banks being identified as significantly lagging behind their peers, which would motivate them to increase their reinvestment activity and improve their ratings.

As described below, the agencies are finalizing § ___.28(b) as proposed with

[1422] Refer to the section-by-section analysis of § ___.21 for additional discussion of the performance score scale.

[1423] *See* 12 U.S.C. 2906(e)(1).

revisions, including adjusting the weights assigned to the performance tests for large banks and more fully explaining the ratings framework in § ____.28(b).

Section ____.28(b)(1) and (2) in General, State, Multistate MSA, and Institution Ratings and Overall Performance Scores

Consistent with the CRA statute, the agencies currently assign ratings for each State and multistate MSA, as applicable, and for the institution. As described below, the agencies proposed in § ____.28(b)(1) and (2) that they generally will assign ratings based on an overall performance score for the State, multistate MSA, and institution derived by combining the bank's performance scores on applicable performance tests. The agencies are generally finalizing the general ratings framework in § ____.28(b)(1) and (2) as proposed, with revisions discussed below.

The Agencies' Proposal

Proposed § ____.28(b)(1) provided that the agencies would assign ratings for a bank's overall performance at the State, multistate MSA, and institution level of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' Other than for a small bank evaluated under the small bank performance standards in § ____.29(a), a wholesale or limited purpose bank evaluated under the Community Development Financing Test for Wholesale or Limited Purpose Banks in § ____.26, and a bank evaluated based on a strategic plan under § ____.27, the agencies proposed in § ____.28(b)(2) to assign a rating based on the bank's overall performance at the State, multistate MSA, and institution levels, respectively, and a related performance score, derived as provided in proposed appendix D. As provided in appendix D, the agencies proposed to aggregate a bank's performance scores for each applicable performance test, with specific weights assigned to the performance score of each performance test, to derive the bank's rating. The same weighting approach would be used to develop ratings for each State and multistate MSA and for the institution. As described in proposed appendix D, the agencies would assign a rating corresponding with the rating category that is nearest to the aggregated performance score, as follows: a performance score of less than 1.5 would result in a rating of ''Substantial Noncompliance''; a performance score of 1.5 or more but less than 4.5 would result in a rating of ''Needs to Improve''; a performance score of 4.5 or more but less than 8.5 would result in a rating of ''Satisfactory''; and a performance score of 8.5 or more would result in a rating of ''Outstanding.'' The agencies also specified in proposed § ____.28(b)(2) that the bank's rating could be adjusted based on evidence of discriminatory or other illegal practices in accordance with § ____.28(d).

Comments Received

A few commenters remarked at a high level on the clarity, complexity, and challenges of the proposed rating system. Specifically, a commenter expressed that the proposal provided a more transparent and consistent approach to determining a bank's overall CRA rating. Another commenter stated, however, that the proposed rating system appeared to be overly complicated, and a ''Satisfactory'' rating may be unachievable for some banks. This commenter recommended further testing of the proposal prior to implementation due to the number of unknowns.

A commenter requested that the agencies improve the proposal by enabling banks to calculate and determine a presumptive rating prior to an examination for all bank sizes and models. In contrast, another commenter asked the agencies to carefully consider the overall structure of the scoring and weighting of various activities under CRA before finalizing a dramatic change, expressing concern that the transparency and predictability that both community groups and banks have requested might have the unintended consequence of starting a race to the bottom.

A few commenters asserted that the CRA ratings framework should better reflect distinctions in performance. One commenter asserted that the proposal did not describe the proposal's impact on CRA ratings except to hint that banks may continue to receive the same ratings. Another commenter conveyed that allowing the vast majority of banks to continue to pass their CRA examinations will not result in banks engaging in serious efforts to positively impact communities of color and low- and moderate-income neighborhoods. A few commenters suggested a five-tier overall rating system, for example, by differentiating between ''Low Satisfactory'' and ''High Satisfactory'' overall ratings, to better distinguish performance. These commenters suggested that doing so would distinguish between merely adequate activity, reasonably good activity, and truly superior banking efforts, and would motivate banks to be more responsive to COVID–19 recovery needs. Another commenter recommended a point system that would show more distinctions. A few commenters recommended that the agencies assign a conclusion and performance score for each performance test at the assessment area level and provide performance scores at the overall rating level to accurately depict distinctions in performance.

A few commenters also suggested that the CRA ratings framework should better incentivize high ratings. One commenter stated that the agencies have made it more difficult to achieve ''Satisfactory'' and ''Outstanding'' ratings, which could lead to reduced incentives to strive for such ratings and, consequently, undermine the goals of CRA. Another commenter expressed that the overly simplistic formula proposed for rating banks means that more complicated affordable housing deals—those that help seniors, disabled persons, and rural communities—will not happen. A commenter stated that, under the proposal, more incentives are needed to motivate banks to achieve an ''Outstanding'' rating, which would help distinguish their performance against peers. Another commenter remarked that when all banks essentially receive the same rating, the motivation to improve dissipates. Another commenter specified that the proposal should provide some financial motivation for an ''Outstanding'' rating (*e.g.,* reduced taxes, reduced deposit insurance assessments, reduced borrowing rates from the Federal Reserve discount window) because being downgraded from an ''Outstanding'' to a ''Satisfactory'' is not much of a disincentive as 90 percent of banks receive ''Satisfactory'' ratings.

Many commenters offered ideas on how findings regarding race and ethnicity should appropriately be factored into a bank's rating. One commenter generally indicated that, regarding racial and ethnic equality, the CRA examination process should incorporate both incentives for positive activities and deterrents and penalties for harmful practices. More specifically, another commenter stated that material decreases in performance by race argue for a ''Needs to Improve'' rating and material increases in performance should be a factor in earning an ''Outstanding'' rating.

Another commenter suggested providing for a presumptive ''Satisfactory'' rating for U.S. Department of the Treasury-certified CDFIs, given the existing annual certification requirements in place for these institutions.

Final Rule

The agencies are adopting final § ____.28(b)(1) and (2) largely as proposed, but with some revisions for clarity discussed below. Final § ____.28(b)(1) provides that the agencies assign a rating for a bank's overall CRA performance of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' in each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution. These ratings 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.

The agencies carefully considered comments that both suggested the proposed CRA rating framework was overly complicated and overly simplistic and, ultimately, believe that the proposed rating system appropriately balances the need for a clear and objective rating system with the need to effectively capture and distinguish between bank performances. Further, the agencies believe that the final rule provides for a quantifiable, consistent approach to assigning conclusions and ratings. The agencies also considered comments that suggested that the CRA ratings framework should be transparent and objective and should recognize distinctions in performance.

Final § ____.28(b)(2) addresses ratings and overall performance scores. Under the finalized ratings approach, the agencies will generally assign ratings for each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution using performance scores associated with a bank's assigned conclusions. For large banks and intermediate banks, the agencies will use established weights, as discussed further in the section-by-section analysis of § ____.28(b)(3), to aggregate performance scores associated with the assigned conclusions for each performance test and, in turn, calculate a performance score associated with the bank's assigned rating. For large banks, intermediate banks, small banks that opt into the Retail Lending Test, and limited purpose banks, final § ____.28(b)(2)(i) specifies that the agencies will calculate and disclose the bank's overall performance score for each State and multistate MSA, as applicable, and the institution overall. Final § ____.28(b)(2)(i) further provides that the agencies will use the overall performance score to assign a rating for the bank's overall performance in each State and multistate MSA, as applicable, and for the institution, subject to adjustments based on evidence of discriminatory or other illegal credit practices pursuant to final § ____.28(d) and consideration of past performance pursuant to § ____.28(e). The agencies added final § ____.28(b)(2)(ii) to clarify that a bank's overall performance scores are based on the bank's performance score for each applicable performance test and derived as provided in § ____.28(b)(3), as applicable and as discussed below, and in final appendix D. The agencies also anticipate disclosing the performance scores associated with the bank's assigned conclusions for each performance test. The agencies expect that this will provide banks and the public with meaningful information about each bank's CRA performance. The agencies believe this approach is responsive to several comments that suggested the agencies assign and provide performance scores or develop a points system to depict distinctions in performance. The agencies acknowledge that banks will not be able to calculate and determine a presumptive rating prior to a CRA examination. The agencies decline to adopt this suggestion because such an approach would hamper the agencies' ability to evaluate qualitative components of a bank's CRA performance.

In response to commenter suggestions to build more distinctions in performance into the CRA rating framework, the agencies note that 12 U.S.C. 2906(b)(2) prescribes the four-tier ratings framework under the current approach and the final rule. The agencies believe, however, that publishing performance scores associated with the bank's assigned conclusions and ratings will provide meaningful information about distinctions in bank performance because performance scores may be more nuanced than assigned conclusions and ratings. For example, if a large bank's overall performance score for the institution, derived based on the bank's performance score for each applicable test, is an 8.1, the agencies would assign the bank an institution rating of ''Satisfactory,'' subject to § ____.28(d), but the performance score would indicate that that the bank's performance is on the higher end of the ''Satisfactory'' range.

The agencies also believe that the final CRA framework adequately incentivizes banks to strive to achieve an ''Outstanding'' rating by disclosing performance scores, conclusions, ratings, and other information about a bank's CRA performance to the public. For example, a bank may indicate to its community that the agencies have evaluated its CRA performance as ''Outstanding,'' as applicable. The agencies note that providing financial incentives under other statutes and regulations for banks that achieve ''Outstanding'' CRA ratings (*e.g.,* reduced taxes, reduced deposit insurance assessments, reduced borrowing rates from the Federal Reserve discount window), as suggested by one commenter, is outside the scope of this rulemaking and, at least in some cases, would not be within the agencies' statutory authority.

The agencies decline to make additional revisions to the CRA ratings framework to address how findings regarding race and ethnicity should be factored into a bank's rating. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Although the agencies recognize that CDFIs play an important role in promoting community development and helping to meet the credit needs of low- or moderate-income individuals and communities, the agencies do not think it would be appropriate to create a presumption that a U.S. Department of the Treasury-certified CDFI subject to CRA would receive a ''Satisfactory'' rating. The CRA and the U.S. Treasury Department's CDFI Fund advance similar objectives but have distinct requirements. Moreover, the agencies are required by statute to assess a bank's record of meeting the credit needs of its entire community,[1424] including low- and moderate-income neighborhoods, and the agencies believe it would not be appropriate for the agencies to rely on the Treasury Department's certification to fulfill their statutory obligation.

For these reasons, the agencies are adopting final § ____.28(b)(1) and (2) with clarifying revisions from the proposal. The agencies added a sentence in final § ____.28(b)(1) that states that the ratings assigned 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, which reflects statutory requirements. The agencies proposed a similar statement in § ____.21 and believe it is appropriate to include this statement in § ____.28 as well, to reinforce the statutory foundation for bank ratings. The agencies also reworded § ____.28(b)(1)

[1424] *See* 12 U.S.C. 2903(a).

for clarity. As discussed above, the agencies also made revisions to proposed § ____.28(b)(2) in the final rule, including restructuring § ____.28(b)(2) to include paragraphs (b)(2)(i) and (ii) to clarify that the agencies will disclose a bank's overall performance score in each State and multistate MSA, as applicable, and for the institution, and will use the overall performance scores as the basis for the bank's ratings, subject to § ____.28(d) and (e). Final § ____.28(b)(2)(i) also clarifies the banks for which the agencies will calculate and disclose performance scores, with one change from the proposal. The agencies believe it is appropriate to calculate and disclose a limited purpose bank's overall performance score for each State and multistate MSA, as applicable, and the institution, which will be based on the bank's performance score on the Community Development Financing Test for Limited Purpose Banks.

Section ____.28(b)(3) Weighting of Performance Scores

Under current large bank CRA examination procedures, examiners use a rating scale in the Interagency Questions and Answers to convert ratings assigned for each performance test into point values; examiners then add those point values together to determine the overall institution rating.[1425] The agencies do not publish, however, the points assigned to each performance test and the overall points that correspond to the bank's overall rating in its performance evaluation. With the exception of this rating scale for large banks, 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 regulations. For example, exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others.[1426]

For large banks, paragraph b of proposed appendix D provided that the agencies would determine a large bank's State, multistate MSA, and institution ratings by combining the bank's performance scores across all four performance tests applicable to large banks. Similarly, for intermediate banks, paragraph c of proposed appendix D provided that to determine an intermediate bank's State, multistate MSA, and institution ratings, the agencies would combine an intermediate bank's performance scores for its State, multistate MSA, and institution performance under the Retail Lending Test and the intermediate bank community development evaluation or, if the bank opts in, the Community Development Financing Test. For both large banks and intermediate banks, the agencies proposed to consistently weight the respective performance tests applicable to each bank when assigning ratings for each State and multistate MSA, as applicable, and the institution.

Section ____.28(b)(3)(i) Large Bank Performance Test Weights

Under the current rating scale for large banks, although there is some variation based on the points assigned for each performance test rating, the lending test generally accounts for 50 percent and the investment test and service test each generally account for 25 percent of a large bank's rating.[1427] In paragraph b of proposed appendix D, the agencies proposed to weight the performance score for each performance test applicable to a large bank by multiplying it by a percentage established for the performance test. The agencies have generally retained this approach in final § ____.28(b)(3)(i) and have described the approach in more detail in paragraph b of final appendix D. As described below, the agencies are adopting in the final rule weights, with revisions relative to the proposal, for the Retail Lending Test, the Retail Services and Products Test, and the Community Development Financing Test, as well as revisions to streamline paragraph b of appendix D. The agencies are finalizing the proposed weight for the Community Development Services Test.

The Agencies' Proposal and Comments Received

For large banks, the agencies proposed to weight performance scores for each test as follows: Retail Lending Test at 45 percent; Community Development Financing Test at 30 percent; Retail Services and Products Test at 15 percent; and Community Development Services Test at 10 percent.[1428]

The agencies received many comments on the proposed weighting of the large bank performance tests from a broad range of commenter types. Most of these commenters discussed the proposed weighting of retail activities, reflected in the Retail Lending Test and Retail Services and Products Test conclusions, compared to the weighting of community development activities, reflected in the Community Development Financing Test and Community Development Services Test conclusions. Generally, these commenters expressed concerns that community development activities were weighted too lightly and that the proposed weighting would disincentivize community development activities. Many commenters suggested that retail activities and community development activities be weighted equally, while some commenters provided specific suggestions for the weighting of the large bank performance tests. Finally, a few commenters suggested that the agencies incorporate flexibility into the weighting framework.

A commenter expressed support for the proposed weighting for large banks, stating that the proposed weighting places appropriate emphasis on the most important aspects of a bank's CRA activities.

Weighting of community development activities compared to retail activities. Most commenters who commented on the proposed weighting of the performance tests conveyed concerns that the proposed weighting of the large bank performance tests overweighted a bank's retail activities compared to its community development activities. These commenters asserted that the proposed weighting would disincentivize and could lessen impactful community development activities. A commenter expressed that the proposed unequal weighting could lead banks to focus more on their retail activities, which also tend to be less expensive and a larger part of their business models. A few commenters stated that the proposed weights would not provide an adequate incentive for banks to meet the community development needs of rural and high-need areas. Moreover, one commenter asserted that there was a lack of an empirical basis for assigning community development activities a lower weight.

Most commenters on the proposed weighting of the large bank performance tests remarked that, due to the heavy weighting of retail activities, it would be extremely difficult or impossible to attain an ''Outstanding'' rating without an ''Outstanding'' performance conclusion on the Retail Lending Test. The majority of these commenters stated that, due to such weighting, the difficulty of achieving an ''Outstanding'' rating would disincentivize banks to pursue this standard. For example, a commenter explained that the proposed

[1425] *See* Q&A § ____.28(a)—3; current appendix A, paragraph (b); *see also* Interagency Large Institution CRA Examination Procedures.

[1426] *See* Q&A Appendix A to part ____—1.

[1427] *See id.*

[1428] *See* proposed appendix D, paragraph b.

weighting for the Retail Lending Test was too high because, for CRA to be effective in providing incentives for institutions to stretch, all banks should have a reasonable opportunity to achieve an ''Outstanding'' rating.

Some commenters expressed concerns that the proposed weighting would disincentivize banks from seeking an ''Outstanding'' conclusion for their community development performance, which a commenter stated would be counter to the intent of the original legislation and decades of established practice and investment. One of these commenters expressed concern that the proposed approach may render the Community Development Financing Test immaterial to a bank's ultimate rating and create a race to the bottom when coupled with peer-based performance evaluations.

Many commenters noted that, under the proposal, banks could receive a ''Satisfactory'' rating even if they performed poorly on the Community Development Financing Test, including receiving a ''Needs to Improve'' conclusion. A few commenters stated that this aspect of the proposal places low value on community development activities and risks banks deprioritizing community development, running counter to the intent of the CRA statute. Lastly, a commenter believed that the proposed weighting, which would allow a bank to receive an overall ''Satisfactory'' rating even if it received a ''Needs to Improve'' conclusion on the Community Development Financing Test as long as it received ''Low Satisfactory'' conclusion on the Retail Lending Test, sets an incredibly low bar that most banks would clear and could disincentivize banks from pursuing community development activities.

Some commenters expressed concerns about the impact the proposed weighting would have on certain community development activities, particularly that the proposed weighting would reduce community development equity financing, including participation in the LIHTC and NMTC programs, and would negatively impact affordable housing. Additionally, one commenter suggested that the proposed weighting would significantly diminish the community finance ecosystem and the CDFI industry. Another commenter expressed concern that the proposed weighting of the Community Development Financing Test would risk reducing the amount of long-term, patient capital flowing to essential projects in the form of community development investments.

Some commenters remarked on the potential negative effect of the proposed weighting on bank risk profiles and certain business models. A few commenters stated that the high weight placed on the Retail Lending Test would disadvantage business models that do not focus on retail lending in particular geographies or overall. Other commenters noted that the high weight for the Retail Lending Test would encourage excessive risk-taking to meet CRA standards and adversely impact safety and soundness. One commenter suggested that a commercial bank could feel pressured by the weighting to compete with credit unions for certain personal products, creating more risk in its portfolio. Another commenter stated that the proposal failed to adequately consider that many banks are not structured to offer large retail loans due to the specific needs of their markets. This commenter asserted that a bank with a business model of small-dollar retail lending with an innovative, complex, and responsible community development lending and investment strategy would not be positioned to earn an ''Outstanding'' rating. Another commenter stated that proposed weight of the Retail Lending Test would be detrimental to its overall CRA rating and would essentially take staff away from helping low- and moderate-income individuals in its community.

Suggestions to adjust the proposed weighting of the performance tests for large banks. Many commenters suggested weighting retail and community development activities equally, with one commenter explaining that this would ensure that resources are more effectively directed to underserved communities. A community development organization stated that the Community Development Financing Test should carry the same, if not more, weight relative to any other performance test, including the Retail Lending Test. Another community development organization likewise supported a stronger role for community development lending and investment over retail lending.

A number of commenters proposed specific alternatives to achieve the equal weighting of retail and community development activities. To achieve equal weight, a few commenters suggested weighting the Retail Lending Test and the Community Development Financing Test each at 40 percent and the Retail Services and Products Test and the Community Development Services Test each at 10 percent. A few other commenters suggested weighting the Retail Lending Test and the Community Development Financing Test each at 35 percent and the Retail Services and Products Test and the Community Development Services Test each at 15 percent. Another commenter suggested that the Community Development Financing Test should be increased to 45 percent, with 25 percent for community development lending and 20 percent for community development investments, and the weight assigned to the Community Development Services Test should be reduced to five percent as many community development services are eligible to be considered under the Retail Services and Products Test. Another commenter suggested that the agencies weight the Retail Lending Test at 35 percent, the Retail Services and Products Test at 15 percent, the Community Development Financing Test at either 40 percent or 45 percent, and the Community Development Services Test at either 10 percent or 5 percent, with the Community Development Services Test receiving the higher weight if grants are included in that performance test.

A few commenters recommended weighting alternatives that did not provide retail and community development activities equal weight, but which generally increased the weight afforded to community development activities. Specifically, one commenter suggested weighting the Retail Lending Test and the Community Development Financing Test each at 40 percent, the Retail Services and Products Test at 15 percent, and the Community Development Services Test at five percent. A commenter recommended weighting community development activities at 60 percent for all banks. Another commenter suggested that the agencies give community development activities a 75 percent weight and retail activities a 25 percent weight, as CRA community development activities have been attributed to reducing the depth of the nation's poverty levels.

A few commenters had additional comments regarding the weighting of community development services. Several commenters stated that the Community Development Services Test is weighted too heavily at 10 percent. One commenter suggested that the Community Development Services Test should be weighted at 5 percent. In contrast, a few commenters suggested that the proposed weight for the Community Development Services Test should be raised as it is too light to encourage effective development of community development services. These commenters suggested weights between 15 percent and 30 percent, although one commenter noted that increasing the weighting of community development services could result in less importance associated with community development lending and investments. A commenter remarked that the weighting of the Community Development Services Test at 10 percent provided large banks with little incentive to strive for an ''Outstanding'' over a ''Satisfactory'' performance conclusion.

A few commenters expressed concern regarding the weighting of retail services and products relative to their importance in assisting communities. A commenter expressed concern that combining all of these critical components of CRA—meaningful access to branches, accounts, and responsive credit products—would give them insufficient consideration in a performance test representing only 15 percent of a bank's CRA rating. One commenter recommended that the rating system emphasize lending, branches, fair lending performance, and responsible loan products for working class families. Another commenter believed that the proposed rating system would devalue the importance of maintaining branches in low- and moderate-income neighborhoods.

Weighting suggestions based on different performance test frameworks. Commenters also suggested weighting based on changes to the four-test framework. For example, a commenter suggested combining the retail performance tests into one performance test and the community development performance tests into one performance test and then giving these combined tests equal weight. A few commenters suggested combining the community development performance tests into one performance test and weighting the combined performance test at 45 percent or 50 percent. Another commenter suggested eliminating the Community Development Services Test and weighting the Community Development Financing Test at 50 percent. Alternatively, a CDFI proposed a five-test weighting scheme with the Retail Lending Test weighted at 35 percent, the Retail Services and Products Test at 15 percent, a Community Development Lending Test at 20 percent, a Community Development Investment Test at 20 percent, and the Community Development Services Test at 10 percent (with grants included under the Community Development Services Test). A few other commenters suggested establishing a Community Development Test weighted at 50 percent, with weighted subtests within the Community Development Test for investments, lending, and services.

Comments regarding weighting flexibility. A few commenters recommended incorporating flexibility in the weighting framework for large banks. A commenter suggested that applying the same weighting to the four large bank tests regardless of how important retail banking is to the bank being evaluated could lead to a disproportionate emphasis on retail loans for banks that focus on other business lines and primarily serve low- and moderate-income people through their community development activities, so the agencies should allow flexibility to accommodate banks with different business models. This commenter suggested, at a minimum, permitting weighting flexibility in strategic plans. Other commenters supported weighting flexibility to allow for other factors such as the availability of funding and variations in market demand and opportunities. A commenter suggested that examiners should have leeway to consider performance context in weighting.

Final Rule

The agencies have considered the many comments that expressed concerns about the proposed weighting of the large bank performance tests and made suggestions to revise the weighting to ensure that community development activities receive appropriate weight. After careful consideration of these comments and further reflection on the proposal, the agencies are adopting modified weighting for the performance tests for large banks in final § ____.28(b)(3)(i) and paragraph b of final appendix D, which will result in equal weighting for community development activities and retail activities.

Specifically, in calculating ratings for large banks at the State, multistate MSA, and institution level, the agencies will weigh the performance scores for the applicable performance tests for large banks as follows:[1429] the Retail Lending Test at 40 percent; the Community Development Financing Test at 40 percent; the Retail Services and Products Test at 10 percent; and the Community Development Services Test at 10 percent. In order to increase the weight of the Community Development Financing Test by 10 percent (from 30 percent to 40 percent), the agencies will reduce by 5 percent the weights for both the Retail Lending Test (from 45 percent to 40 percent) and the Retail Service and Products Test (from 15 percent to 10 percent). The agencies considered a number of weighting alternatives, including those suggested by commenters, and determined that the weighting for large bank performance test scores adopted in the final rule most appropriately balances the many considerations involved in establishing these weights. As discussed below, this change will also mean that retail activities and community development activities will be equally weighted for both intermediate banks and large banks under the respective weighting for applicable performance tests.

The agencies expect that increasing the weights of the community development tests so that the combined weight of the Community Development Financing Test and the Community Development Services Test accounts for half of a large bank's ratings, and the Community Development Financing Test, in particular, accounts for 40 percent of a large bank's ratings, will address many concerns expressed by commenters. Specifically, the increased weight will more strongly incentivize community development loans and investments, including certain community development activities that commenters identified as particularly impactful. The agencies also believe that the weighting under the final rule will encourage banks to pursue ''Outstanding'' ratings based on ''Outstanding'' performance on either the Community Development Financing Test or the Retail Lending Test, or both, as appropriate based on the bank's capacity and business model. Similarly, the finalized weighting will make it more difficult for a bank to obtain an ''Outstanding'' or ''Satisfactory'' rating with a ''Needs to Improve'' conclusion on the Community Development Financing Test. Further, the increased weight placed on community development lending and investment recognizes that not all community credit needs can be met through retail lending. For example, affordable housing is a widespread community need that banks generally may not be able to address through retail lending.

After extensive consideration of the comments, the agencies also believe that the corresponding reduction in the assigned weight for the Retail Lending Test from 45 percent to 40 percent is appropriate. The agencies note that, although the lending test generally receives 50 percent weight under the current CRA rating framework, the final

[1429] Refer to the section-by-section analysis of §§ ____.22 through ____.25 for discussion of how the agencies derive the performance score for each performance test applicable to a large bank. Generally, performance scores are presented as unrounded or rounded numbers, depending on the applicable performance test, on the 10-point scale described in the section-by-section analysis of § ____.21.

Retail Lending Test does not have the same scope as the current lending test. For example, community development lending, which is currently considered under the large bank lending test, will be considered with community development investments under the Community Development Financing Test. Under the final rule, multifamily lending also will be exclusively evaluated under the Community Development Financing Test. Further, as discussed in the section-by-section analysis of § ____.28(b)(4) below, the final rule retains the requirement that a bank receive a minimum performance test conclusion of a ''Low Satisfactory'' on the Retail Lending Test for a State, multistate MSA, or institution, to receive a ''Satisfactory'' rating for, respectively, the State, multistate MSA, or the institution. Between the final weighting and this requirement, the agencies believe the final rule contains appropriate safeguards to ensure that a bank must meet the retail credit needs of its community to receive an ''Outstanding'' or ''Satisfactory'' rating.

As noted above, the final rule reduces the weight assigned to the Retail Services and Products Test from 15 percent to 10 percent. After considering all comments on the weighting of the large bank performance tests, including those regarding the weighting of retail services and products, the agencies believe this change best facilitates an increase in the weight of the Community Development Financing Test, as discussed above. Further, the final rule adopts the proposal to weight the Community Development Services Test at 10 percent. Therefore, the final rule will weight a bank's retail and community development activities equally with respect to retail and community development lending and investment and retail and community development services. The agencies believe this balance in the weighting will appropriately encourage CRA activities of all kinds and will provide flexibility for banks. The combined 20 percent weighting of the Retail Services and Products Test and the Community Development Services Test will remain similar to the effect of the current service test on a large bank's rating under the current rating scale, which is generally 25 percent of a large bank's rating.

The agencies believe that equally weighting both the Retail Lending Test and the Community Development Financing Test at 40 percent and both the Retail Services and Products Test and the Community Development Services Test at 10 percent recognizes the historical focus of CRA on retail and community development lending and investment and is consistent with the statutory purpose of CRA to encourage banks to help meet the credit needs of their local communities.[1430] The agencies also believe the 10 percent weight assigned to both the Retail Services and Products Test and Community Development Services Test will ensure these performance tests have sufficient weight in the calculation of the bank's overall rating to be meaningful.

For the reasons described in the section-by-section analysis of final § ____.21, the agencies have determined to finalize the general framework of four performance tests for large banks as proposed. Thus, suggested weighting schemes based on a different performance test framework, such as those involving the combination, elimination, or addition of performance tests, would not align with the final rule.

The agencies have determined to assign a fixed weight for each of the performance tests applicable to a large bank. For large banks, the agencies believe the benefits of weighting flexibility for banks with different communities, business models, and capacity are outweighed by an interest in ensuring an objective, quantifiable, and consistent method to assign large bank ratings. The agencies note that the performance tests for large banks have elements tailored to a bank's size and business model and allow for flexibility in considering and weighting components, as appropriate. As discussed in the section-by-section analysis of final § ____.21, the agencies will also consider performance context under final § ____.21(d) in assigning the conclusions and associated performance scores that factor into a bank's assigned ratings. Finally, as discussed in the section-by-section analysis of final § ____.27, the final rule permits weighting flexibility for banks evaluated under an approved strategic plan pursuant to final § ____.27.

In addition to the revisions discussed above, the agencies added final § ____.28(b)(3)(i) to address the weighting of performance scores for large bank ratings in final § ____.28. The agencies also made revisions to streamline paragraph b of final appendix D compared to the proposal.

Section ____.28(b)(3)(ii) Intermediate Bank Performance Test Weights

Under the current ratings approach for intermediate small banks, the agencies have not established a rating scale to aggregate an intermediate small bank's performance under the lending test and the community development test. Current practice with respect to intermediate small banks, however, typically gives equal weight to retail lending and community development activities.[1431]

In paragraph c of proposed appendix D, similar to the proposal with respect to large banks, the agencies proposed to weight the performance score, presented on a 10-point scale as described in the section-by-section analysis of § ____.21, for each performance test applicable to an intermediate bank by multiplying it by a percentage established for the performance test. As described below, the agencies generally adopted this approach in final § ____.28(b)(3)(ii) and as described in more detail in paragraph c of final appendix D. The agencies also made revisions to streamline paragraph c of final appendix D compared to the proposal.

The Agencies' Proposal and Comments Received

For intermediate banks, the agencies proposed to weight the Retail Lending Test at 50 percent and the intermediate bank community development evaluation, or, for intermediate banks that opt in, the Community Development Financing Test, at 50 percent.[1432] The agencies sought feedback on whether it would be more appropriate to weight retail lending activity at 60 percent and community development activity at 40 percent in developing the overall rating for an intermediate bank to maintain the CRA's focus on meeting community credit needs through home mortgage loans, small business loans, and small farm loans.

As discussed above in the section-by-section analysis of § ____.28(b)(3)(i), many commenters addressed the appropriate weighting of a bank's community development activities relative to its retail activities. Many commenters specifically recommended that a bank's community development activities and retail activities should be equally weighted. Although many of

[1430] *See* 12 U.S.C. 2901(b).

[1431] Under the current approach, an intermediate small bank's performance on the lending test and the community development test are generally treated equally. For example, an intermediate small bank may not receive an assigned overall rating of ''Satisfactory'' unless it receives a rating of at least ''Satisfactory'' on both the lending test and the community development test. An intermediate small bank that receives an ''Outstanding'' rating on one test and at least ''Satisfactory'' on the other test may receive an assigned overall rating of ''Outstanding.'' *See* current appendix A, paragraph (d)(3); Interagency Intermediate Small Institution CRA Examination Procedures.

[1432] *See* proposed appendix D, paragraph c.

these comments were specific to the agencies' proposed weighting for the large bank performance tests, other commenters did not specify whether their comments applied to large banks or intermediate banks.

A few commenters specifically addressed the proposed weighting for intermediate banks. The commenters supported equal weighting for the Retail Lending Test and the intermediate bank community development evaluation based on the idea that community development services are assessed in the intermediate bank community development evaluation. One of the commenters stated that if community development services are optional for intermediate banks, however, the Retail Lending Test weight should be increased to 55 or 60 percent to encourage more lending.

Final Rule

In final § ____.28(b)(3)(ii) and paragraph c of final appendix D, after considering the comments and alternatives to the proposed weighting for intermediate bank performance scores, the agencies are finalizing as proposed the weights for both the Retail Lending Test and the renamed Intermediate Bank Community Development Test (*i.e.,* referred to as the ''intermediate bank community development evaluation'' in the proposal) or, for intermediate banks that opt in, the Community Development Financing Test.

As discussed above with respect to large banks, the agencies believe that equally weighting a bank's retail lending and community development lending appropriately emphasizes retail lending and community development lending and investments as key parts of a bank's CRA activities. As discussed above, equal weighting is generally consistent with the agencies' current approach to intermediate small banks. Because the final rule also generally adopts equal weighting for the retail and community development activities of large banks, adopting equal weighting for an intermediate bank's retail and community development activities will establish a consistent standard for banks evaluated under multiple performance tests and subject to weighting of performance scores.

The agencies also considered the impact of the additional consideration for other activities, including community development services, on the weighting of the performance tests applicable to intermediate banks. As discussed further in the section-by-section analysis of final § ____.30, however, the agencies believe that the flexibility intermediate banks have to decide which community development approach better fits their bank will allow banks that currently participate heavily in community development services to continue to be evaluated for these services under the Intermediate Bank Community Development Test, or to have these community development services given additional consideration if they opt into the Community Development Financing Test. As such, the agencies did not increase the Retail Lending Test weight based on commenter input.

In addition to the revisions discussed above, the agencies added final § ____.28(b)(3)(ii) to address the weighting of performance scores for intermediate banks ratings in final § ____.28. The agencies also made revisions to streamline paragraph c of final appendix D.

Section ____.28(b)(4) Minimum Conclusion Requirements

In addition to the weighting approach above, final § ____.28(b)(4) establishes requirements, as proposed in paragraph g of appendix D, for minimum performance test conclusions for a large bank or an intermediate bank to be eligible for an ''Outstanding'' or ''Satisfactory'' rating. The agencies intended these requirements to be additional safeguards, in addition to the rating developed by aggregating and weighting a bank's performance test scores, to ensure that a bank receiving an ''Outstanding'' or ''Satisfactory'' rating is meeting the credit needs of its community.

Under the current approach, the agencies assign ratings for large banks assessed under the lending, investment, and service tests in accordance with several principles. First, a large bank that receives an ''Outstanding'' rating on the lending test receives an assigned rating of at least ''Satisfactory.''[1433] Second, a large bank that receives an ''Outstanding'' rating on both the service test and the investment test and at least a ''High Satisfactory'' rating on the lending test receives an assigned rating of ''Outstanding.''[1434] Finally, a large bank cannot receive an assigned rating of ''Satisfactory'' or higher unless it receives at least a ''Low Satisfactory'' rating on the lending test.[1435] The current rating scale for large banks reflects these principles.

In addition, under the current approach, an intermediate small bank may not receive an overall ''Satisfactory'' rating unless it receives at least a ''Satisfactory'' on both the lending test and the community development test.[1436] An intermediate small bank that receives an ''Outstanding'' on one test and at least ''Satisfactory'' on the other test may receive an overall rating of ''Outstanding.''[1437]

Section ____.28(b)(4)(i) Retail Lending Test Minimum Conclusion

Consistent with a current approach, final § ____.28(b)(4)(i) adopts the requirement, proposed in paragraph g.1 of appendix D, that an intermediate bank or a large bank must receive at least a ''Low Satisfactory'' Retail Lending Test conclusion to be eligible for an ''Outstanding'' or ''Satisfactory'' rating for a State, multistate MSA, or the institution overall.

The Agencies' Proposal and Comments Received

The agencies proposed in paragraph g.1 of appendix D to retain the current requirement that an intermediate bank or a 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 ''Outstanding'' or ''Satisfactory.''[1438] A commenter specifically supported this part of the proposal with respect to intermediate banks.

The agencies did not propose minimum conclusion requirements for other performance tests, such as the current requirement that an intermediate small bank must receive a ''Satisfactory'' on both the current lending test and the current community development test to receive an overall ''Satisfactory'' rating. The agencies also did not propose specific minimum conclusion requirements for a bank to receive an ''Outstanding'' rating. Some commenters suggested, however, that the agencies impose minimum conclusion requirements for other performance tests for a bank to receive an ''Outstanding'' rating.

Community development test minimum conclusions. Some commenters recommended that the agencies should also require at least a ''Low Satisfactory'' on the community

[1433] Current 12 CFR ____.28(b)(1).

[1434] Current 12 CFR ____.28(b)(2).

[1435] Current 12 CFR ____.28(b)(3).

[1436] *See* current appendix A, paragraph (d)(3)(i).

[1437] *See* current appendix A, paragraph (d)(3)(ii)(A).

[1438] *See* proposed appendix D, paragraph g.1. The agencies did not, however, propose to retain, for intermediate banks, the current requirement that intermediate small banks must receive a ''Satisfactory'' rating on both the Retail Lending Test and intermediate bank community development evaluation.

development performance tests in order to receive an overall ''Satisfactory'' rating. Further, a few commenters suggested that a bank should not receive a higher overall rating than the conclusion it receives on the community development tests. Some commenters specifically recommended that no bank should receive a ''Satisfactory'' rating unless it receives at least a ''Low Satisfactory'' conclusion on the Community Development Financing Test. A commenter specifically opposed eliminating, for intermediate banks, the current requirement that intermediate small banks receive a ''Satisfactory'' on the community development performance test to earn a ''Satisfactory'' rating, stating this would have the perverse outcome of reducing overall levels of community developing financing.

Other requirements for a ''Satisfactory'' rating. Some commenters suggested that the agencies consider failing a bank overall if the bank receives a ''Needs to Improve'' on any of the performance tests. A group of commenters suggested that a passing score for a bank should be based on high scores for each component of its CRA examinations. Another commenter believed that all of a bank's CRA ''activity areas'' and sub-activity areas should be evaluated separately, with a high minimum threshold of activity, calculated as a percentage of deposits, in each area, and that no CRA activity area should be abandoned or allowed to underperform.

More generally, a commenter proposed that no bank should pass its CRA examination if it fails to serve communities with branches, and affordable and accessible products. Additionally, a few commenters expressed that banks should not pass their CRA examinations if they are not lending to minorities or if HMDA data show that they have otherwise failed to serve the entire community.

Requirements related to an ''Outstanding'' rating. A few commenters suggested allowing a bank to achieve an overall rating of ''Outstanding'' by receiving an ''Outstanding'' conclusion for its community development activities and at least a ''High Satisfactory'' conclusion for its retail activities. A commenter recommended not precluding banks with a ''High Satisfactory'' conclusion on either the Retail Lending Test or the Community Development Financing Test from an overall ''Outstanding'' rating. Another commenter suggested that a large bank that receives a ''High Satisfactory'' conclusion on the Retail Lending Test and ''Outstanding'' conclusions for the other three performance tests should receive an ''Outstanding'' rating overall. Another commenter suggested that a large bank that receives an ''Outstanding'' conclusion on the Community Development Financing Test or on the Retail Lending Test should receive an overall ''Outstanding'' rating if it received at least a ''High Satisfactory'' conclusion on the other performance tests. A few other commenters stated that no bank should receive an ''Outstanding'' rating without demonstrating improved measures of direct responses to the needs of low- and moderate-income populations with disabilities within and across assessment areas.

Final Rule

The agencies are adopting paragraph g.1 of final appendix D as proposed. Consistent with the agencies' determination to include more detail about how bank ratings will be assigned in § ____.28, as discussed above, the final rule also adopts in § ____.28(b)(4)(i) the requirement that an intermediate bank or a large bank must receive at least a ''Low Satisfactory'' Retail Lending Test conclusion for the State, multistate MSA, or institution to be eligible for an ''Outstanding'' or ''Satisfactory'' rating for, respectively, that State, multistate MSA, or institution.

The commenter that specifically addressed the minimum performance conclusion requirement for the Retail Lending Test expressed support for the agencies' proposal. The agencies also continue to believe this minimum performance conclusion requirement emphasizes the importance of retail loans to low- and moderate-income communities. Finalizing this requirement will ensure that banks are required to meet the retail lending credit needs of their communities to receive an ''Outstanding'' or ''Satisfactory'' rating for each State, multistate MSA, or the institution.

As proposed, the final rule does not establish minimum performance conclusion requirements for performance tests other than the Retail Lending Test. Generally, the agencies believe that the final rule's consistent and objective weighting for the performance tests under § ____.28(b)(3) will result in banks being assigned the appropriate rating category. For example, the agencies expect more nuanced performance scores for each performance test and the overall CRA ratings as a result of the methodology for weighting bank performance across applicable geographic areas.

With respect to commenter suggestions that the agencies impose a similar minimum performance conclusion requirement for the Community Development Financing Test as that established for the Retail Lending Test, the agencies considered and decided not to adopt this suggestion. In the final rule, as discussed above in the section-by-section analysis of final § ____.28(b)(3), the agencies revised the proposed weighting of the performance tests for large banks to equally weight the Community Development Financing Test and the Retail Lending Test. The agencies believe this change sufficiently addresses commenter concerns that the proposal did not sufficiently emphasize community development loans and investments, and do not believe that adding an additional requirement outside of the weighting framework is necessary.

Also as proposed, the final rule does not adopt the current requirement that an intermediate bank must receive a ''Satisfactory'' rating on both the Retail Lending Test and either the Intermediate Bank Community Development Test or, if the bank opts in, the Community Development Financing Test, to receive an ''Outstanding'' or ''Satisfactory'' rating. The agencies continue to believe eliminating this requirement for intermediate banks allows intermediate banks to meet community development credit needs consistent with their more limited capacity.

The agencies decline to adopt revisions based on commenter suggestions that the agencies should consider failing a bank overall if the bank receives a ''Needs to Improve'' on any of the performance tests. The agencies generally want to encourage banks to compensate for weaker performance in one area with stronger performance in another, and the commenter's approach may discourage a bank that receives a ''Needs to Improve'' conclusion on one performance test from striving for higher conclusions on other performance tests. The agencies believe this is consistent with the statutory purpose of CRA to encourage banks to help meet the credit needs of their communities.[1439] The agencies intend that the weighting of performance scores for applicable performance tests for large banks and intermediate banks, subject to the minimum performance requirement for the Retail Lending Test reflects a bank's

[1439] *See* 12 U.S.C. 2901(b).

overall performance in a State or multistate MSA or for the institution.

With respect to comments suggesting requirements for ''Outstanding'' ratings, the agencies believe that the established weighting for performance test scores will appropriately identify when a bank demonstrates ''Outstanding'' performance. The agencies also believe that the weighting for ratings under the final rule, which will, in general, equally weight a bank's retail activities and community development activities, addresses the commenter concerns that led to some of these suggestions. For example, a large bank will generally need to receive an ''Outstanding'' performance conclusion on one or more performance tests, including either or both of the ''Retail Lending Test'' or Community Development Financing Test, to receive an ''Outstanding'' rating.

Section ____.28(b)(4)(ii) Minimum of ''Low Satisfactory'' Overall Facility-Based Assessment Area And Retail Lending Assessment Area Conclusion

Final § ____.28(b)(4)(ii) adopts the requirement, modified from that proposed in paragraph g.2. of appendix D, that a large bank with a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State or multistate MSA, as applicable, or for the institution, as applicable, may not receive a rating of ''Satisfactory'' or ''Outstanding'' in that State or multistate MSA, as applicable, or for the institution, unless the bank receives an overall conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas and retail lending assessment areas in that State or multistate MSA, as applicable, or for the institution. The current regulations do not include a similar requirement. The final rule adopts paragraph g.2. of proposed appendix D, with clarifying revisions and one modification to phase in this requirement as described below, and also includes this requirement in new final § ____.28(b)(4)(ii).

The Agencies' Proposal

In paragraph g.2 of proposed appendix D, the agencies provided that a large bank with 10 or more facility-based assessment areas and retail lending assessment areas combined in a State, in a multistate MSA, or nationwide would not be eligible to receive a ''Satisfactory'' or higher rating for, respectively, the State, multistate MSA, or institution unless the bank achieved at least an overall ''Low Satisfactory'' conclusion in at least 60 percent of its facility-based assessment areas and retail lending assessment areas.[1440] For purposes of this requirement, the overall conclusion in a facility-based assessment area would be based on the performance scores for the conclusions that the large bank received on each performance test in that assessment area.[1441] For each facility-based assessment area, the agencies proposed to develop a facility-based assessment area performance score, for purposes of this requirement only, by calculating a weighted average of the performance scores for each performance test using the same test-specific weights as the agencies would use to calculate ratings.[1442] If the weighted average of the performance scores for each test was 4.5 or greater, the large bank would be considered to have an overall conclusion of at least ''Low Satisfactory'' in the facility-based assessment area.[1443] For each retail lending assessment area, for purposes of this requirement only, the bank's overall conclusion would be equivalent to its Retail Lending Test conclusion.[1444]

The agencies requested feedback on whether the proposed requirement that a large bank with 10 or more facility-based assessment areas and retail lending assessment areas would receive at most a ''Needs to Improve'' rating unless the bank achieved at least an overall ''Low Satisfactory'' conclusion in at least 60 percent of its facility-based assessment areas and retail lending assessment areas should apply to facility-based assessment areas and retail lending assessment areas or only to facility-based assessment areas. Additionally, the agencies sought feedback about: whether 10 facility-based assessment areas and retail lending assessment areas was the right threshold to trigger this requirement; and whether 60 percent of facility-based assessment areas and retail lending assessment areas was the right threshold to satisfy this requirement. Finally, the agencies requested feedback on the impact that this requirement would have on branch closures.

Comments Received

Most commenters expressed concern about the proposed 60 percent threshold. Many commenters suggested that the 60 percent threshold would not effectively incentivize CRA activities in rural areas or smaller urban areas, noting that because smaller areas could represent a minority of assessment areas a bank could pass the 60 percent threshold by focusing on the larger areas.

Some commenters stated that no bank should be allowed to pass its CRA examination if it fails nearly 40 percent of its assessment areas or to pass in an assessment area where it fails one of the performance tests, especially in cases where there is displacement financing or branch closures in already underserved low- and moderate-income and minority communities. Similarly, some commenters expressed that banks should be required to serve all areas, and not just 60 percent of areas, where they take deposits and lend. Moreover, a commenter did not support assigning a percentage threshold to the number of assessment areas required for passing and, along with another commenter, suggested that if a bank failed in any assessment area, it should be deemed not to be serving the needs of its community in a satisfactory manner.

A few commenters proposed increasing the 60-percent threshold, with at least one commenter suggesting each of 67 percent, 70 percent, 75 percent, and 90 percent as an appropriate threshold. One commenter explained that a higher threshold would encourage banks to meet the credit needs of a larger share of their customers and communities.

Commenters also proposed alternative ways to implement the 60-percent threshold. Many commenters suggested requiring the threshold be met for different types of assessment areas (*e.g.,* large metropolitan, small metropolitan, and rural assessment areas; or metropolitan and nonmetropolitan assessment areas). One of these commenters indicated that this should be in addition to increasing the threshold to 70 percent for all assessment areas. A few commenters recommended that a lender with 10 or more rural assessment areas should be required to earn a ''Satisfactory'' conclusion in the majority of its rural assessment areas in order to achieve an overall rating of ''Outstanding'' or ''Satisfactory.''

A few commenters encouraged having a ''Satisfactory'' rating threshold that is weighted across different types of assessment areas to help all communities experience the intended effect of the CRA, with one commenter suggesting that the weights assigned to each assessment area be reversed according to the assessment area size. The latter commenter also suggested a combination of requiring that the threshold be met for different types of assessment areas and incorporating weighting. This commenter suggested

[1440] *See* proposed appendix D, paragraph g.2.i.

[1441] *See* proposed appendix D, paragraph g.2.ii.B.

[1442] *See* proposed appendix D, paragraph g.2.ii.C.

[1443] *See* proposed appendix D, paragraph g.2.ii.D.

[1444] *See* proposed appendix D, paragraph g.2.ii.A.

that the proposed unweighted 60 percent threshold would impose a ''cliff'' that could encourage banks to stop activities in certain areas or avoid expansion to new areas to be eligible for a ''Satisfactory'' rating, which may affect competition. The commenter also suggested that according to its analysis, a simplified version of the Retail Lending Test without the 60 percent requirement could produce the same aggregate outcome with less potentially adverse incentives.

Regarding the agencies' request for feedback on the 10 facility-based assessment area and retail lending assessment area threshold, one commenter suggested lowering the threshold from 10 to five assessment areas, because the proposed threshold implies that a bank can fail in four assessment areas before receiving a ''Needs to Improve'' rating. A few commenters stated that this threshold should be fewer than 10 assessment areas without suggesting a specific number.

A few other commenters suggested a broader implementation of this requirement. Specifically, a commenter suggested expanding the group of banks subject to this requirement from large banks to all banks. Another commenter suggested that the requirement should also apply to be eligible for an ''Outstanding'' rating, such that a bank with 10 or more assessment areas would need a conclusion of Outstanding in at least 60 percent of its assessment areas to achieve an overall conclusion of Outstanding.

Some other commenters supported the 60 percent threshold only for facility-based assessment areas. For example, one commenter suggested not including retail lending assessment areas because it is much harder for banks to meet low- and moderate-income credit needs where they do not have a local branch presence and to compete with banks that have branches.

A few commenters opposed the requirement generally. A commenter explained that banks should strive to serve all of their markets, but that there is variation in a bank's ability to serve any given assessment area. This commenter explained that branch presence, tenure in the community, and economic conditions all impact CRA performance and cautioned that the 60 percent requirement could cause banks to close branches in their weaker markets, causing the loss of competitive financial services in areas where they are needed but are in decline. Another commenter suggested that the prospect of negative publicity from poor performance in a significant number of assessment areas would already provide banks sufficient incentive to perform satisfactorily in as many of their assessment areas as possible.

Final Rule

The final rule adopts the 60 percent requirement proposed in paragraph g.2 of appendix D with one modification, a phased implementation of the requirement, as well as clarifying revisions. Specifically, under final § ____.51(e) and as discussed in the section-by-section analysis of § ____.51(e), in a large bank's first examination under the final rule, the requirement will only apply where a bank has 10 or more facility-based assessment areas in any State or multistate MSA, or for the institution, as applicable. Therefore, final § ____.28(b)(4)(ii)(B) and paragraph g.2.i of final appendix D, provide that the requirement applies except as provided in final § ____.51(e).

After careful consideration of commenters' suggestions, the agencies are finalizing the 60 percent threshold. The agencies proposed this requirement to ensure that large banks receiving a ''Satisfactory'' rating meet the credit needs of their entire community and not just densely populated markets with high levels of lending and deposits that will factor heavily into the calculation of a bank's ratings based on how assessment area conclusions will be weighted to develop a bank's performance test conclusions, which, in turn, will be used to develop a bank's ratings. The agencies note that the requirement that a large bank receive at least a ''Low Satisfactory'' in 60 percent of facility-based assessment areas and retail lending assessment areas will apply in addition to calculating the bank's rating as described in final § ____.28(b)(2) and (3). Therefore, to receive an ''Outstanding'' or ''Satisfactory'' rating, a bank will need to satisfy the 60 percent threshold in addition to earning an ''Outstanding'' or ''Satisfactory'' rating based on the weighting of performance test conclusions.

The agencies believe that the 60 percent threshold ensures that large banks receiving an ''Outstanding'' or ''Satisfactory'' rating are meeting the credit needs of their entire community while acknowledging limitations that may impact bank performance, such as business model, capacity, opportunities to lend, and changes in a bank's assessment areas. The agencies note that, under the final rule, the agencies will examine a bank's performance under the applicable performance tests in the same manner in all facility-based assessment areas and retail lending assessment areas, which is a change from the current approach that permits limited-scope reviews. The agencies believe that a higher threshold—such as 67 percent, 70 percent, 75 percent, 90 percent, or all assessment areas, as suggested by commenters—may establish a requirement that would be too onerous for some banks to meet consistent with safety and soundness requirements. Further, the agencies are also sensitive to the concerns expressed by a commenter that a threshold that establishes too onerous of a requirement could lead banks to close branches in certain facility-based assessment areas or reduce lending in certain facility-based assessment areas or retail lending assessment areas.

The agencies have considered commenter suggestions to require banks to meet the 60 percent threshold for different types of assessment areas (such as large metropolitan, small metropolitan, and rural assessment areas, or metropolitan and nonmetropolitan assessment areas) or adopt weights for assessment areas associated with this requirement. The agencies have concerns, however, that these suggestions would be overly complex and difficult to implement. Some suggested types of facility-based assessment areas and retail lending assessment areas—for example, rural assessment areas—do not have clear and consistent definitions. Further, the agencies note that the 60 percent requirement to receive a ''Satisfactory'' rating is intended to be an additional guardrail supplementing the final rule approach to developing bank conclusions under the applicable performance tests. This approach generally includes consideration of a weighted average of the bank's facility-based assessment area performance, and calculates a bank's rating by weighting the bank's performance scores on applicable performance tests. For these reasons, the agencies are not adopting these suggestions in the final rule.

The agencies believe that analysis provided by one commenter on the impact of the 60 percent threshold omits important aspects of the Retail Lending Test calculations and therefore does not align with the final rule in fundamental respects. For example, the analysis described by the commenter did not consider CRA small business and small farm lending data and was applied to individual counties instead of facility-based assessment areas. In addition, the analysis applied the 60 percent threshold to Retail Lending Test conclusions, in contrast to the proposed and final rule approach, which applies this threshold to overall conclusions of facility-based assessment areas and retail lending assessment areas. Applying the 60 percent threshold to Retail Lending Test conclusions represents a significant departure from the proposed and final rule approach, because for facility-based assessment areas, overall conclusions reflect a bank's conclusions on all four performance tests, not only the Retail Lending Test.

Finally, the agencies acknowledge comments that described variations in a bank's ability to serve any given facility-based assessment area or retail lending assessment area. The agencies determined, however, that the 60 percent threshold provides sufficient flexibility to account for challenges regarding a bank's performance.

The agencies are also finalizing the proposed threshold for the number of combined facility-based assessment areas and retail lending assessment areas in a State, a multistate MSA, or nationwide at 10 facility-based assessment areas and retail lending assessment areas. Based on the agencies' supervisory experience, the agencies believe this threshold balances the need for a guardrail for banks with a larger footprint with the agencies' intent to provide flexibility to smaller institutions. The agencies are finalizing the same threshold for States, multistate MSAs, and nationwide to reduce complexity and so that this requirement will apply at more levels as a bank's footprint increases. For example, in its second examination under the final rule, a bank with 10 combined facility-based assessment areas and retail lending assessment areas nationwide in two or more states or multistate MSAs will only be subject to this requirement for its institution rating. A bank with 10 combined facility-based and retail lending assessment areas in each of several States or multistate MSAs will be subject to this requirement for each applicable State rating, multistate MSA rating and for its institution rating. The agencies also have opted not to apply this requirement to intermediate banks or small banks. In the agencies' experience, it is unlikely that many intermediate banks or small banks would have 10 or more facility-based assessment areas and retail lending assessment areas in any State, multistate MSA, or nationwide. The agencies also decline to adopt a requirement that a bank obtain an ''Outstanding'' conclusion in 60 percent of its facility-based assessment areas and retail lending assessment areas to receive an ''Outstanding'' rating. The agencies believe this would add complexity, and the weighting of performance test conclusions will provide sufficient guardrails related to eligibility for ''Outstanding'' ratings.

Section ____.28(c) Conclusions and Ratings for States and Multistate MSAs

Section ____.28(c) addresses when, consistent with statutory requirements, the agencies will evaluate and assign conclusions and ratings for a bank's CRA performance in a State or multistate MSA. The CRA statute requires that the agencies separately evaluate a bank's CRA performance for each State where the bank maintains a branch office or other facility that accepts deposits.[1445] If a bank maintains a branch office or other facility that accepts deposits in two or more States of a multistate metropolitan area (*i.e.,* a multistate MSA), the agencies must instead evaluate a bank's CRA performance for the multistate MSA.[1446] If the agencies evaluate a bank's CRA performance for a multistate MSA, the statute also requires that the agencies adjust their evaluation of a bank's CRA performance in any State accordingly.[1447] The agencies' current approach to conclusions and ratings reflects these statutory requirements.

The Agencies' Proposal

Proposed § ____.28(c) provided that the agencies would evaluate a bank's performance in any State in which the bank maintains one or more facility-based assessment areas and in any multistate MSA in which the bank maintains a branch in two or more States within the multistate MSA. In assigning conclusions and ratings for a State, the agencies would not consider a bank's activities in that State that are evaluated for a multistate MSA.

Final Rule

The agencies did not receive any comments on proposed § ____.28(c). The agencies are adopting final § ____.28(c) with modifications from the proposal, however, to clarify how the agencies will assign conclusions and ratings for geographic areas consistent with statutory requirements. In final § ____.28(c)(1)(i) and (c)(2), the agencies revised the proposed provision to clarify that the agencies will evaluate a bank and assign both conclusions and ratings for each State and multistate MSA, as applicable.

The agencies made several additional revisions to proposed § ____.28(c)(1) related to State conclusions and ratings in the final rule. First, the agencies are adopting final § ____.28(c)(1)(i) with revisions to the proposal to provide that, except as provided in § ____.28(c)(1)(ii) regarding States with multistate MSAs for which the agencies assign conclusions and ratings to the multistate MSA (*i.e.,* rated multistate MSA), the agencies assign conclusions and ratings for any State in which the bank maintains a main office, branch, or deposit-taking remote service facility. The agencies believe this language better reflects the statute—which refers to each State in which a bank maintains one or more domestic branches, defined to include any branch or other facility of a bank that accepts deposits[1448]—than referring to a facility-based assessment area, as proposed. Final § ____.28(c)(1)(i) also aligns with final § ____.16, regarding facility-based assessment areas.

Second, the agencies are adopting final § ____.28(c)(1)(ii) with revisions to the proposal to clarify that the agencies will evaluate and assign conclusions or ratings for a State only if a bank maintains a main office, branch, or deposit-taking remote service facility outside the portion of the State comprising any rated multistate MSA. Similar to the proposal, final § ____.28(c)(1)(ii) further states that the agencies will not consider activities to be in the State if those activities take place in the portion of the State comprising any multistate MSA. This reflects statutory requirements.[1449] The agencies note that in calculating metrics, benchmarks, and weighting performance scores in a State for any bank, the agencies will only include activities considered to be in that State pursuant to § ____.28(c)(1) for purposes of the agencies' evaluation of that bank.

Third, the agencies are adopting final § ____.28(c)(1)(iii), a new provision, to clarify the agencies' consideration of a bank's performance for States with multistate MSAs for which the agencies do not assign conclusions and ratings to the multistate MSA (*i.e.,* non-rated multistate MSA).[1450] Specifically, final § ____.28(c)(1)(iii) provides that, if a bank's facility-based assessment area comprises a geographic area spanning two or more States within a non-rated

[1445] *See* 12 U.S.C. 2906(d)(1).

[1446] *See* 12 U.S.C. 2906(d)(2).

[1447] *Id.*

[1448] *See* 12 U.S.C. 2906(d)(1)(B), (e)(1).

[1449] *See* 12 U.S.C. 2906(d)(2) (requiring that, if an agency evaluates a bank's performance in a multistate metropolitan area, the agency must adjust the scope of its evaluation of a bank's performance in a State accordingly).

[1450] Consistent with 12 U.S.C. 2906(d)(2) and pursuant to final § ____.28(c)(2), discussed below, the agencies evaluate a bank's performance in a multistate MSA if the bank maintains a main office, a branch, or a deposit-taking remote service facility in two or more States within that multistate MSA.

multistate MSA, the agencies will consider activities in the entire facility-based assessment area to be in the State in which the bank maintains—within the multistate MSA—a main office, branch, or deposit-taking remote service facility. Consider, for example, a particular bank with a branch located in a multistate MSA. In this example, although the bank's branch is located in a county in one State within the multistate MSA, the bank delineates a facility-based assessment area in the multistate MSA that includes, consistent with final § ____.16(b)(2), a county in a second State within the multistate MSA where the bank originated or purchased a substantial portion of its loans but does not have a branch or other facility that accepts deposits. Under this example, for purposes of evaluating the bank and assigning conclusions and ratings—including calculating metrics, benchmarks, and weighting performance scores—the agencies would consider activities in the bank's entire facility-based assessment area within the multistate MSA to be in the one State where the bank has a branch. Final § ____.28(c)(1)(iii) also clarifies that, in evaluating a bank and assigning conclusions and ratings for a State, the agencies will not consider activities to be in a State if those activities take place in any facility-based assessment area considered to be in another State.

Fourth, the agencies are adopting final § ____.28(c)(1)(iv), a new provision, to clarify the agencies' consideration of a bank's performance in retail lending assessment areas that span multiple States in a multistate MSA (*i.e.,* multistate retail lending assessment areas). Specifically, pursuant to final § ____.28(c)(1)(iv), the agencies will not consider activities that take place in a multistate retail lending assessment area to be in any State for purposes of assigning Retail Lending Test conclusions to a bank pursuant to final § ____.22 and final appendix A. The agencies note that, if a multistate retail lending assessment area is in a rated multistate MSA, the agencies will consider activities in the multistate retail lending assessment area for purposes of assigning a bank's Retail Lending Test conclusions and ratings for the multistate MSA. To the extent a multistate retail lending assessment area is not in a rated multistate MSA, however, activities in that multistate retail lending assessment area would be considered only in the bank's conclusions and ratings for the institution.

The agencies also made revisions to proposed § ____.28(c)(2) related to multistate MSA conclusions and ratings in the final rule. Final § ____.28(c)(2) specifies that the agencies will evaluate a bank and assign conclusions and ratings in any multistate MSA in which the bank maintains a main office, a branch, or a deposit-taking remote service facility in two or more States within that multistate MSA. The agencies believe this language better reflects the statutory requirement—which refers to each State in which a bank maintains one or more domestic branches, defined to include any branch or other facility of a bank that accepts deposits [1451]—than referring to a facility-based assessment area, as proposed. Final § ____.28(c)(2) also aligns with final § ____.16, regarding facility-based assessment areas.

Section ____.28(d) Effect of Evidence of Discriminatory or Other Illegal Credit Practices

Current Approach

Current § ____.28(c) generally provides that the agencies' evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory 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. In connection with any type of lending activity evaluated under the current lending test, evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to, violations of certain enumerated laws.[1452] Current § ____.28(c)(2) provides certain factors the agencies consider in determining the effect of discriminatory or other illegal credit practices on a bank's assigned rating, including: the nature, extent, and strength of the evidence of the practices; policies and procedures the bank has in place to prevent the practices; corrective action; and any other relevant information.

The Agencies' Proposal and Final Rule

Similar to the approach under the current regulations, the agencies proposed in § ____.28(d)—and are now finalizing with certain modifications from the proposal described below—that a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal practices. Although, under the proposal, evidence of any discriminatory or other illegal practices would have adversely affected a bank's CRA performance, the final rule, like the current regulations, limits consideration to credit practices. Similar to the current approach and the proposal, the agencies will consider certain factors under the final rule in determining the effect of evidence of discriminatory or other illegal credit practices on a bank's assigned rating. The section-by-section analysis below describes the agencies' proposal, including proposed changes from the current approach, and final § ____.28(d) in detail.

Section ____.28(d)(1) Scope

The Agencies' Proposal

Proposed § ____.28(d)(1) expanded consideration of evidence of discriminatory or other illegal practices to include practices beyond credit practices. Specifically, proposed § ____.28(d)(1) provided that the agencies' evaluation of a bank's CRA performance would be adversely affected by evidence of any discriminatory or other illegal practices. As proposed, evidence of discriminatory or other illegal practices could be related to deposit products or other bank products and services. Unlike current § ____.28(c)(1), which limits the agencies consideration of discriminatory or other illegal practices to those in connection with any type of lending activity evaluated under the current lending test, consideration of discriminatory or other illegal practices under proposed § ____.28(d)(1) would no longer be limited to certain credit products. Proposed § ____.28(d)(1) also provided for downgrades of a bank's State or multistate MSA rating, in addition to downgrades of the institution rating, based on discriminatory or other illegal practices.

Proposed § ____.28(d)(1)(i) provided that evidence of discriminatory or other illegal practices in any geographic area by a bank, including its operations subsidiaries or operating subsidiaries, could result in a downgrade to the bank's CRA rating. Proposed § ____.28(d)(1)(ii) further provided that evidence of 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 loans are considered as part of the bank's lending performance could result in a downgrade to the bank's CRA rating.

[1451] *See* 12 U.S.C. 2906(d)(1)(B), (e)(1).

[1452] In guidance, the agencies have stated that violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating but may warrant the inclusion of comments in an institution's performance evaluation. *See* Q&A § ____.28(c)–1.

Comments Received

Many commenters expressed strong support for downgrading banks that engage in discriminatory or other illegal practices. Some of these commenters suggested that the agencies severely punish banks under CRA if they are found to have violated civil rights, fair lending, or fair housing laws. Relatedly, one commenter stated that ''Outstanding'' or ''Satisfactory'' ratings should meaningfully demonstrate a bank's commitment to treating its customers fairly in a manner consistent with the law.

Some commenters expressly supported expanded consideration of evidence of discriminatory or other illegal practices to include practices beyond credit practices. For example, a commenter stated that the agencies' proposal represented an effective way to hold banks accountable for discrimination and other illegal practices. Another commenter noted that this expansion could help ensure there is no unintended discrimination in loan servicing. Commenters cautioned, however, that this expansion would only be as helpful as the agencies' willingness and capacity to diligently identify discrimination and then downgrade banks.

In contrast, some commenters raised concerns regarding the expanded consideration of evidence of discriminatory or other illegal practices to include practices beyond credit practices and supported limits on the type of practices that could lead to CRA rating downgrades. A few commenters asserted that broadening discriminatory or other illegal practices to include more than just illegal credit practices was inconsistent with the CRA statute. A few commenters also expressed concern that expanding discriminatory or other illegal practices could include issues unrelated to Congress's intent in enacting CRA, such as anti-money laundering and safety and soundness issues. One commenter stated that because discriminatory and other illegal practices are comprehensively addressed by other examinations (*e.g.,* safety and soundness, fair lending, consumer reporting, and consumer debt collection), CRA downgrades are not necessary to remediate prior violations or prevent future discriminatory or other illegal practices. A commenter suggested that expanding the types of violations that could lead to a downgrade could disincentivize banks from seeking an ''Outstanding'' rating by expanding CRA activities out of fear of adverse rating impacts from tangential or technical issues. A few commenters also suggested that expansion of practices considered could lead to an increase in adverse ratings and harm consumers and communities, noting that projects to provide new products or services that respond to customer needs, LIHTC or NMTC projects, and opening branches could be negatively impacted if a bank receives a rating below ''Satisfactory.''

Some commenters supported retaining the current standard or adopting other limitations on when discriminatory or other illegal practices could be considered. Some commenters recommended restricting downgrades to products and services considered in CRA evaluations, with a few commenters also suggesting that only violations directly related to the treatment of consumers should be considered. Another commenter proposed limiting downgrades to illegal practices that have a nexus to the provision of financial products and services. A few commenters stated that the proposal would create uncertainty as to what types of practices would result in a rating downgrade and requested that the agencies provide more clarity and guidance on the types of practices that could lead to a downgrade.

A few commenters suggested that the agencies apply all downgrades to a bank's institution rating, rather than to State or multistate MSA ratings. Relatedly, a commenter stated that a bank that has been found to engage in discriminatory practices in one geographic area is likely to have engaged in similar practices elsewhere and has exposed that it lacks the internal controls to prevent illegal activity. Another commenter suggested that the agencies could instead increase transparency by providing greater detail on the geographic scope of any violation in a bank's performance evaluation and by providing guidance on the specific impact of downgrades applied to State or multistate MSA rating on the institution rating.

One commenter stated that the agencies should automatically include any discriminatory or other illegal practices by an operations subsidiary or operating subsidiary, or affiliate.

Final Rule

In final § ____.28(d)(1), the agencies are adopting the proposed provision regarding consideration of evidence of discriminatory or other illegal practices without the proposed expansion from the current approach to include practices beyond credit practices. Specifically, under final § ____.28(d)(1), for each State and multistate MSA, as applicable, and the institution, the evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices, as provided in final § ____.28(d)(2). As discussed further below, final § ____.28(d)(2) provides that discriminatory or other illegal credit practices consist of violations of specified laws, including any other violation of a law, rule, or regulation consistent with the types of violations listed, as determined by the agencies. Final § ____.28(d)(1) further provides that the agencies will consider evidence of discriminatory or other illegal credit practices by: (1) the bank, including by an operations subsidiary or operating subsidiary of the bank, without limitation; and (2) any other affiliate related to any activities considered in the evaluation of the bank.

After considering many comments that supported proposed § ____.28(d)(1) and many that raised concerns, the agencies believe that final § ____.28(d)(1) appropriately modifies the proposed regulatory text regarding discriminatory or other illegal practices that may lead to a CRA rating downgrade. As reflected in the agencies' CRA regulations and supervisory practices, the agencies have long considered that a bank's CRA rating should reflect whether it has engaged in discrimination or otherwise treated consumers in a manner inconsistent with laws, rules, or regulations. The agencies carefully considered, however, comments that raised concerns that discriminatory or other illegal practices, without further qualification, would be too broad and would potentially allow consideration of violations of laws, rules, regulations generally unrelated to CRA, such as anti-money laundering and safety and soundness issues. In response to these comments and after further consideration, the agencies revised § ____.28(d)(1) to state that the evaluation of a bank's performance under the rule is adversely affected by evidence of discriminatory or other illegal credit practices as provided in § ____.28(d)(2). The agencies believe that maintaining a limitation, also reflected in the current regulations, to consider only discriminatory or other illegal practices related to credit practices is responsive to commenters' concerns.

The final rule also reflects a modification in the scope of evidence of discriminatory or other illegal credit practices the agencies will consider in a bank's CRA evaluation, compared to the proposal, to specify that the evidence of discriminatory or illegal credit practices the agencies will consider are those practices provided in final § ____.28(d)(2) (discussed further in the section-by-section analysis of final § ____.28(d)(2)). Unlike the current approach, which provides that evidence of discriminatory or other credit practices are those in connection with any type of lending activity described the current lending test,[1453] final § ____.28(d)(1) does not limit the types of credit practices that may be considered as evidence of discriminatory or illegal credit practices.

Some commenters suggested alternative limitations on the discriminatory or other illegal practices that could be considered in a bank's CRA evaluation. The agencies carefully considered these alternatives and believe that the revisions in the final rule will generally serve the same objectives as many of the commenters' suggestions.

Regarding commenter sentiment that rating downgrades should only be applied to a bank's institution rating, the agencies determined to finalize this part of § ____.28(d)(1) as proposed. Although the agencies agree that issues may be widespread and that the agencies can improve transparency by providing additional information about the geographic area where discriminatory or other illegal practices occurred, the agencies believe that allowing for downgrades to a bank's State, multistate MSA, or institution rating will provide greater clarity and transparency about the geographic area in which relevant violations occurred and flexibility for the agencies to consider the geographic scope of those violations. With respect to whether evidence of discriminatory or other illegal credit practices will impact a bank's State, multistate MSA, or institution rating, the agencies intend to consider the adverse effect of evidence of discriminatory or other illegal credit practices at each rating level based on the geographic scope of relevant violations and the factors in final § ____.28(d)(3), as discussed below.

The agencies are also adopting final § ____.28(d)(1) with modifications from the proposal related to the circumstances in which the agencies will consider evidence of discriminatory or other illegal credit practices by a bank, including by an operations subsidiary or operating subsidiary of the bank, or any other affiliate. Specifically, the agencies removed language that would have provided that the agencies would consider evidence of discriminatory or other illegal credit practices by the bank, including by an operations subsidiary or operating subsidiary of the bank, ''in any census tract'' as unnecessary. For other affiliates—although under the proposal the agencies would have considered evidence of discriminatory or other illegal activities 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—the agencies believe it is appropriate to remove references to the geographic areas where an affiliate's discriminatory or other illegal credit practices may be considered and not to limit such consideration to an affiliate whose retail loans are considered as part of the bank's lending performance. Under the final rule, and as provided in § ____.21(b)(3), the agencies may consider an affiliate's activities in any geographic area at the bank's option, pursuant to the applicable performance test. In addition, the agencies believe, given the scope of the agencies' consideration of evidence of discriminatory or other illegal credit practices and the affiliate activities that may be included in a bank's CRA evaluation, it is appropriate to consider evidence of discriminatory or other illegal credit practices by any affiliate related to any activities considered in the evaluation of the bank. Finally, the agencies do not think it would be appropriate to consider evidence of discriminatory or other illegal credit practices by a bank affiliate that are wholly unrelated to activities considered in the bank's performance evaluation, and thus did not make revisions in the final rule based on this commenter's suggestion.

Therefore, the agencies are finalizing § ____.28(d)(1) with the modifications from the proposal addressed above.

Section ____.28(d)(2) Discriminatory or Other Illegal Credit Practices

The Agencies' Proposal

Proposed § ____.28(d)(2) provided a non-exhaustive list of examples of evidence of discriminatory or other illegal practices that violate an applicable law, rule, or regulation. Similar to the current approach, proposed § ____.28(d)(2) included the following among the list of examples: discrimination against applicants on a prohibited basis in violation, for example, of ECOA or the Fair Housing Act; violations of the Home Ownership and Equity Protection Act; violations of section 5 of the Federal Trade Commission Act; violations of section 8 of the Real Estate Settlement Procedures Act; and violations of the Truth in Lending Act (TILA) provisions regarding a consumer's right of rescission. For added clarity, the agencies also proposed to add the following to the list of examples: violations of the prohibition against unfair, deceptive, or abusive acts or practices in 12 U.S.C. 5531; violations of the Military Lending Act; and violations of the Servicemembers Civil Relief Act.[1454]

Comments Received

Some commenters addressed violations of specific laws, rules, or regulations listed in proposed § ____.28(d)(2), generally to express support for their inclusion on the list. A few commenters specifically supported the proposal to continue to allow rating downgrades for fair lending violations. Some commenters supported the proposed addition of violations of the prohibition against unfair, deceptive, or abusive acts or practices in 12 U.S.C. 5531, with one of these commenters stating that this would be a check against unfair and abusive practices like predatory lending, unfair loan fees, and mark-ups that often harm low- and moderate-income individuals and communities. A few commenters supported the proposed addition of the Military Lending Act to the list.

Some commenters also recommended that the agencies add violations of other laws, rules, or regulations to the list of discriminatory or other illegal practices. Specifically, some commenters recommended that the agencies add the Americans with Disabilities Act (ADA)[1455] to the list. Another commenter also provided other examples of illegal practices, such as violations of consumer and civil rights laws governing deposit products and HMDA. Some commenters asserted that the agencies should consider evidence of discrimination obtained by State and local agencies. Another commenter conveyed that the agencies should factor successful discrimination lawsuits and other punitive legal measures into a bank's CRA rating.

Suggestions regarding specific bank practices. Some commenters discussed specific bank practices that they thought should be considered discriminatory or other illegal practices. For example, some commenters expressed support for downgrading banks for conduct harmful to consumers, including fee gouging; charging high fees; offering high-cost or

[1453] *See* current 12 CFR ____.28(c)(1).

[1454] *See* proposed § ____.28(d)(2)(iv) and (vii) through (viii).

[1455] 42 U.S.C. 12101 *et seq.*

predatory products, investments, or services; or having unreasonably high delinquency rates. Some of these commenters stated that the agencies should consider products that banks offer in partnership with nonbanks and whether loans exceeded State usury caps and borrowers' abilities to repay. One commenter encouraged expanding the discriminatory practices that result in a rating downgrade to include bank activities that have high rates of defaults and delinquencies. Similarly, another commenter suggested that evidence of illegal practices should include banks offering unsuitable credit to consumers or banks earning a disproportionately high share of their revenues from overdraft and insufficient funds fees. Another commenter recommended that an agency's finding that a bank's consumer credit card lending is not fair, affordable, and sustainable should result in a ratings downgrade, depending on the extent of the harm to consumers. A few commenters emphasized that the agencies should scrutinize banks' multifamily lending programs, including those conducted in partnership with third-party nonbank institutions, for illegal practices. A commenter recommended downgrading ratings where there is demonstrable evidence that lenders have invested or renewed investments in which property owners were engaging in tenant harassment of which lenders have notice. One commenter urged the agencies to assign a ''Substantial Noncompliance'' rating to any bank that lends its charter to fintech companies to enable them to circumvent State usury laws. Another commenter stated that given the rise in mobile and online banking, specific standards should be developed to regulate digital banking to avoid discriminatory or predatory practices.

A few commenters also provided examples of the type of conduct they believed should be considered discriminatory or other illegal practices, such as: a pattern or practice of discriminating and failing to serve communities equitably, regardless of whether these disparate negative impacts are the result of intentional or unintentional bias; misleading customers in order to sell products; discriminating against certain categories of borrowers in the price or availability of home mortgage lending; or illegally foreclosing on homeowners. Relatedly, another commenter proposed that the agencies consider ways to address discriminatory practices against low- and moderate-income and LGBTQ+ communities.

Final Rule

In final § ____.28(d)(2), the agencies are adopting the proposal with several revisions, as described below, in addition to making conforming changes to refer to ''discriminatory or other illegal credit practices,'' as discussed above. First, the final rule provides that discriminatory or other illegal credit practices consist of the listed violations of laws, rules, or regulations. This is a change from the proposal, which would have provided a non-exhaustive list of examples of discriminatory or other illegal practices. Second, the final rule adopts new § ____.28(d)(2)(ix), which adds to the list of discriminatory or other illegal credit practices any other violation of a law, rule, or regulation consistent with the types of violations in § ____.28(d)(2)(i) through (viii) as determined by the appropriate Federal financial supervisory agency. Finally, the final rule adopts revisions to the discriminatory or other illegal credit practices included in the current list to cover any discrimination on a prohibited basis in violation, for example, of ECOA or the Fair Housing Act and any violation of TILA.

The agencies believe that the first and second revisions, taken together, clarify the agencies' intent regarding the types of evidence of violations of laws, rules, or regulations, that they consider evidence of discriminatory or other illegal credit practices. As discussed above, although the list of violations of laws, rules, and regulations in current § ____.28(d)(1) is a non-exhaustive list, the agencies have generally stated that, under the current rule, evidence of violations of other provisions generally will not adversely affect an institution's CRA rating.[1456] From time to time, the agencies have considered evidence of discriminatory or other illegal credit practices beyond the listed violations of laws, rules, or regulations where those practices are sufficiently similar in nature to items on the list. The agencies intend that revisions to the list in final § ____.28(d)(2) will codify this practice, so that the agencies will consider evidence of the listed violations of laws, including their implementing rules or regulations, and other violations of laws, rules, or regulations consistent with the types of violations listed.

The final rule also adopts the proposal to add the following to the listed discriminatory or other illegal practices: violations of the prohibition against unfair, deceptive, or abusive acts or practices in 12 U.S.C. 5531; violations of the Military Lending Act (10 U.S.C. 987); and violations of the Servicemembers Civil Relief Act (50 U.S.C. 3901 *et seq.*). The final rule adopts two other minor revisions to the proposed list of discriminatory or other illegal practices. First, final § ____.28(d)(2)(i) would apply to any discrimination on a prohibited basis in violation, for example, of ECOA or the Fair Housing Act. This is a clarifying change. Second, final § ____.28(d)(2)(vi) would include any violations of TILA. This change, to include violations of TILA beyond those involving consumer's right of rescission, is appropriate so as to incorporate TILA amendments to include additional substantive provisions since the agencies adopted current § ____.28(c)(1)(v). The agencies also made technical revisions to the listed laws to add citations to the United States Code, as applicable.

The agencies note that their consideration of discriminatory or other illegal credit practices listed in § ____.28(d)(2) will include consideration of information received from other Federal agencies and, as applicable, State agencies, with responsibility for enforcing compliance with relevant laws and regulations, including the U.S. Department of Justice, HUD, and the CFPB. The final rule does not limit the sources for evidence of discriminatory or other illegal credit practices that can be considered by examiners in a CRA evaluation. Moreover, the agencies note that, pursuant to § ____.28(d)(1), a bank's CRA performance is adversely affected by ''evidence of'' discriminatory or other illegal credit practices, which consist of the practices listed in § ____.28(d)(2). The agencies believe that ''evidence of'' discriminatory or other illegal credit practices, consistent with the current approach, provides flexibility and acknowledges that other agencies may use different terms or act on information in different ways. The agencies may consider, for example, information that leads to a settlement of claims and a consent order under ECOA or the Fair Housing Act as evidence of discriminatory or other illegal credit practices.

The agencies have decided not to add violations of certain laws, rules, or regulations suggested by commenters, specifically violations of ADA or HMDA, to the list in § ____.28(d)(2). With regard to the ADA, the agencies believe that although some violations of ADA could involve credit practices that affect consumers, small businesses, and small farms and be considered by the agencies, the explicit inclusion in the

[1456] *See* Q&A § ____.28(c)–1.

list may have the effect of including practices unrelated to a bank's CRA performance, such as conduct related to a bank's role as an employer. HMDA includes many technical requirements, and the agencies believe there are other ways of addressing HMDA violations, such as not considering inaccurate HMDA data submitted by a bank in its CRA examination.

Finally, regarding commenter suggestions that various specific types of acts or practices be considered discriminatory or other illegal practices that would adversely affect a bank's CRA performance evaluation, the agencies note that whether specific acts or practices violate applicable laws, rules or regulations requires analysis based on the individual facts and circumstances and the requirements of each law, rule, or regulation. Therefore, the agencies decline to state whether specific acts or practices would violate listed laws, rules, or regulations.

Section ____.28(d)(3) Agency Considerations

The Agency's Proposal

The agencies proposed in § ____.28(d)(3) updated considerations in determining the effect of evidence of discriminatory and other illegal practices on a bank's assigned CRA ratings: the root cause of any violations of law; the severity of any consumer harm resulting from the violations; the duration of time over which the violations occurred; and the pervasiveness of the violations. In addition, the agencies proposed in § ____.28(d)(3) that examiners would also consider the degree to which the bank, a subsidiary, or an 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 noncompliance and consumer harm. Accordingly, a range of consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade.

Comments Received

A few commenters expressly suggested requiring downgrades if consumer financial protection violations are cited. For example, a commenter stated that any evidence of illegal and abusive lending found during fair lending examinations must be penalized via lower ratings. Some commenters suggested that the proposal provides too much discretion to examiners, and the agencies should automatically issue a failing rating when a bank is found to have engaged in discriminatory practices. For example, commenters suggested that a bank be automatically downgraded to ''Needs to Improve'' if it is found to have violated any civil rights, equal protection, or consumer protection laws—even if it settles without admitting guilt or if the violations are dated—or if the agencies determine that there is reason to believe that the bank engaged in a pattern or practice of discrimination, regardless of the bank's asset size or amount of restitution. A commenter asserted that the agencies' proposal to consider the severity of consumer harm resulting from relevant violations and the duration of time over which the violations occurred would serve to reduce the adverse impact of a bank's illicit behavior on its CRA rating.

A few commenters requested that the agencies provide more clarity and guidance regarding the scope and severity of a violation that would warrant a downgrade and the discretion that examiners would have to determine whether a violation has occurred. Further, a few commenters suggested the agencies codify OCC Policies and Procedures Manual (PPM) 5000–43, as amended by OCC Bulletin 2018–23, which requires, as a prerequisite to any downgrade predicated on evidence of discriminatory or other illegal credit practices by a bank: (1) a logical nexus between the bank's assigned rating and the practices; and (2) full consideration of remedial actions taken by the bank.

Final Rule

The agencies are adopting proposed § ____.28(d)(3) with revisions to expand the agencies' consideration of the severity and risk of harm to consumers to include harm to ''communities, individuals, small businesses, and small farms.'' The agencies believe that this change better aligns the agencies' considerations in final § ____.28(d)(3) with bank activities considered under CRA. As discussed above, the agencies are also adopting § ____.28(d)(3) with a conforming change, compared to the proposal, to refer to ''discriminatory or other illegal credit practices.''

The agencies have considered commenter sentiment that the agencies should automatically downgrade a rating or assign a rating of ''Needs to Improve'' for evidence of discriminatory or other illegal practices. As provided in final § ____.28(d)(1), evidence of discriminatory or other illegal credit practices will adversely impact the agencies' evaluation of a bank's CRA performance, but evidence of discriminatory or other illegal credit practices will not always lead to a ratings downgrade. The agencies believe that automatically downgrading a bank's rating would be inappropriate based on the range of potential discriminatory or other illegal credit practices listed in final § ____.28(d)(2). Instead, consistent with the current approach, the agencies believe that it is important to consider the factors listed in final § ____.28(d)(3) in determining how evidence of discriminatory or other illegal credit practices may impact a bank's CRA performance.

The agencies believe that final § ____.28(d)(3) sufficiently describes the factors to be considered in assessing the effect of discriminatory or other illegal credit practices. The agencies may consider providing additional guidance in the future, as needed and appropriate. In the final rule, the agencies are also reformatting final § ____.28(d)(3) to number the factors the agencies will consider as § ____.28(d)(3)(i) through (vi).

Ratings Downgrades for Other Harms

Comments Received

Many commenters suggested that the final rule should provide for the possibility of downgrades based on harms other than discriminatory or other illegal practices described in § ____.28(d), such as financing displacement, activities that harm the environment, or harm that disproportionately impacts minority communities. Some of these commenters also suggested that the agencies should consider additional conduct as discrimination because of the impact on low- and moderate-income and minority communities. Some commenters also asserted that findings of discrimination, including disparate impact related to displacement financing, fee gouging, or climate degradation, should always result in automatic CRA rating downgrades.

Displacement. Several commenters suggested downgrading banks for financing that causes displacement. Some commenters suggested that displacement financing should be considered discrimination because it often has a disparate impact on minority communities and that such action should trigger rating downgrades and subject banks to potential enforcement actions.

Environmental harm. Some commenters suggested that disproportionate impacts that contribute to climate change and impair access to credit for communities should be considered in CRA examinations. Further, some commenters suggested that the agencies should consider downgrades for financing that funds activities or industries that are harmful to the climate. One commenter suggested the agencies should consider lower performance conclusions or ratings if a bank is financing fossil fuel facilities in low- and moderate-income or minority communities while not financing renewable or clean energy projects. Some commenters suggested that banks be downgraded for the financing of pollution-causing activities (*e.g.,* the building of gas pipelines) that can threaten tribal rights when these activities occur without informed consent. Some commenters proposed that climate harm be considered discrimination because it disproportionately impacts minority communities and that such action should subject banks to CRA rating downgrades. A few commenters suggested that financing of harmful projects like landfills and fossil fuel facilities in low- and moderate-income and minority communities must be penalized by lowering Community Development Financing Test performance conclusions.

Conduct that disproportionately impacts minority communities. Several commenters recommended downgrades for harm that disproportionately impacts minority communities, such as branch closures, harmful landlord practices, and higher-cost products. One of these commenters suggested that the agencies should require action plans to correct and mitigate such harms. Another commenter conveyed that banks that prioritize larger businesses, bypass minority or immigrant communities, or rely only on credit card loans should be downgraded. A commenter asserted that the agencies should include an affirmative statement in their CRA regulations regarding banks' obligations to fairly serve all races and ethnicities. One commenter indicated that the agencies should assess whether banks make loans to minority individuals and that this assessment should impact CRA ratings, while another commenter suggested that home mortgage lending and small business lending data disaggregated by race, ethnicity, gender, and community should impact CRA ratings.

Final Rule

The agencies have considered these commenters and are not adopting additional provisions to provide for ratings downgrades. The agencies believe that § ____.28(d) provides an appropriate mechanism to consider the types of harm raised by commenters when they involve evidence of discriminatory or other illegal credit practices. For example, the agencies believe that some conduct that commenters have identified that may disproportionately impact minority or low- or moderate-income communities is addressed by other legal frameworks applicable to banks and included in the listed laws, rules, and regulations in § ____.28(d)(2), such as fair lending laws and consumer protection laws.

The agencies also believe that the final rule addresses some of the concerns raised by commenters through other means. As discussed in the section-by-section analysis of § ____.13(e) through (j) (regarding place-based community development categories), the final rule includes protections to ensure that banks do not receive consideration for place-based community development activities that involve forced or involuntary relocation of low- or moderate-income individuals. Further, as discussed in the section-by-section analysis of § ____.13(i) (regarding disaster preparedness and weather resiliency), the final rule provides community development consideration for disaster preparedness and weather resiliency activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters. The agencies also believe that some of the conduct that commenters have identified as conduct that may disproportionately impact minority communities may be considered under other provisions of the final rule. For example, the agencies will consider a bank's record of opening and closing branches under the Retail Services and Products Test, as applicable. For more information and discussion regarding the agencies' consideration of comments recommending adoption of additional race- and ethnicity-related provisions in this final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

Section ____.28(e) Consideration of Past Performance

The Agencies' Proposal

Proposed § ____.28(e) provided that the agencies would consider past performance when assigning ratings. Specifically, if a bank's prior rating was ''Needs to Improve,'' the agencies 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.

Comments Received

The agencies received one comment on proposed § ____.28(e). The commenter stated that a downgrade from ''Needs to Improve'' to ''Substantial Noncompliance'' should be made by examiners only with full consideration of performance context and should not be automatic.

Final Rule

A downgrade from ''Needs to Improve'' to ''Substantial Noncompliance'' pursuant to § ____.28(e) would not be automatic. Of note, proposed § ____.28(e) specifies that the agencies would consider whether the bank has an acceptable basis for its failure to improve its performance. Therefore, the agencies believe that proposed § ____.28(e) adequately addresses the commenter's suggestion. Accordingly, the agencies are finalizing § ____.28(e) as proposed.

Section ____.29 Small Bank Performance Evaluation

Section ____.29(a) Small Bank Performance Evaluation

Current Approach

The current category of small banks that are not intermediate banks includes those banks with assets of less than $376 million as of December 31 of the prior two calendar years.[1457] Pursuant to the current CRA regulations, a small bank that is not an intermediate small bank is evaluated under the lending test of the small bank performance standards, unless the bank elects to be assessed under the lending, investment, and service tests and collects and reports the data required for large and other banks.[1458] Specifically, the agencies evaluate a small bank's lending performance pursuant to the following criteria: (1) the bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments; (2) the percentage of loans

[1457] The agencies publish annual adjustments to these dollar figures based on the year to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. *See* current 12 CFR 228.12(u)(2) and 345.12(u)(2); 70 FR 44256 (Aug. 2, 2005). The agencies update this threshold annually 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. *See* current 12 CFR ____.12(u).

[1458] *See* current 12 CFR ____.21(a)(3). The small bank may also make an alternative election to be evaluated under the community development test for wholesale or limited purpose banks or operate under an approved strategic plan. *See id.*

and, as appropriate, other lending-related activities located in the bank's assessment areas; (3) the bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes; (4) the geographic distribution of the bank's loans; and (5) 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.[1459]

The Agencies' Proposal

The agencies proposed to revise current § ____.26(b), renumbered in the proposal as § ____.29(a), to maintain the criteria required to evaluate a small bank's lending performance. Specifically, in § ____.29(a), the agencies proposed to continue evaluating small banks under the current small bank lending test. As discussed further in the section-by-section analysis of § ____.12, the agencies defined ''small bank'' in proposed § ____.12 as a bank with average assets of less than $600 million in either of the prior two calendar years. The proposal also provided that a small bank could opt into the proposed Retail Lending Test described above in the section-by-section analysis of final § ____.22.[1460] In proposed § ____.29(a)(2), the agencies described how small banks could request consideration for additional CRA activities to elevate a small bank rating from ''Satisfactory'' to ''Outstanding.'' In § ____.29(a)(3), the agencies outlined their proposed approach to small bank performance ratings. The agencies also requested feedback on other ways to tailor the evaluation for small banks and, when determining a small bank's institution rating, whether additional consideration should 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.

Comments Received

The agencies received a range of comments addressing the proposed performance standards for small banks. Several of these commenters supported the agencies' proposal to evaluate small banks under the current small bank lending test, with an option for the bank to choose an evaluation under the proposed Retail Lending Test. A commenter applauded the agencies' decision not to require any new data collection and reporting requirements. Another commenter stated that the ability to opt into certain performance tests is critical for small banks and urged the agencies to retain this provision. In this regard, a commenter stated that many community banks and their communities may benefit most from being allowed to opt into the proposed Retail Lending Test rather than being evaluated under the small bank lending evaluation; however, this commenter viewed the agencies' proposal as complex and questioned whether these banks would have enough resources and time to adequately consider the benefits of being evaluated under the new performance test. This commenter also expressed concern that the proposal may effectively encourage banks to maintain their status quo examination approach, which the commenter believed would be a suboptimal outcome if the community would have benefitted most from a bank being evaluated under the new performance test.

The agencies received a few comments in response to the agencies' request for feedback on other ways to tailor the evaluation for small banks. These commenters provided several recommendations, including, among other things, that the agencies: use community affairs departments to coach small banks; make the Retail Services and Products Test and the Retail Lending Test, with certain adjustments, such as implementation after a two-to-three year transition period among others, mandatory for small banks; ensure in the regulations that supervisory constraints imposed on small banks, including CDFIs and MDIs, do not adversely affect their ability to meet community credit needs in difficult times; outline a transition plan with a specified future date or exam cycle in which to require small banks to be evaluated under the Community Development Financing Test and the Retail Lending Test; and apply the more rigorous Retail Lending Test when community needs indicate it is warranted while considering, as part of performance context, how the bank's business model might affect performance under the performance test.

Final Rule

The agencies are adopting proposed § ____.29(a) introductory text and (a)(1) with one technical change. Unlike the proposal, which referred to the ''small bank performance standards'' to differentiate from the current CRA regulation's ''small bank lending test,'' the final rule refers to the default standards for small banks as the ''Small Bank Lending Test.'' The agencies determined that, because the test in the current CRA regulations and in the final rule are so similar, it is appropriate to refer to them by the same name.

The agencies carefully considered all comments received and appreciate the recommendations made. The agencies believe that, while requiring the metrics-based approach in the Retail Lending Test for small banks may provide additional transparency regarding performance standards, it is appropriate to continue to evaluate small banks under the current framework to provide regulatory flexibility given their more limited capacity and resources. Consistent with the current rule, the agencies will use data that small banks maintain in their own format or report under other regulations. In addition, the agencies anticipate that, for small banks that do not opt into the Retail Lending Test, the final rule includes minimal, if any, regulatory changes to small banks' current CRA evaluations.

The agencies are sensitive to commenters' concerns about small banks' limited resources and time to adequately consider the benefits of being evaluated under the new Retail Lending Test. However, given that small banks have the option to be evaluated under the approach that best suits the bank's needs, whether it be an evaluation under the Small Bank Lending Test (formerly, the ''small bank lending test'') or, if the bank chooses, an evaluation under the Retail Lending Test, the agencies believe a small bank will have sufficient time to consider the benefits of being evaluated under the Retail Lending Test and can choose to be evaluated under this performance test if the bank determines that it is in its interest to do so. Permitting this option will ensure that small banks have available a metrics-based approach to increase the clarity, consistency, and transparency regarding how their retail lending is evaluated. The agencies believe this is consistent with the objective to tailor the evaluation approach according to a bank's size and business model.

Regarding other ways in which to tailor small bank evaluations, given the limited resources and capacity of small banks the agencies believe that, as finalized, the evaluation approach for small banks strikes the appropriate balance between effectively evaluating CRA activity for small banks and the agencies' intention to minimize the impact of changing regulatory

[1459] *See* current 12 CFR ____.26(b)(1) through (5).

[1460] *See* the section-by-section analysis of § ____.22.

requirements. For this reason, the agencies do not believe that requiring an evaluation under the Retail Services and Products Test, or the Retail Lending Test, even with certain adjustments, is necessary for small banks. Continuing to evaluate small banks under the current framework maintains a strong emphasis on retail lending performance while minimizing changes for these smaller banks. The agencies believe the decision on whether to request additional consideration for activities that qualify under the Retail Services and Products Test in § ____.23, or be evaluated under the Retail Lending Test in § ____.22, is better determined by the individual bank.

The agencies agree with commenters that additional consideration for activities that qualify under the Retail Services and Products Test may be appropriate for a small bank rating adjustment from ''Satisfactory'' to ''Outstanding.'' As explained in the section-by-section analysis of § ____.29(b), the agencies have made revisions to proposed § ____.29(a)(2), renumbered in the final rule as § ____.29(b), to allow banks to seek additional consideration for certain activities regardless of whether the small bank is evaluated under the Small Bank Lending Test or the bank opts into the Retail Lending Test.

Regarding commenters' suggestion that the agencies use their community affairs departments to coach or train small banks, the agencies note that they already provide significant outreach to banks and the communities they serve and will continue to do so, regardless of the bank's size. The agencies' community affairs programs provide, among other things, information and technical assistance to banks to assist them in responding to the credit and banking needs of the communities they serve, including low- and moderate-income individuals and communities. The agencies continue to encourage all banks to reach out to the community affairs department of the bank's regulator as well as supervisory staff for CRA guidance and other assistance to support efforts to develop strategies that are responsive to the credit, service, and investment needs of the banks' communities.

The agencies also note that because they are making no substantive changes to the Small Bank Lending Test criteria, the agencies do not believe that the evaluation framework for small banks will impose any additional supervisory constraints on small banks, including but not limited to those that are also CDFIs or MDIs, that will affect these banks' ability to meet the credit needs of their communities during difficult times, such as market downturns or changes in the business cycle.

Section ____.29(b) Additional Consideration

Current Approach and the Agencies' Proposal

As provided in current appendix A, small banks, that are not intermediate small banks, evaluated under the existing small bank performance standards and that meet the standards for a ''Satisfactory'' rating may warrant consideration for an overall rating of ''Outstanding.'' [1461] In assessing whether a bank's performance is ''Outstanding,'' the agencies consider 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 in providing branches and other services and delivery systems that enhance credit availability in its assessment areas.[1462]

In proposed § ____.29(a)(2), the agencies proposed to revise the ratings approach to memorialize current interagency guidance that the agencies may adjust a small bank's rating from ''Satisfactory'' to ''Outstanding'' at the institution level, where a small bank requests and receives consideration for its performance in making community development investments and services and in providing branches and other services and delivery systems that enhance credit availability in the bank's assessment areas. The agencies requested feedback on whether additional consideration should 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.

Comments Received

The majority of commenters that addressed the agencies' request for feedback regarding whether additional consideration should be provided for activities that could be considered under the proposal's Retail Services and Products Test, the Community Development Financing Test, or the Community Development Services Test when determining a small bank's overall institution rating were generally supportive. For example, a commenter believed that providing such additional consideration could encourage additional activities that serve low- and moderate-income individuals and communities. Some commenters supported such additional consideration as a way to increase a small bank's CRA rating from a ''Satisfactory'' to an ''Outstanding.'' A commenter suggested that the agencies should encourage small banks to increase their community impacts as practice before becoming a larger bank. Another commenter stated that, if the agencies provide additional consideration for small banks, they should initially collect any data on activities conducted that fall under any of the relevant performance tests in a format provided by the bank to limit burden.

Final Rule

After consideration of these comments, the agencies are finalizing the revisions in proposed § ____.29(a)(2), with certain modifications related to the consideration of additional activities. Specifically, the agencies are renumbering proposed § ____.29(a)(2) as § ____.29(b)(1) and are adopting an additional provision in § ____.29(b)(2). In § ____.29(b)(1), for small banks evaluated under the Small Bank Lending Test, the final rule provides that in addition to requesting and receiving additional consideration for the activities described in proposed § ____.29(a)(2), a small bank may also request additional consideration for the following activities without regard to whether these activities are in one or more of the bank's facility-based assessment areas: making community development investments; providing community development services; and providing branches and other services, digital delivery systems and other delivery systems, and deposit products responsive to the needs of low- or moderate-income individuals, families, or households, small businesses, and small farms. The agencies note that credit products responsive to the needs of low- and moderate-income individuals, families, or households, small businesses, and small farms are considered under the Small Bank Lending Test, and not separately as an additional consideration activity. The agencies believe that these changes provide additional clarity and specificity for small banks on the types and location of activities that may qualify for additional consideration. The final rule maintains the proposal's requirements that the bank's rating may

[1461] *See* current 12 CFR ____.29(d) and current appendix A.

[1462] *See* current appendix A, paragraph (d)(3)(ii)(B).

be adjusted from ''Satisfactory'' to ''Outstanding'' at the institution level.

The final rule also adopts an additional provision in § ____.29(b)(2) to provide that, for small banks that opt to be evaluated under the Retail Lending Test, where a small bank requests and receives additional consideration for activities that qualify under the Retail Services and Products Test in § ____.23, the Community Development Financing Test in § ____.24, or the Community Development Services Test in § ____.25, the bank's rating may be adjusted from ''Satisfactory'' to ''Outstanding'' at the institution level. The agencies believe that, in comparison to the proposal, the specific references to the remaining three large bank performance tests provides additional certainty and clarity for small banks that opt into the Retail Lending Test.

As in the proposal, and consistent with the current regulations, the agencies will not consider these additional activities to adjust a ''Needs to Improve'' rating to a ''Satisfactory'' or to an ''Outstanding'' rating so as to maintain a strong emphasis on retail lending performance. The agencies continue to believe that additional activities should not compensate for, or otherwise minimize poor retail lending performance. The agencies note that in the final rule, as in the current regulations, a small bank can 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.

The agencies have also added new final § ____.29(b)(3) to clarify that notwithstanding the requirement that a small bank have a ''Satisfactory'' or ''Outstanding'' rating for the consideration of additional activities under paragraphs (b)(1) and (2) of the section, small banks may receive consideration for activities with MDIs, WDIs, and LICUs, and for low-cost education loans without regard to the small bank's rating. The agencies added this additional consideration to provide clarity about how these activities and loans may be considered in compliance with the requirements of the CRA.

The agencies considered comments suggesting that the agencies should collect data on activities eligible for additional consideration. On balance, the agencies believe that additional consideration for such activities without a requirement to collect any additional data or opt into any additional performance test beyond the current small bank lending test may encourage additional activities for low- and moderate-income individuals and communities and may encourage small banks to increase their community impacts without increasing regulatory burden. The agencies will, however, review appropriate information related to the activities for which a small bank is requesting additional consideration in a format of the bank's choosing.

Section ____.29(c)(1) Small Bank Performance Conclusions

Section ____.29(c)(2) Small Bank Performance Ratings

Current Approach

Current § ____.26(d) and current appendix A provide that the agencies assign one of four ratings based on the performance of a bank evaluated under the small bank performance standards: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''[1463] The agencies rate a small bank's lending performance as ''Satisfactory'' if, in general, the bank demonstrates a reasonable loan-to-deposit ratio; a majority of loans are in its assessment area; a distribution of loans to, and for, individuals of different income levels and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment areas; a record of taking appropriate action in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment areas; and a reasonable geographic distribution of loans given the bank's assessment areas.[1464] Small banks may be eligible for an ''Outstanding'' lending test rating if the bank meets each of the standards for a ''Satisfactory'' rating described above, and exceeds some or all of those standards.[1465] A small bank may also receive a lending test rating of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''Satisfactory'' rating.[1466]

The Agencies' Proposal

The agencies proposed to revise § ____.26(d), renumbered in the proposal as § ____.29(a)(3), and to replace current appendix A with proposed appendix E. Although current appendix A addresses performance ratings for all banks, appendix E proposed to address small bank conclusions and ratings as well as intermediate bank community development evaluation conclusions to provide consistency with other performance tests. Proposed appendix E provided that, unless a small bank opts to be evaluated under the Retail Lending Test, the agencies assign conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the small bank's performance under § ____.29 in each facility-based assessment area to arrive at the bank's overall rating assigned by the agencies. Proposed appendix E also provided that, unless a small bank opts to be evaluated under the Retail Lending Test, consistent with current appendix A, the agencies would evaluate a small bank's performance under the applicable performance criteria in the regulations and assign a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the bank's performance. Under the proposal, 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 would warrant consideration for an overall rating of ''Outstanding.'' In assessing whether a bank's performance is ''Outstanding,'' the agencies proposed that they would consider 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. A small bank would also have received an overall bank rating of ''Needs to Improve'' or ''Substantial Noncompliance'' depending on the degree to which its performance failed to meet the standards for a ''Satisfactory'' rating.

With respect to a small bank that opted to be evaluated under the Retail Lending Test, the agencies proposed to evaluate the small bank as provided for intermediate banks in proposed appendix D, with the exception that no small bank would be evaluated on its retail lending outside of its assessment areas, regardless of the amount of such lending.

In appendix D, the agencies also proposed that a small bank evaluated under the Retail Lending Test may request additional consideration for its 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.

[1463] *See* current appendix A, paragraph (d)(1).

[1464] *See id.* at paragraphs (d)(1)(i)(A) through (E).

[1465] *See id.* at paragraph (d)(1)(ii).

[1466] *See id.* at paragraph (d)(1)(iii).

Final Rule

The agencies received no comments specifically related to the revisions in proposed § ____.29(a)(3), renumbered in the final rule as § ____.29(c)(1) and (2), pertaining to a small bank's conclusions and ratings. Accordingly, the agencies are finalizing these provisions as proposed. The agencies are also making certain revisions for clarity and to conform to other changes made in § ____.29. Specifically, final § ____.29(c)(1) clarifies that, except for a small bank that opts to be evaluated under the Retail Lending Test, the agencies assign conclusions in connection with a small bank evaluated pursuant to § ____.29 as provided in appendix E. Final appendix E provides that the agencies assign conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for a small bank's test performance in each facility-based assessment area, in each State or multistate MSA, as applicable, and for the institution as provided in § ____.29. For a small bank that opts to be evaluated under the Retail Lending Test, the agencies will assign conclusions regarding the small bank's Retail Lending Test performance as provided in final appendix C.

Final § ____.29(c)(2) provides that the agencies rate the performance of a small bank evaluated under the Small Bank Lending Test, as provided in appendix E. If the small bank opts to be evaluated under the Retail Lending Test, the agencies rate the performance of the small bank as provided by appendix D. In turn, final appendix D provides that the agencies determine a small bank's rating for each State or multistate MSA pursuant to § ____.28(c), and for the institution based on the performance score for the bank's Retail Lending Test conclusions for the State, multistate MSA, or institution, respectively. In addition, the final rule removes the proposal's exception that no small bank would be evaluated on its retail lending outside of its assessment areas. As described in more detail in the section-by-section analysis of § ____.22, to be consistent with intermediate banks, the agencies will treat the outside retail lending of a small bank the same as intermediate banks.

Section ____.30 Intermediate Bank Performance Evaluation

Section ____.30(a)(1) Intermediate Bank Performance Evaluation

Section ____.30(a)(2) Intermediate Bank Community Development Test

Current Approach

Currently, the agencies define intermediate small banks as having assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years.[1467] The agencies evaluate intermediate small banks under the small bank performance standards as provided in current § ____.26(a)(2). Specifically, intermediate small banks are currently evaluated under two performance tests: (1) the small bank lending test in current § ____.26(b),[1468] described above in the section-by-section analysis of § ____.29(a); and (2) the community development test in current § ____.26(c) that applies exclusively to intermediate small banks. The test evaluates the intermediate small bank's community development performance pursuant to the following criteria: (1) the number and amount of a bank's community development loans; (2) the number and amount of community development investments; (3) the extent to which the bank provides community development services; and (4) the bank's responsiveness through such activities to community development lending, investment, and services needs.[1469] An intermediate small bank may allocate its resources among community development lending, investment, and services in amounts that the bank reasonably determines are the most responsive to community development needs and opportunities.[1470] However, an intermediate small bank may not simply ignore one or more of these categories of community development.[1471] Neither the current regulations nor the guidance prescribe a required threshold for each category; instead, appropriate levels of each community development category depend on the capacity and business strategy of the bank, community needs, and the number and types of opportunities available for community development within the bank's assessment areas.[1472]

The Agencies' Proposal

The agencies proposed to revise current § ____.26(a)(2), renumbered in the proposal as § ____.29(b), with respect to evaluating intermediate small banks. First, the agencies proposed to create a new ''intermediate bank'' category to replace the ''intermediate small bank'' category. The agencies proposed to define intermediate banks in proposed § ____.12 to include banks with average assets of at least $600 million as of December 31 of both of the prior two calendar years and less than $2 billion as of December 31 of either of the prior two calendar years.[1473] Second, in § ____.29(b)(1), the agencies proposed to continue evaluating an intermediate bank under two performance tests. Specifically, the agencies proposed to evaluate intermediate banks under: (1) the proposed Retail Lending Test; and (2) the current community development test, unless the bank opts to be evaluated under the proposed Community Development Financing Test in proposed § ____.24.[1474]

In proposed § ____.29(b)(1), the agencies indicated that intermediate banks would be evaluated under the Retail Lending Test, in a manner tailored to intermediate banks (as further described in the section-by-section analysis of § ____.22). The agencies did not propose any new data collection, maintenance, or reporting requirements for intermediate banks under the Retail Lending Test.[1475] Consistent with the current regulations, the agencies proposed to use data that intermediate banks maintain in a format of their choosing or report under other regulatory requirements.

In proposed § ____.29(b)(1), the agencies also provided that the community development activities of intermediate banks be evaluated using the intermediate bank community development evaluation, unless the intermediate bank chose to be evaluated under the Community Development Financing Test in proposed § ____.24.[1476] As discussed in more detail in the section-by-section analysis

[1467] *See* current 12 CFR ____.12(u). As noted above, the agencies update this threshold annually 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.

[1468] *See also* current 12 CFR ____.21(a)(3).

[1469] *See* current 12 CFR ____.26(c)(1) through (4).

[1470] *See* Q&A § ____.26(c)—1.

[1471] *See id.*

[1472] *See id.*

[1473] *See* the section-by-section analysis of § ____.12 for a discussion of the ''intermediate bank'' definition.

[1474] *See* the section-by-section analysis of § ____.24.

[1475] For a discussion of proposed retail lending data requirements, see the section-by-section analysis of § ____.42.

[1476] *See* the section-by-section analysis of § ____.24.

of § ____.42(a)(5), the agencies proposed that an intermediate bank that opts to be evaluated under the Community Development Financing Test must collect and maintain the same data required of large banks, but in the format used by the bank in the normal course of business.

The agencies requested feedback on ways to further tailor the Retail Lending Test for intermediate banks. The agencies also requested comment on whether all banks, including intermediate banks, should have the option to have their community development activities outside of facility-based assessment areas considered. In addition, the agencies requested feedback on whether intermediate banks should continue to have the flexibility to have small business, small farm, and home mortgage loans considered as community development loans, provided that those loans have a primary purpose of community development pursuant to proposed § ____.13 and the bank is not required to report those loans. Relatedly, the agencies also requested feedback on whether an intermediate bank should have the ability to have its small business or small farm loans considered under the Retail Lending Test or, if they have a primary purpose of community development pursuant to proposed § ____.13, under the applicable community development evaluation, regardless of the reporting status of these loans.

Comments Received

The agencies received a range of comments addressing the proposed performance standards for intermediate banks from a wide variety of commenters. Of the commenters that addressed the agencies' proposal to evaluate intermediate banks under the Retail Lending Test, a few supported this approach, while a majority recommended that the agencies apply the Retail Lending Test to large banks only and continue to evaluate intermediate banks, or give these banks the option to be evaluated, under the lending test applicable to intermediate small banks under the current CRA regulations. Some of these commenters explained that significant implementation costs for intermediate banks justified making the Retail Lending Test optional. A commenter stated that the ability to opt into certain performance tests is critical for intermediate banks (as well as small banks) and urged the agencies to retain this provision. Another commenter stated that many community banks and their communities may benefit most from being allowed to opt into the proposed Retail Lending Test; however, this commenter viewed the agencies' proposal as complex and questioned whether these banks would have enough resources and time to adequately consider the benefits of being evaluated under the new performance test. This commenter also expressed concern that the proposal may effectively encourage intermediate banks (and small banks) to maintain their status quo examination approach, which the commenter believed would be a suboptimal outcome if the community would have benefitted most from a bank being evaluated under the new performance test.

Most commenters addressing the agencies' proposals for intermediate banks commented on the proposed requirement to evaluate these banks under the intermediate bank community development test. These commenters expressed a range of views. For example, several of these commenters suggested that the Community Development Financing Test should not be optional but, instead, be required for intermediate banks to create consistency among banks and examiners and to provide other interested parties with a common understanding with respect to CRA community development requirements. Other commenters, however, supported providing intermediate banks with the flexibility to opt into the Community Development Financing Test. As the Community Development Financing Test does not include a review of community development services, a few commenters expressed corresponding concerns, with one commenter indicating that the overall level of intermediate banks' community development services would decrease and another commenter stating that intermediate banks should all be evaluated regarding community development services activities even if they opt into being evaluated under the Community Development Financing Test. Another commenter suggested that the agencies should provide intermediate banks with a formal option for electing to be evaluated under the Retail Services and Products Test.

Regarding the agencies' request for feedback on ways to further tailor the Retail Lending Test for intermediate banks, several commenters provided recommendations. A commenter stated that performance context should weigh more than positioning amongst peers in an intermediate bank's evaluation. Several other commenters supported tailoring that reduces Retail Lending Test data reporting requirements. For example, one commenter applauded the agencies' decision to not require any new data collection and reporting requirements. Other commenters also recommended that, to the extent data reporting is required, the agencies ought to use data already submitted by these banks. A few other commenters expressed a contrary view, stating that tailoring the Retail Lending Test with respect to data reporting requirements would lead to data gaps and inconsistencies in assessing activities and difficulties in comparing data across the agencies' supervised banks. One of these commenters asserted that all intermediate banks should be mandatory Retail Lending Test data reporters, citing minimal burden and public benefit. Another commenter recommended an alternative approach requiring that intermediate banks provide Retail Lending Test data that they already collect on activities across all assessment areas and for the agencies to, in turn, conduct qualitative assessments in accordance with each relevant performance test. According to this commenter, this approach would also provide the agencies with data that could be used to assess what systems and procedures would be needed to allow intermediate banks to report data in accordance with the corresponding proposed large bank requirements. Another commenter recommended that all Retail Lending Test requirements applicable to large banks be applied to intermediate banks, and noted that, although this would be more rigorous for intermediate banks it would also be more predictable and add transparency. A few commenters indicated that only large banks should be subject to the Retail Lending Test.

Several commenters responded to the agencies' request for feedback on questions about counting retail loans under the applicable community development test for intermediate banks. Most of these commenters expressed support for intermediate banks having flexibility to have small business, small farm, and home mortgage loans considered as community development loans regardless of a loan's reporting status. A few of these commenters also suggested that intermediate banks needed to be provided with targeted performance standards to help decide whether a loan should be evaluated under the Retail Lending Test or under either the intermediate bank community development test or, at the bank's option, the Community Development Financing Test. However, another commenter did not support providing community development consideration for retail loans on the basis that retail lending and community development lending serve different purposes, and recommended that if an intermediate bank wants credit for retail lending it should voluntarily report that lending for consideration under the Retail Lending Test.

As noted above, the agencies requested comment on whether all banks, including intermediate banks, should have the option to have their community development activities outside of facility-based assessment areas considered. A few commenters addressing this question supported giving all banks the option to receive such consideration, regardless of their size or whether they elect to be evaluated under a strategic plan. A commenter indicated that small lenders are often in the best position to engage in community development activities in underserved areas, but are not required to do so; accordingly, it would be beneficial to give them the option to engage in such activities outside of their facility-based assessment areas, including through the incentive of possibly receiving an ''Outstanding'' rating.

Final Rule

For the reasons stated below, the agencies are finalizing proposed § ____.29(b)(1), renumbered as § ____.30(a)(1) in the final rule, pertaining to the evaluation of an intermediate bank's retail lending performance under the Retail Lending Test, and its community development activities under the intermediate bank community development evaluation (in proposed § ____.29(b)(2), renumbered as § ____.30(a)(2)(i))—renamed in the final rule as Intermediate Bank Community Development Test—unless an intermediate bank opts to be evaluated under the Community Development Financing Test. The agencies are also making technical changes to improve the clarity and organization of this paragraph. Specifically, the agencies are clarifying the criterion in proposed § ____.29(b)(2)(iv), renumbered as § ____.30(a)(2)(i)(D), that the agencies' evaluation of the responsiveness of the bank's activities is informed by information provided by the bank and may be informed by the impact and responsiveness review factors described in § ____.15(b). The agencies believe that providing some of the specific factors they will consider when evaluating the degree of responsiveness of intermediate bank's community development loans, investments, and services improves the ability of stakeholders to assess the qualitative impact of the activities. The agencies also note that renumbering of this section serves to separate the performance standards for small banks in § ____.29 from the performance standards for intermediate banks in new § ____.30. The agencies believe that this revision improves organizational clarity and readability.

With respect to the Retail Lending Test, the agencies believe applying this performance test to intermediate banks is appropriate because evaluating an intermediate bank under the Retail Lending Test, rather than the Small Bank Lending Test in § ____.29, provides intermediate banks (and the public) with increased clarity, consistency, and transparency on applicable supervisory expectations, and standards for evaluating their retail lending performance. In addition, as the asset size of intermediate banks increased to between $600 million and less than $2 billion in assets,[1477] the agencies believe that banks in this asset-size category should have sufficient resources and capacity to adjust to the Retail Lending Test, particularly as no new data reporting and no delineation of retail lending assessment areas are required. In addition, as described further in the section-by-section analysis of § ____.22, intermediate banks are treated differently related to the retail lending volume screen and the outside retail lending assessment area. This approach also supports an easier potential transition to the large bank category later, as these intermediate banks will be familiar with certain Retail Lending Test requirements applicable to large banks and would need to adjust to a smaller set of additional requirements.

The agencies considered comments that a tailored approach to the Retail Lending Test for intermediate banks might lead to corresponding data gaps, inconsistencies in assessing activities, and difficulties in comparing data across banks. Under the final rule, the agencies have sought to achieve a balance between ensuring a standardized evaluation approach that is informed by metrics, and limiting additional complexity and burden, in particular for small and intermediate banks, as discussed in the section-by-section analysis of § ____.42. In light of these objectives, the agencies believe it is appropriate to tailor data collection and reporting requirements for intermediate banks, recognizing that any data requirements for these banks would create additional burden. Additionally, for those banks that do not have data collection and maintenance requirements, the agencies may use bank data collected in the ordinary course of business, or may use sampling techniques to compute metrics for the bank.

With respect to an intermediate bank's community development evaluation, the agencies believe that retaining the flexibility for these banks to be evaluated under the Intermediate Bank Community Development Test or, at the bank's option, to be evaluated under the Community Development Financing Test, recognizes these banks' more limited capacity compared to larger banks. The agencies believe tailoring the evaluation for intermediate banks is necessary to appropriately reflect their resources and capacity relative to large banks, and the focus of their business models, which is generally on their facility-based assessment areas. Moreover, although the agencies recognize commenter concerns that requiring intermediate banks to be evaluated under the Community Development Financing Test may promote greater consistency among banks and examiners, the agencies are not persuaded that the additional Community Development Financing Test data collection, maintenance, and reporting burden would in all cases outweigh the additional benefits. In addition, the agencies believe that providing intermediate banks with flexibility to opt into the Community Development Financing Test best supports the agencies' objective of tailoring the evaluation to best fit an intermediate bank's size, business model, and business strategy. Of note, both the Intermediate Bank Community Development Test and the Community Development Financing Test are intended to consider and evaluate intermediate bank community development loans and community development investments. In addition, the agencies note that the Intermediate Bank Community Development Test includes community development services, while community development services are considered at the bank's option for intermediate banks evaluated under the Community Development Financing Test. So, too, the results of the agencies' evaluation of an intermediate bank's community development activities, evaluated under in either performance test, will be presented in the public portion of the bank's CRA performance evaluation. This, in turn, will assist stakeholders to

[1477] *See* the section-by-section analysis of § ____.12.

understand how these community development activities are assessed and regulated.

The agencies also believe that the flexibility of permitting intermediate banks to opt to have their retail services and products considered in order to potentially elevate an overall rating from a ''Satisfactory'' to an ''Outstanding'' makes it unnecessary to incorporate a formal intermediate bank opt-in to the Retail Services and Products Test.

The agencies acknowledge the importance of performance context in the CRA evaluation of any bank. However, the agencies do not believe that it is appropriate to weight an intermediate bank's performance context considerations more than its actual retail lending and community development activities given the CRA's strong emphasis on retail lending and community development performance in order to meet community needs. Examiners will continue to consider a bank's capacity, business model, business strategy, and other performance context factors when evaluating the overall performance of intermediate and other banks, as discussed in the section-by-section analysis of § ____.21.

Upon consideration of the comments, the agencies have decided to permit an intermediate bank to receive consideration for retail loans that have a community development purpose under both the Retail Lending Test (under which the number of such loans will be considered) and under either the Intermediate Bank Community Development Test or, at the bank's option, the Community Development Financing Test (under which the dollar amount of such loans will be considered). To accomplish this, the agencies are removing the provision in proposed § ____.22(a)(5) that made the consideration of retail loans for intermediate banks exclusive to the Retail Lending Test. The agencies believe that it is appropriate to consider a retail loan as a community development loan if the retail loan meets the definition of a community development loan pursuant to final §§ ____.12 and ____.13, given the different considerations applicable to these loans pursuant to the relevant performance tests. For example, closed-end home mortgage loans considered under the Retail Lending Test are excluded from community development consideration unless these loans are one-to-four family home mortgage loans for rental housing with affordable rents in nonmetropolitan census tracts. The agencies also believe that the decision regarding which retail loans to request consideration for as a community development loan should be left to the bank using the criteria provided in § ____.13 to determine whether a retail loan has a community development purpose as described in that section.

Section ____.30(a)(2)(ii) Consideration of Community Development Activities Outside Facility-Based Assessment Areas

The agencies are persuaded by commenters' recommendations that all banks' community development activities, including those of an intermediate bank, be considered without regard to whether the activity is conducted in the bank's facility-based assessment areas. Accordingly, the agencies are revising final § ____.19 to provide that all banks, including intermediate banks, may receive consideration for community development loans, investments, or services provided outside of their facility-based assessment areas. The agencies believe providing consideration for community development activities outside a bank's facility-based assessment areas adds certainty and will contribute to higher levels of community development activities. The agencies also believe consideration for these outside activities will encourage activities in areas with high community development needs, such as underserved areas, while not increasing burden since banks would not be required to serve these areas if not otherwise required to do so. This provision includes intermediate banks that opt to be evaluated under the Community Development Financing Test in final § ____.24.

The agencies are also adopting an additional provision in § ____.30(a)(2)(ii) to provide that community development activities of an intermediate bank evaluated under either the Intermediate Bank Community Development Test or, at the bank's option, the Community Development Financing Test, are considered regardless of whether the activity is conducted in one or more of the bank's facility-based assessment areas. The extent of the consideration given to community development activities outside of an intermediate bank's facility-based assessment areas will depend on the adequacy of the bank's responsiveness to the needs and opportunities for community development activities within the bank's facility-based assessment areas and applicable performance context information. The agencies believe that providing consideration for community development activities outside of a bank's facility-based assessment areas introduces additional certainty that will incentivize higher levels of community development activities. The agencies also believe that consideration for these outside activities will encourage activities in areas with high community development needs, such as underserved areas, while not increasing regulatory burden as banks would not be required to serve these areas. Further, the agencies believe that these activities would not supplant facility-based assessment area community development activities but could instead provide banks with the flexibility to engage in outside activities, particularly when there are limited opportunities for such community development activities in a bank's facility-based assessment area.

Section ____.30(b) Additional Consideration

Current Approach and the Agencies' Proposal

As explained in the section-by-section analysis of § ____.30(a)(1) and (2), an intermediate small bank is currently subject to the small bank lending test and a community development test, which includes consideration of community development lending, investments, and services. The agencies proposed in § ____.29(b)(3) that if an intermediate bank opts to be evaluated under the Community Development Financing Test the bank would have the option to request additional consideration for activities that qualify under the Retail Services and Products Test and the Community Development Services Test for possible adjustment of an overall rating of ''Satisfactory'' to ''Outstanding.'' The agencies did not propose to provide additional consideration for retail services and products and community development services for intermediate banks evaluated under the intermediate bank community development evaluation in proposed § ____.29(b)(2), because, as explained in the proposal, the agencies believed this section already incorporated those activities in the status quo intermediate bank community development evaluation.

Final Rule

The agencies received no specific comments related to the provision for additional consideration of an intermediate bank's activities that qualify under other performance tests. Accordingly, the agencies are finalizing proposed § ____.29(b)(3), renumbered as § ____.30(b), with a few revisions for clarity. Specifically, the agencies are clarifying their intent that, if an intermediate bank requests and receives consideration for additional activities, the agencies may adjust the bank's rating from a ''Satisfactory'' to an ''Outstanding,'' regardless of whether the bank is evaluated under the Intermediate Bank Community Development Test or the Community Development Financing Test.

In the preamble to the proposed rule, the agencies explained that additional consideration for retail services and products and community development services would not be appropriate for an intermediate bank that is evaluated under the intermediate bank community development evaluation because proposed § ____.29(b)(2) already incorporated those activities. However, the agencies note that proposed § ____.29(b)(2) did not address additional consideration for certain retail services and products included under the Retail Services and Products Test, even though the agencies intended to provide such consideration. Accordingly, the agencies are finalizing § ____.30(b)(1) to make clear that an intermediate bank evaluated under the Intermediate Bank Community Development Test may also request and receive additional consideration for activities that qualify under the Retail Services and Products Test, provided the bank achieves an overall institution rating of at least ''Satisfactory.'' It is not necessary to provide these intermediate banks with additional consideration for community development services because the Intermediate Bank Community Development Test already incorporates an evaluation of community development services.

The final rule also revises proposed § ____.29(b)(3), renumbered as § ____.30(b)(2), to clarify that an intermediate bank that opts to be evaluated under the Community Development Financing Test must achieve an overall institution level rating of at least ''Satisfactory'' to request and receive additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Services Test, or both.

Similar to the requirements for small banks, the agencies will consider these activities to potentially elevate a bank's overall institution rating from ''Satisfactory'' to ''Outstanding, but would not elevate a ''Needs to Improve'' rating to a ''Satisfactory'' or an ''Outstanding'' rating. Additionally, an intermediate bank could likewise 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 eligible for additional consideration.

The agencies have also added new final § ____.30(b)(3) to clarify that notwithstanding the requirement that an intermediate bank must achieve a ''Satisfactory'' or ''Outstanding'' rating for the consideration of additional activities under paragraphs (b)(1) and (2) of the section, intermediate banks may receive additional consideration for low-cost education loans without regard to the intermediate bank's overall institution rating. The agencies added this additional consideration to provide clarity about how low-cost education loans may be considered in compliance with the requirements of the CRA.[1478]

Section ____.30(c) Intermediate Bank Performance Conclusions and Ratings

Current Approach

Current § ____.26(d) provides that the agencies assign the performance of a bank evaluated under the small bank performance standards one of four ratings, as set forth in current appendix A: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''[1479]

Under current appendix A, the agencies assign intermediate small banks evaluated under the small bank lending test conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' based on the bank's lending performance. The agencies rate an intermediate small bank's lending performance as ''Satisfactory'' if, in general, the bank demonstrates a reasonable loan-to-deposit ratio; a majority of loans are in its assessment areas; a distribution of loans to, and for individuals of, different income levels and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment areas; a record of taking appropriate action, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment areas; and a reasonable geographic distribution of loans given the bank's assessment areas. An intermediate small bank that meets each of the standards for a ''Satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for a lending test rating of ''Outstanding.''

Under the current intermediate small bank community development test, the agencies rate the bank's community development performance ''Satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its 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 assessment areas' need for such community development activities, and the availability of such opportunities for community development in the bank's assessment areas. The agencies rate an intermediate small bank's community development performance ''Outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its 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 assessment areas.

The agencies may assign an intermediate small bank a community development test 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.

Pursuant to current appendix A, an intermediate small bank may not receive an assigned overall rating of ''Satisfactory'' unless it receives a rating of at least ''Satisfactory'' on both the lending test and the community development test.[1480] An intermediate small bank that receives an ''Outstanding'' rating on one test and at least ''Satisfactory'' on the other test may receive an assigned overall rating of ''Outstanding.''[1481]

The Agencies' Proposal

For intermediate banks, the agencies proposed to revise current 12 CFR ____.26(d) (Small bank performance rating), renumbered in the proposal as proposed § ____.29(b)(4) (Intermediate bank performance ratings), to provide that the agencies would rate the performance of an intermediate bank as provided in proposed appendices D (Ratings) and E (Small Bank Conclusions and Ratings and Intermediate Bank Community

[1478] *See* 12 U.S.C. 2903(d).

[1479] Current appendix A, paragraph (d)(1).

[1480] *Id.*

[1481] *See* current appendix A, paragraph (d)(3)(ii)(A).

Development Evaluation Conclusions). In proposed appendix E, the agencies proposed to rate an intermediate bank's performance as described in appendix D.[1482] Pursuant to proposed appendix D, for intermediate banks evaluated under the Retail Lending Test and the Community Development Financing Test, the agencies proposed to combine an intermediate bank's raw performance scores for its State or multistate MSA performance under the Retail Lending Test and the Community Development Financing Test to determine the bank's rating at the State or multistate MSA level and for the institution.[1483] The agencies proposed to weight the performance scores equally: Retail Lending Test (50 percent) and Community Development Financing Test (50 percent). The agencies proposed to multiply each of these weights by the bank's corresponding performance score on the respective performance test, and then add the resulting values together to develop a State, multistate MSA, or institution performance score. For this calculation, the performance score for the Retail Lending Test and the Community Development Test alike 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). The agencies would then assign a rating corresponding to the rating category that is nearest to the State, multistate MSA, or institution performance score, as provided in proposed appendix D.

Proposed appendix D further provided that the agencies may adjust an intermediate bank's institution rating from ''Satisfactory'' to ''Outstanding'' where the bank requests and receives sufficient additional consideration for activities that qualify under the Retail Services and Products Test, the Community Development Services Test, or both.

Pursuant to proposed appendix E, for intermediate banks evaluated under the Retail Lending Test and the intermediate bank community development performance evaluation, the agencies proposed to assign conclusions for an intermediate bank's community development performance of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.'' The agencies proposed to assign an intermediate bank's community development performance a ''Low Satisfactory'' conclusion if the bank demonstrated adequate responsiveness, and a ''High Satisfactory'' conclusion if the bank demonstrated 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 agencies proposed that their determination of the adequacy of the bank's response would depend on the bank's 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. The agencies proposed to consider an intermediate bank's retail banking services and products activities as community development services if they provide benefit to low- and moderate-income individuals.

Additionally, the agencies proposed to assign an intermediate bank's community development performance an ''Outstanding'' conclusion if the bank demonstrated 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. The agencies proposed to assign an intermediate bank's community development performance a ''Needs to Improve'' or ''Substantial Noncompliance'' conclusion depending on the degree to which the bank's performance had failed to meet the standards for a ''Satisfactory'' conclusion.

Comments Received

The agencies received a few comments specifically related to an intermediate bank's conclusions and ratings. Related to the equal 50 percent weighting between the Retail Lending Test and the intermediate bank community development evaluation, these commenters supported equal weighting under the assumption that community development services are part of the intermediate bank community development evaluation. One of the commenters stated that if community development services are optional, the Retail Lending Test weight should be increased to 55 or 60 percent to leverage more lending.

The agencies also received comments on what should constitute an overall passing score (*i.e.,* an overall ''Satisfactory'') for a bank's CRA performance. A commenter agreed with the proposal that intermediate banks must have at least a ''Low Satisfactory'' on the Retail Lending Test to pass overall, but opposed eliminating the requirement that banks have a ''Satisfactory'' rating on the community development test to have ''Satisfactory'' rating overall, stating that there is no justification for removing this requirement.

Final Rule

The agencies are finalizing proposed § ____.29(b)(4), renumbered in the final rule as § ____.30(c)(1) and (2), pertaining to an intermediate bank's performance conclusions and ratings, with revisions to provide separate provisions for conclusions and ratings. Specifically, the agencies are finalizing § ____.30(c)(1), which provides that the agencies assign a conclusion for the performance of an intermediate bank evaluated pursuant to final § ____.30 as provided in final appendices C and E. The agencies are also finalizing § ____.30(c)(2), which provides that the agencies rate the performance of an intermediate bank evaluated pursuant to final § ____.30 as provided in final appendix D.

The agencies are also finalizing as proposed the respective weights of the Retail Lending Test at 50 percent and either the Intermediate Bank Community Development Test or, at the bank's option, the Community Development Financing Test, also at 50 percent. The agencies note that they considered various weighting combinations to apply to a two performance-test analysis; however, the agencies have ultimately determined that the weights as finalized are appropriate, and did not increase the Retail Lending Test weight. The agencies continue to believe that the weight for each test, as finalized, reflects the CRA's emphasis on retail lending and the importance of community development activities in meeting community credit needs. In comparison to alternatives where a greater emphasis is placed on one of the two applicable performance tests, the agencies determined that an equal weighting on both tests best recognizes bank performance for both retail lending and community development and avoids diminution of one type of performance in favor of the other. The agencies also note that the weighting of the performance tests in the final rule is consistent with the current practice for

[1482] *See* proposed appendix E, paragraph b.2.

[1483] *See* proposed appendix D, paragraph c.

intermediate small banks, which gives equal weight to retail lending and community development activities.

For the final rule, the agencies also considered the impact of the additional consideration of other activities, including community development services, on the weight of the performance tests. The agencies continue to believe that the flexibility intermediate banks have to decide which community development performance test better fits their bank will allow banks that currently participate heavily in community development services to continue to have these services evaluated under the Intermediate Bank Community Development Test or to have these community development services given additional consideration under the Community Development Financing Test. In addition, the agencies also believe that maintaining consistency in the evaluation framework outweighs additional adjustments based on which community development performance test applies to the intermediate bank.

The agencies are also finalizing as proposed the requirement that an intermediate bank receive at least a ''Low Satisfactory'' on the Retail Lending Test for the bank to receive an overall ''Satisfactory'' rating. As the agencies explained in the proposal, this requirement serves to prevent a bank from receiving a ''Satisfactory'' or higher rating at the State or multistate MSA level or for the institution if it fails to meet its community's credit needs for retail loans. Consistent with current practice, the agencies are finalizing this requirement to emphasize the importance of retail loans to low- and moderate-income individuals, and in low- and moderate-income communities.

Finally, the agencies believe that removal of the requirement that an intermediate bank receive a ''Satisfactory'' on both applicable performance tests in order to receive an overall ''Satisfactory'' CRA rating will allow intermediate banks to best determine how to meet community credit needs consistent with their more limited capacities. Moreover, the agencies believe this aspect of the final rule provides parity between intermediate and large banks, as this requirement is only applicable to intermediate small banks in the current rule, which holds these banks to a higher standard of performance than their larger counterparts.

Section ____.31 Effect of CRA Performance on Applications

Current Approach

Under the current CRA regulations, the agencies take into account a bank's CRA performance when considering certain applications, including but not limited to: the establishment of a domestic branch; a merger, consolidation, acquisition of assets, or assumption of liabilities; the relocation of a main office or branch; a deposit insurance request; and transactions subject to the Bank Merger Act, the Bank Holding Company Act, or the Home Owners' Loan Act.[1484] In considering these applications, the agencies also take into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures.[1485]

A bank's record of CRA performance may be the basis for denying or conditioning approval of an application.[1486] In reviewing applications in which CRA performance is a relevant factor, information from a bank's CRA examination is a particularly important, and often controlling, factor in the consideration of a bank's record.[1487] The agencies' consideration of CRA performance on applications implements the statutory requirement that the agencies take into account 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, in evaluating applications for a deposit facility by such bank.[1488]

The Agencies' Proposal

The agencies proposed to renumber current § ____.29 to proposed § ____.31 but did not propose any substantive changes to current § ____.29.[1489] The agencies sought feedback on the sufficiency of the agencies' current policies for considering CRA performance in connection with applications and whether any changes could make the process more effective.

[1484] *See* current 12 CFR 25.29(a) (OCC), 228.29(a) (Board), and 345.29(a) (FDIC). The agencies' respective CRA regulations include provisions that relate directly to each of their specific authorities with regard to banking applications.

[1485] *See* current 12 CFR 25.29(c) (OCC), 228.29(b) (Board), and 345.29(c) (FDIC).

[1486] *See* current 12 CFR 25.29(d) (OCC), 228.29(c) (Board), and 345.29(d) (FDIC).

[1487] *See* Q&A § ____.29(a)–1.

[1488] *See* 12 U.S.C. 2903(a); *see also* 12 U.S.C. 2902(3).

[1489] Each agency proposed, and is finalizing, final § ____.31 as part of its agency-specific amendments.

Comments Received

The agencies received comments related to proposed § ____.31 from a variety of stakeholders. Some commenters provided input specifically on the effect of a bank's CRA rating on an application. One commenter stated that current policies related to the effect of CRA performance on applications are sufficient, with other commenters suggesting changes. Some of these commenters stated that an ''Outstanding'' CRA rating must not be considered evidence that a merging bank has satisfied the public benefits legal requirement[1490] because the CRA rating is retrospective and does not consider the resulting bank, whereas another commenter suggested that the agencies deem a bank with an ''Outstanding'' CRA rating to have satisfied the convenience and needs standard for purposes of the application's processing to incentivize banks to achieve an ''Outstanding'' rating. Further, a commenter stated that banks with a poor CRA rating should be prevented from merging and another commenter suggested banks rated ''Outstanding'' should be reviewed more closely when purchasing banks rated less than ''Outstanding.'' In a similar vein, a commenter supported efforts to hold banks accountable if they fail CRA examinations or wish to acquire a bank with a better CRA rating. Other commenters specifically called for greater public and regulatory scrutiny of applications by banks with a ''Low Satisfactory'' CRA rating and for a requirement that these banks submit a plan to improve their CRA rating. One commenter urged the agencies to state how a ''Needs to Improve'' CRA rating would affect applications.

Many commenters that provided input on proposed § ____.31 also discussed the agencies' processes and standards for reviewing merger applications. Many of these commenters stated that the agencies must scrutinize mergers more closely to ensure that community credit needs, convenience and needs, and public benefits standards are met. Specifically, many of these commenters supported holding more frequent public meetings or soliciting more public comments when considering merger applications or suggested that public meetings should be held as a matter of course for all mergers; for all large bank merger applications; or whenever there are public comments, a request for a public

[1490] The agencies believe that the commenter is likely referring to the convenience and needs standard under the Bank Merger Act. *See* 12 U.S.C 1828(c)(5); *see also* 12 CFR 5.33(e)(1)(ii)(C).

meeting, or for any applicants with less than an ''Outstanding'' CRA rating. Some commenters stated there should be at least 90 days in which to comment on a merger. In addition, some commenters stated that the agencies' review of mergers should include review of consumer complaints, community comments, and CFPB and other agency investigations. Many commenters suggested that the agencies should deny mergers unless an applicant demonstrates how a merger will benefit the community. Other commenters raised specific concerns about application delays associated with public comments, which they stated can result in significant increased costs and talent retention concerns.

The agencies also received several comments relating to CBAs and community benefit plans (CBPs). Most commenters supported considering or otherwise encouraging CBAs or CBPs to be part of merger application reviews or endorsed requiring applicants to submit a CBA or CBP as part of the merger application process. Some commenters requested that the agencies monitor and enforce compliance with CBAs and CBPs.

Final Rule

The agencies are adopting final § ____.31 as proposed with one technical edit. Consistent with **Federal Register** drafting guidelines, the Agencies have replaced the word ''shall'' with the word ''must.'' [1491]

The agencies believe that the current rule as well as final § ____.31 appropriately implement the statutory requirement that the agencies take a bank's CRA record into account in evaluating applications. As noted above, the current rule as well as final § ____.31 provide that a bank's record of performance under the CRA examination may be the basis for denying or conditioning approval of an application. Further, a bank's CRA performance is often a controlling factor in the consideration of a bank's record when reviewing applications in which CRA performance is a relevant factor.[1492] The agencies also note that current regulations generally provide expedited application review for banks rated at least ''Satisfactory.'' [1493]

The agencies note that CRA examinations are a retrospective evaluation of a bank's record of meeting the credit needs of its community, while a convenience and needs assessment under the Bank Merger Act is prospective and, as such, considers how the combined institution will serve the needs of its communities following consummation of the proposed transaction. Further, the agencies review a bank's CRA record comprehensively and believe that each application should be reviewed according to its specific facts and circumstances. In some cases, the CRA examination might not be recent, or a specific issue raised in the application process might not be reflected in the CRA rating (although it might be generally relevant to a CRA evaluation), such as a bank's progress in addressing weaknesses noted by examiners or implementing commitments previously made to the reviewing agency. In addition, pursuant to final § ____.31(c), the agencies review public comments received on the application. Therefore, agency discretion is necessary during the application process with respect to taking into account a bank's CRA performance.

The agencies appreciate the feedback on the Bank Merger Act application process and CBAs and CBPs, but note that these comments are outside the scope of this rulemaking.[1494]

Section ____.42 Data Collection, Reporting, and Disclosure

Current Approach—Generally

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.[1495] 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.[1496] CRA data reporting requirements are based on bank size, not type of exam.[1497] 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 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.[1498] Large banks report aggregate small business and small farm data at the census tract level.[1499]

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.[1500]

The current CRA regulations also require large banks to report the aggregate number and dollar amount of their community development loans

[1491] *See* National Archives, Office of the Federal Register, ''Principals of Clear Writing,'' *https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html.*

[1492] Q&A § ____.29(a)–(1). *See, e.g.,* 12 CFR 5.39(i)(5) (OCC), 208.75 (Board), and 362.18(b) (FDIC).

[1493] *See* 12 CFR parts 5 (OCC), 208 and 225 (Board), and 303 (FDIC).

[1494] *Id.* The comments on bank mergers are more applicable to the agencies' merger regulations and related processes. *See* 12 CFR parts 5 (OCC), 208 and 225 (Board), and 303 (FDIC).

[1495] *See* current 12 CFR ____.42(f).

[1496] *See* current 12 CFR ____.42.

[1497] *See* Q&A § ____.42–1.

[1498] *See* current 12 CFR ____.42(a).

[1499] *See* current 12 CFR ____.42(b)(1).

[1500] *See* current 12 CFR ____.42(c)(1).

originated or purchased during the evaluation period, but not information for individual community development loans.[1501] A bank must, however, provide examiners with sufficient information to demonstrate its community development performance.[1502] 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 current 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;[1503] a list of branches opened or closed;[1504] 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.[1505]

Banks have the option of including information regarding the availability of alternative systems for delivering services.[1506] 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.

The Agencies' Proposal—Generally

As discussed in more detail in the section-by-section analysis of § ____.42, the agencies proposed 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 recognized the importance of using existing data sources where possible and tailoring data requirements based on bank size where appropriate. The agencies proposed that all large banks, defined in proposed § ____.12 as banks with assets of at least $2 billion in both of the prior two calendar years, would be subject to certain data requirements. Specifically, the agencies largely retained the existing large bank data collection and reporting requirements for small business and small farm lending in proposed § ____.42(a)(1) and (b)(1), although the agencies proposed replacing these data with CFPB's section 1071 data once those data became available. The agencies also proposed that large banks collect and maintain data for branches and remote service facilities under proposed § ____.42(a)(4)(i) and collect and report community development financing data under proposed § ____.42(a)(5) and (b)(3). The proposal also provided updated standards for all large banks to report the delineation of their assessment areas under proposed § ____.42(f).

The agencies also proposed new data requirements that would only apply to large banks with assets of over $10 billion. Specifically, the proposed rule required additional data collection and reporting for these large banks for automobile lending under proposed § ____.42(a)(2) and (b)(2); data collection for retail services and products under proposed § ____.42(a)(4)(ii) (digital and other delivery systems) and under proposed § ____.42(a)(4)(iii) (responsive deposit products); data collection and reporting for community development services under proposed § ____.42(a)(6) and (b)(4); and data collection and reporting of deposits data under proposed § ____.42(a)(7) and (b)(5).

Under the proposal, 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, unless they opt into the proposed Community Development Financing Test. In addition, small banks, as defined in proposed § ____.12, would not be required to collect or report any data beyond current requirements.

Comments Received

The agencies received numerous comments that generally addressed the agencies' proposed data collection, reporting, and disclosure requirements. Many of these commenters expressed concern regarding the expected burden and utility of the data proposed to be collected and reported, but many also noted that the proposed rule's data requirements would improve the agencies' and the public's understanding of how banks serve their communities.

Several commenters suggested that banks should be able to use data that they currently submit to government agencies in lieu of data that the agencies would require them to collect, maintain, and report for CRA purposes. These comments included the request that CDFI banks be permitted to submit CDFI Fund Annual Certification and Data Collection Report Forms in lieu of their CRA data requirements.

A few commenters addressed the agencies' request for feedback on what data collection and reporting challenges, if any, exist for credit cards that could adversely affect the accuracy of metrics and benchmarks for credit card lending. For example, a few commenters disputed the proposal's suggestion that banks may not currently retain or have the capability to capture credit card borrower income at origination or subsequently. These commenters asserted that banks generally collect borrower income information on consumer credit card applications or at the time a credit card is issued, and suggested that the benefits of a metrics-based approach to evaluating consumer credit card lending (including more competition and better rates for low- and moderate-income consumers) would outweigh the modest cost of requiring banks to report this data. However, another commenter stated that the operational nature of credit card lending would not easily support the need for data collection and reporting; this commenter agreed that borrower income information is typically collected as part of the underwriting process, but noted that banks make underwriting decisions primarily based on an applicant's creditworthiness as revealed through credit bureaus, and borrower income information is not usually validated by banks. Another commenter identified difficulties in obtaining information that the

[1501] *See* current 12 CFR ____.42(b)(2).

[1502] *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.''

[1503] *See* current 12 CFR ____.43(a)(3).

[1504] *See* current 12 CFR ____.43(a)(4).

[1505] *See* current 12 CFR ____.43(a)(5).

[1506] *See id.*

commenter views as necessary for evaluating the responsiveness of a consumer credit card loan, such as how and why a consumer is using a credit card loan (as opposed to another loan product), whether the credit card loan terms are responsive to the consumer's needs, and how equitable the terms are for low- and moderate-income and BIPOC consumers compared to other consumers.

Final Rule

The agencies are finalizing the data collection and reporting requirements for large banks with several modifications to the data collection requirements. The data collection and reporting requirements in the final rule are necessary for the construction of the various metrics and benchmarks used in the Retail Lending Test, the Retail Services and Products Test, the Community Development Financing Test, and the Community Development Services Test, as well as various weighting calculations, all of which are at the core of the effort to modernize the CRA regulations. Additionally, the specific data collection and reporting requirements are an important component of the effort to increase consistency and transparency in the new rule—having consistently defined data for bank activities enables more consistent treatment of those activities in the examination process. The agencies are tailoring data collection and reporting requirements with regard to bank size and other characteristics with the intention of creating minimal additional burden.

Regarding commenter suggestions that data already reported to government agencies be used in lieu of data required for CRA purposes, the agencies believe that the data requirements specified in the final rule are critical components to developing metrics and benchmarks. As such, the agencies believe that having different data requirements for a subset of institutions could create confusion and could impact the consistency of metrics and completeness of benchmarks.

The agencies have considered the comments related to credit card lending. However, the agencies have determined to not evaluate consumer credit card lending in the Retail Lending Test, which is addressed in the section-by-section analysis of § ____.22. Therefore, collection and maintenance of consumer credit card lending data will not be required.

Section ____.42(a)(1) Information Required To Be Collected and Maintained—Small Business and Small Farm Loan Data

Section ____.42(b)(1) Information Required To Be Reported—Small Business and Small Farm Loan Data

Current Approach

The CRA regulations in current § ____.42(a) require a bank, except a small bank, to collect, and maintain in prescribed machine readable form until the completion of the bank's next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank: (1) a unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (2) the loan amount at origination; (3) the loan location; and (4) an indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.[1507]

The regulations in current § ____.42(b) also require that a bank, except a small bank or a bank that was a small bank during the prior calendar year, report annually by March 1 in machine readable form, to the appropriate agency, small business and small farm loan data. The current regulations require the bank to report for each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans: (1) with an amount at origination of $100,000 or less; (2) with an amount at origination of more than $100,000 but less than or equal to $250,000; (3) with an amount at origination of more than $250,000; and (4) 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).

The Agencies' Proposal

The agencies proposed to expand the data requirements in current § ____.42(a)(1) by expanding the collection and maintenance of the following data related to small business loan and small farm loan originations and purchases by the bank: (1) a unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (2) an indicator for the loan type as reported on the bank's Call Report; (3) the date of the loan origination or purchase; (4) loan amount at origination or purchase; (5) the loan location (State, county, census tract); (6) an indicator for whether the loan was originated or purchased; and (7) an indicator for whether the loan was to a business or farm with gross annual revenues of $1 million or less.

The agencies also proposed to revise current § ____.42(b)(1) to require that all large banks report by April 1 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. This proposed provision also required large banks to 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). The proposed gross annual revenue data would allow the agencies to conduct a borrower distribution analysis that shows the level of lending to small businesses of different revenue sizes.

The agencies also requested feedback on whether banks should be required to collect and report an indicator on loans made to businesses or farms with gross annual revenues of $250,000 or less or whether another gross annual revenue threshold should be collected that better represents lending to the smallest businesses or farms during the interim period before the CFPB Section 1071 Final Rule comes into effect.

Comments Received

Several commenters addressed the agencies' proposed alignment of the CRA definitions of ''small business'' and ''small farm'' to the CFPB's section 1071 definition of ''small business.'' A few of these commenters addressed the impact this alignment would have on purchases of small business and small farm loans. More specifically, a commenter sought clarification about how banks could count purchases of small business and small farm loans in the CRA evaluation when the CFPB's definition would only include originations. This commenter requested that the agencies consider including purchased loans even if not accounted for in a bank's CFPB's section 1071 data reporting requirements. Another commenter expressed concern that such alignment would penalize banks that rely heavily on purchases of indirect small business loans from dealers, such as commercial automobile loans. This commenter urged the agencies to wait until the CFPB's Section 1071 Proposed Rule is finalized to determine its implications on a bank's CRA performance before implementing portions of the final rule

[1507] *See* current 12 CFR ____.42(a)(1) through (4).

that would require such data. A few other commenters addressed the alignment of the CRA definitions of ''small business'' and ''small farm'' to the CFPB's section 1071 definition of ''small business,'' with mixed views. A commenter supported the agencies' proposed alignment of the definitions and the resulting increase in reported business loans stating it would be beneficial by providing a more comprehensive picture of credit supply in communities. This commenter also recommended including in the CRA evaluation small business loans that are supported by personal guarantees secured by liens on residential property. This commenter noted that currently these loans are not reported under either HMDA or CRA, resulting in a significant underreporting of small business loan volume. By contrast, multiple other commenters did not support the agencies' proposal because it would mean that every loan made by a community bank would be a small business loan or small farm loan, subject to reporting. These commenters argued that doing so would impose significant new data collection and reporting requirements on community banks that opt-in to the Retail Lending Test. Several commenters further emphasized the importance of reconciling the differences between the CRA definitions and the CFPB's section 1071 definition, with one commenter noting that aligning the CRA definitions of ''small business'' and ''small farm'' to the CFPB's Section 1071 Final Rule would be confusing for banks that would still be required to report small business loans for purposes of the Call Report. This commenter recommended that the agencies retain the current definition so that it aligns with the Call Report definition. Another commenter stated that because businesses may be serving multiple locations, identifying a single location for purposes of geocoding small business loans may not be feasible (same as with community development loans).

Commenters that addressed the agencies request for feedback on whether banks should collect and report an indicator on loans made to businesses or farms with gross annual revenues of $250,000 or less or whether another gross annual revenue threshold should be collected that better represents lending to the smallest businesses or farms during the interim period before the CFPB's Section 1071 Final Rule comes into effect, expressed mixed views. A few of the commenters supported no additional indicators during the transition, while a few other commenters supported the indicator in the interim. The commenters that supported establishing the gross annual revenue amount at $250,000 or less also supported adding a second indicator for businesses with revenues of $100,000 and less. A few other commenters made other recommendations. For example, a commenter suggested that banks should collect an indicator for loans made to a business or farm that identifies the size of the business or farm using the ''small business'' definition from section 8(d) of the Small Business Act or section 3(p) of the Small Business Act (''qualified HUBZone small business concern'') rather than gross annual revenues of $250,000. Another commenter recommended that banks should report indicators for the smallest of businesses with gross annual revenues of $500,000 and that providing indicators for businesses of various sizes should be encouraged if that is similar or the same as to how the CFPB's Section 1071 Final Rule is structured. Finally, a commenter asked the agencies to clarify that in the case of a small business loan, a bank could rely on gross annual revenue information provided by third-party sources if the banks does not (and is not otherwise required to) collect that information directly from the borrower.

Final Rule

The agencies are adopting § ____.42(a)(1) (collection and maintenance) and § ____.42(b)(1) (reporting) largely as proposed, with some revisions upon consideration to comments.

Specifically, the agencies are revising the data collection and maintenance requirements for small business and small farm loans by revising proposed § ____.42(a)(1)(vii) to indicate whether a loan was to a business or farm with gross annual revenues of $250,000 or less, rather than $1 million or less as proposed. The agencies are also adopting new § ____.42(a)(1)(viii) through (x) to indicate, respectively, whether a loan was to a business or farm with gross annual revenues greater than $250,000 but less than or equal to $1 million; whether the loan was to a business or farm with gross annual revenues greater than $1 million; and whether the loan was to a business or farm for which gross annual revenues are not known by the bank. As a result of the changes made to the small business and small farm loan data collection and maintenance, the agencies are also making conforming changes to the information required to be reported for these data by adopting new § ____.42(b)(1)(v) through (vii). Finally, the agencies are requiring that a large bank must collect and maintain these data until the completion of the bank's next CRA examination in which the data are evaluated.

The agencies believe incorporating the new indicators to the data collection and reporting of small business and small farm lending will facilitate and add efficiency to the distribution analysis under the Retail Lending Test. Specifically, the new indicators will allow the agencies to calculate metrics and market benchmarks used to evaluate a bank's distribution of lending to small businesses and small farms in different gross annual revenues categories ($250,000 or less, and between $250,000 and $1 million) prior to the agencies' use of section 1071 data. As discussed in the section-by-section analysis of final § ____.22(e), the agencies believe that evaluating a bank's distribution of lending to small businesses and small farms of different sizes, based on gross annual revenues, will support a more comprehensive evaluation. The agencies determined that the additional indicators in the final rule would not be especially burdensome, because large banks already collect and maintain small business and small farm data that includes similar data points, such as indicating whether a loan is made to a business or farm with gross annual revenues of $1 million or less. Furthermore, once banks must comply with reporting small business loan data under the section 1071, they will be required to collect and maintain gross annual revenues information for small business and small farm borrowers, which is consistent with the new indicators in the final rule approach. In light of these considerations, the agencies determined that these new required indicators for large banks are appropriate and will result in more comprehensive evaluations of retail lending performance.

Regarding required data fields for the loan amount at origination or purchase, loan location, and whether the loan was either originated or purchased by the bank, the agencies determined that these data points are substantively consistent with current data collection procedures for large banks, and will allow the agencies to calculate the various metrics, benchmarks, and other quantitative components of the Retail Lending Test evaluation.

For small and intermediate banks, consistent with the current evaluation approach and the agencies' proposal, the final rule does not require data collection, maintenance, or reporting of small business loan or small farm loan data. For banks that do not collect and maintain these data in electronic form, the agencies may evaluate the banks' distribution of lending to low- and moderate-income census tracts, small businesses, and small farms, using the bank's own data, or using sampling of a bank's own records, as under current examination procedures. The agencies believe it is appropriate to maintain the current approach for small and intermediate bank data requirements in order to limit additional burden and complexity for these banks, in recognition that they may have lower capacity to adjust to regulatory changes.

The agencies have determined not to add an indicator for loans made to small businesses or small farms with revenues of $100,000 or less. The agencies determined that an indicator for $250,000 gross annual revenue threshold rather than the $100,000 gross annual revenue threshold was appropriate primarily to achieve consistency between the categories of small businesses and small farms in the Retail Lending Test and the impact and responsiveness review factors used in evaluating community development activities, which considers activities supporting small businesses or small farms with gross annual revenues of $250,000 or less.

Similarly, the agencies have determined not to add an indicator for loans made to a business or farm using the Small Business Act's definition of ''small business.'' The multiple approaches that the Small Business Act uses to define small businesses would add unnecessary complexity and would add burden to banks by requiring them to collect additional data to that required under the CFPB's section 1071 process, in order to determine whether businesses or farms qualify as small businesses. Rather, the agencies have determined that using the gross annual revenue criteria defined in the CFPB's Section 1071 Final Rule as the basis for identifying small businesses and small farms for purposes of CRA is appropriate. This approach supports the CRA final rule's goals of consistency and transparency.

In response to comments regarding the alignment of the agencies' CRA definitions of ''small business'' and ''small farm'' to the section 1071 definition of ''small business'' and the impact on purchases of small business and small farm loans, the final rule would allow banks to include purchases of small business and small farm loans in the numerator of their relevant retail lending metrics, at the bank's option, once the transition to section 1071 data occurs.[1508] However, because purchases would not be included in the CFPB's section 1071 data, banks electing to include such loans in their relevant retail lending metrics would need to collect and maintain these data. The bank would provide the collected data to the examiner to incorporate into the metric and the subsequent distribution analysis. These data would not be reported and would not be included in any aggregate data used for the creation of benchmarks. Allowing banks, at their option, to include these purchases of small business and small farm loans would maintain consistency in the Retail Lending Test regarding treatment of closed-end home mortgage loans and small business and small farm loans.

The agencies are sensitive to commenters' concerns regarding the potential burden imposed on community banks created by the agencies' alignment of the definitions of ''small business'' and ''small farms'' to the CFPB's definition of ''small business'' and the potential confusion created for banks that will be required to report small business loans for purposes of CRA using the Call Report definition during the transition period. While some banks may have to collect and report data for both regulations for a limited amount of time, the agencies note that once the agencies transition to using section 1071 data, under the CRA final rule, small business and small farm loans will only be reported in accordance with the definition and reporting requirement of the CFPB's Section 1071 Final Rule. After the transition to the section 1071 data takes effect, there is no additional data reporting burden created by the CRA final rule with regard to small business and small farm lending data. In addition, the agencies acknowledge commenter sentiment that aligning the CRA definitions of ''small business'' and ''small farm'' to the CFPB's section 1071 rule would be confusing for banks. The agencies note that banks will be required to report data using both the CFPB's section 1071 definition and Call Report definition regardless of whether the CRA regulation aligns to either of them. The agencies believe that the CFPB's section 1071 definition is a more appropriate definition of small businesses and small farms for the purposes of identifying small business lending and small farm lending. The Call Report and current CRA definitions define these loans on the basis of the size of the loan, rather than on the basis of characteristics of the borrower (such as the gross annual revenue of the business). As such, ''small business loans'' included in the Call Reports and in CRA evaluations may be made to companies and farms that could reasonably be considered large businesses and large farms (which sought loans small enough to be reported on the Call Report and the CRA evaluations). Given that the CFPB's section 1071 definition and reporting requirement exists as a result of the CFPB's Section 1071 Final Rule, and the Call Report definition exists as a result of the existing Call Report reporting requirements, the CRA final rule does not create any additional burden as a result of which definition it uses between those two.

The agencies have determined not to adopt the commenter's recommendation that the agencies retain the current definition so that it aligns with the Call Report definition. The definition used by the CFPB's section 1071 process is preferable because it is better targeted towards loans to small businesses and small farms and provides data regarding a broader set of small business and small farm lenders.

The agencies are also clarifying that the data reported through the CFPB's section 1071 process will be used as the foundation of small business and small farm data collection. The CFPB's Section 1071 Final Rule requires that if a financial institution is unable to collect or determine the gross annual revenue of the applicant through applicant-provided data, the financial institution is required to report that the gross annual revenue is ''not provided by applicant and otherwise undetermined.''[1509]

Finally, the agencies acknowledge commenter sentiments that there are situations in which identifying a single location for the purposes of geocoding small business loans can be difficult, such as when a small business has multiple locations. The agencies have addressed this situation in the current data reporting guide.[1510] A small business or small farm loan is located in the geography where the main business facility or farm is located or where the

[1508] The transition amendments included in this final rule will permit the agencies to transition the CRA data collection, maintenance, and reporting requirements for small business loans and small farm loans to section 1071 data. This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to transition to 1071 data for small business loan and small loan data under the CRA regulations. The agencies will provide notice of the effective date of this amendment in the **Federal Register** once section 1071 data are available.

[1509] 88 FR 35150, 35553 (May 31, 2023).

[1510] *See* FFIEC, ''A Guide to CRA Data Collection and Reporting'' (2015), *https://www.ffiec.gov/cra/pdf/2015_CRA_Guide.pdf.*

loan proceeds otherwise will be applied, as indicated by the borrower.[1511]

Section ____.42(a)(2) Information Required To Be Collected and Maintained—Consumer Loans Data—Automobile Loans

Under the CRA current regulations, banks are not required to collect, maintain, or report data for consumer loans under current § ____.42(c)(1). Current § ____.42(c)(1) provides that a bank may collect and maintain data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it must maintain the data for all loans originated or purchased within that category, and must collect and maintain the data in machine readable form as prescribed by the appropriate agency. The data must be maintained separately for each category of loans including for each loan: (1) a unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (2) the loan amount at origination or purchase; (3) the loan location; and (4) the gross annual income of the borrower that the bank considered in making its credit decision. The data collected and maintained are not reported but provided to examiners at the time of the bank's CRA examination.

The Agencies' Proposal

The agencies proposed in § ____.42(a)(2) that automobile loans would be the only consumer loan category with data collection and reporting requirements. Specifically, the agencies proposed that banks with assets of over $10 billion in both of the prior two calendar years would be required 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: (1) a unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (2) the date of loan origination or purchase; (3) the loan amount at origination or purchase; (4) the loan location (State, county, census tract); (5) an indicator for whether the loan was originated or purchased by the bank; and (6) the borrower's annual income the bank relied on when making its credit decision.

Proposed § ____.42(b)(2) required a bank with average assets of over $10 billion in both of the prior two calendar years to report annually by April 1 to the appropriate agency, 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. The proposal required that these banks report the data in machine readable form, as prescribed by the agencies. The agencies did not propose to make reported automobile lending data publicly available.

Comments Received

A few commenters addressed the agencies' proposal to require automobile lending data, generally. A commenter asked for clarification on whether the data would be submitted in aggregate form as it would be required for community development loans, or whether it would be required in CRA Loan Application Register format. Other commenters recommended that the agencies reconsider the requirement to collect automobile lending data. A commenter stated that if consumer data is wanted, then general information should be required to be reported, but drilling down to a particular consumer product is too extensive and burdensome. Another commenter supported the agencies' proposal to require new automobile lending data collection and reporting by banks with assets of over $10 billion; the commenter further suggested that the data would allow for better analysis of automobile lending patterns compared to existing data sources, such as credit reporting agency data. This commenter also supported optional data collection for small banks and intermediate banks that elect evaluation under the Retail Lending Test given suggested data collection and reporting burden banks might face with respect to automobile lending data requirements. Another commenter argued that the statutory authority for this data collection was thin, and that dropping automobile lending from the Retail Lending Test would eliminate the need for this data collection.

The agencies solicited specific feedback on whether the final rule should also include automobile loan data requirements for large banks with assets of $10 billion or less. Most commenters were in favor of expanding this requirement to all large banks, rather than only make this a requirement for banks with assets of over $10 billion. One of these commenters stated that expanding the requirement to banks with $10 billion or less in assets would better support a fair lending analysis and ensure that banks are providing consumers with fair and affordable automobile loans. Another commenter recommended expanding the automobile lending data requirements to all large banks and all wholesale and limited purpose banks with assets over $10 billion. Many commenters noted that including automobile loan data only from banks with assets above $10 billion would create an incomplete and misleading impression of the automobile lending market.

Several commenters recommended an expansion in the data collected to include consumer lending more broadly, with a commenter suggesting that banks with assets of $10 billion or less should have the option to collect, maintain, and report these data. A few commenters did not support expansion of automobile loan data collection to large banks with assets of $10 billion or less, with one commenter noting the associated burden and cost. The other commenter did not support additional reporting of automobile lending for any large bank.

The agencies also sought specific feedback on whether they should streamline any of the proposed data fields for collecting and reporting automobile data. A few of the commenters addressing this question felt that the proposed data fields were minimal, and they could not identify how it could be further streamlined, while a few suggested further streamlining or using as few fields as possible. Another commenter asked the agencies to investigate the use of market sources for automobile lending data and that data collected should include the full cost of the loan to the consumer.

The agencies did not propose to publish automobile lending data for individual banks in the form of a data set because the agencies were mindful of having appropriate limits on the use of collected and reported automobile lending data. However, the agencies sought feedback on whether it would be useful to consider publishing county-level automobile lending data in the form of a data set. Most of the commenters addressing this question urged the agencies to make all the data publicly available. Some commenters expressed the view that the availability of these data would hold banks accountable for their lending to underserved communities and minorities. In addition, two commenters wanted the county-level data to include information on whether the borrower lived in low- or moderate-income

[1511] *See id.*

census tracts or was a low- or moderate-income individual. A commenter wanted the data to be provided at the lowest geographic level (ideally, census tracts). Another commenter favored the release of the county-level data because it would be helpful in self-evaluation of CRA performance.

Final Rule

The agencies have considered the comments received and are adopting § ____.42(a)(2) pertaining to the collection and maintenance of automobile lending data, with significant modifications narrowing the number of banks that would be subject to this requirement. Specifically, the agencies are revising proposed § ____.42(a)(2), renumbered in the final rule as § ____.42(a)(2)(i) to require the collection and maintenance of automobile loan data, as detailed below, for a large bank for which automobile loans are a product line (*i.e.,* if the bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to § ____.22). The agencies are also adopting new § ____.42(a)(2)(ii) which provides that a bank, other than a large bank, for which automobile loans are a product line may collect and maintain the automobile loan data required of large banks as detailed below.

The data collection and maintenance requirement is a change from the proposal, which would have required automobile lending data for all large banks with assets of over $10 billion. This change limits the required collection of automobile loan data to only those large banks for which automobile lending is the majority of their retail lending or which opt to have their automobile loans evaluated pursuant to § ____.22. Not adding a data collection requirement for smaller banks is consistent with the agencies' goal of requiring no new data collection and reporting for small and intermediate banks. The agencies continue to believe it is important for large banks for which automobile lending is a product line to collect and maintain data for automobile loans because these data will help enable the agencies to calculate the bank's distribution metrics under the Retail Lending Test. For example, the agencies would use loan location and borrower income information to calculate borrower distribution metrics, and would use loan amount information to calculate the Bank Volume Metric and various weights used to develop Retail Lending Test conclusions. The agencies would use information regarding whether a loan was purchased or originated in conjunction with the final § ____.22(g)(1) additional factor. The agencies would also use loan location and loan count data as the basis for weighting component geographic areas for the construction of weighted average benchmarks for a bank's outside retail lending area.

The agencies note that they considered various options regarding whether and how to collect automobile lending data. This included using third-party sources for automobile lending data. In order to evaluate automobile lending, the agencies believe it is appropriate to require the collection of automobile lending data from large banks for which automobile loans are a product line, due to the unavailability of these data from any source other than the banks themselves.

The agencies are finalizing the data to be collected and maintained in proposed § ____.42(a)(2)(i) through (vi), renumbered in final as § ____.42(a)(2)(iii)(A) through (F) for each automobile loan originated or purchased by the bank until the completion of the bank's next CRA examination in which the data are evaluated. The agencies believe the data fields, as finalized, are sufficient for purposes of the evaluation of automobile lending in the Retail Lending Test.

The agencies have considered commenter feedback that suggests requiring additional data, such as the full cost of the loan to the consumer. The agencies have determined to not add this data point among the set of data collected for the Retail Lending Test. The agencies note that under current CRA and the final rule, the retail lending evaluation focuses on distributional analyses of lending to low- and moderate-income census tracts and low- and moderate-income borrowers (and small businesses and small farms).

In response to comments, the agencies believe that focusing the collection and maintenance of automobile lending data on large banks for which the majority of their retail lending is automobile lending, or which opt to have their automobile loans evaluated pursuant to § ____.22, strikes an appropriate balance between minimizing burden, tailoring requirements for banks of different sizes and business models, and enabling an appropriate evaluation of banks' retail lending. In the final rule, data collection and maintenance of automobile lending remains optional for intermediate banks, and small banks that opt to be evaluated under the Retail Lending Test, for which automobile loans are a product line.

The agencies considered the comments regarding requiring automobile loan data for large banks with assets of $10 billion or less. After weighing the costs and benefits from requiring data from a broader range of banks, as explained above, the agencies decided to tailor the data collection requirement according to bank size and whether automobile lending constituted the majority of a bank's lending. The agencies will evaluate automobile lending for all banks evaluated under the Retail Lending Test for which automobile lending is the majority of their lending or which opt to have their automobile loans evaluated pursuant to § ____.22. Large banks (not just large banks with assets above $10 billion) meeting these criteria will be required to collect and maintain these data. This will provide a more complete evaluation of automobile lending by banks, while still limiting the data burden for smaller banks and for banks for which automobile lending is not the majority of their lending. In response to the commenter that suggested expanding this data requirement to banks with assets of $10 billion or less to better support a fair lending analysis, the agencies note that fair lending analyses are not part of the CRA evaluation process.

In response to commenters suggesting an expansion of data collection to include all consumer lending products, the agencies have determined not to add this recommendation to the regulation. While consumer lending products are important in fulfilling credit needs of low- and moderate-income borrowers, the agencies continue to believe that consumer loans span multiple product categories that are heterogeneous in meeting low- and moderate-income credit needs and are difficult to evaluate on a consistent quantitative basis. Therefore, in the final rule, the agencies will consider the qualitative aspects of all other consumer loans, apart from automobile loans, under the Retail Services and Products Test without data collection and maintenance requirements specified in § ____.42, as explained in more detail in the section-by-section analysis of § ____.23.

Regarding the agencies' statutory authority to collect automobile lending data, the agencies believe that the CRA's provision, which 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'' [1512] is sufficiently broad to cover the evaluation of a bank's automobile

[1512] 12 U.S.C. 2903(a)(1).

lending in the Retail Lending Test and, therefore, believe collection of these data will serve the purposes of the CRA.

Finally, the final rule does not adopt the reporting requirement for automobile lending in proposed § ____.42(b)(2). The agencies also explored the availability of market sources for data on banks' automobile lending to use, as suggested by a commenter, and were unable to find any reliable source appropriate for the applications needed for the Retail Lending Test. In response to comments received, inadequacy of available data, and the agencies' further analysis, the agencies have determined not to establish market benchmarks for automobile lending, as discussed further in the section-by-section analysis of § ____.22.

The agencies have also considered comments received regarding the publication of automobile loan data. As explained above, the final rule does not adopt a reporting requirement for automobile lending data. As such, any consideration of public disclosure of these data has effectively been removed.

Section ____.42(a)(3) Information Required To Be Collected and Maintained—Home Mortgage Loan Data

Current Approach

The CRA regulations in current § ____.42(b)(3) require a bank, except for a small bank or a bank that was a small bank during the prior calendar year, to report annually by March 1 to the Board, FDIC, or OCC, as applicable, and in machine readable form as prescribed by that agency, 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. Interagency guidance explains that institutions that are not required to collect home mortgage loan data by HMDA need not collect home mortgage loan data under this provision of CRA.[1513] If a bank wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain the data on these loans.

The Agencies' Proposal

The agencies proposed to revise current § ____.42(b)(3), renumbered in the proposal as § ____.42(a)(3), to require certain banks to collect and maintain certain home mortgage loan data, similar to current practice. Specifically, if a bank is a HMDA reporter, the agencies proposed to require a bank (other than a small bank or intermediate bank) to collect and maintain, in machine readable form as prescribed by the Board, FDIC, or OCC, as applicable, until the completion of its next CRA examination, the location of each home mortgage loan application, origination, or purchase outside of 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.

The agencies sought feedback on whether certain banks that are not mandatory reporters under HMDA should be required to collect and maintain, or report, mortgage loan data if they engage in a minimum volume of home mortgage lending. The agencies described an option that would 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 in the proposed Retail Lending Test in § ____.22.

The agencies also solicited specific feedback on whether the benefits of requiring home mortgage loan data collection and reporting by non-HMDA reporter large banks that engage in a minimum volume of mortgage lending outweigh the burden associated with the data collection, and whether the further benefit of requiring these data to be reported outweighs the additional burden of reporting.

Comments Received

The agencies received comments on several aspects of data collection and maintenance for home mortgage lending data. A majority of commenters supported expanding home mortgage loan data collection, maintenance, and reporting to non-HMDA reporter large banks that engage in a minimum volume of mortgage lending. These commenters generally believed the benefits would outweigh the burden associated with such a requirement. In support of this view, one of these commenters stated that even with limited volume mortgage lending there could be high denial rates and disparities in loan terms that the agencies need to review. A few commenters also noted that in addition to expanding the data, the data should be available by race and ethnicity, while another commenter noted that the benefit of added transparency for rural areas of collecting and publishing these data would outweigh the burden placed on these large banks.

By contrast, a commenter argued against expanding HMDA data collection to non-HMDA reporting banks because this would exacerbate an existing regulatory imbalance between banks' and non-bank mortgage lenders' level of regulatory scrutiny. Finally, several of the commenters addressing this issue of requiring HMDA data collection to non-HMDA reporting banks also stated that the previous reporting threshold of 25 closed-end loans should be implemented.

Final Rule

The agencies are finalizing proposed § ____.42(a)(3), renumbered in the final rule as § ____.42(a)(3)(i) with a few wording changes. Similar to the current rule, the final rule requires large banks that are HMDA reporters to collect and maintain 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 MSAs. The agencies believe this requirement is appropriate and consistent with current practice. In addition, the agencies are adopting new § ____.42(a)(3)(ii) to implement certain data requirements for certain non-HMDA reporters. Specifically, final § ____.42(a)(3)(ii) requires a large bank that is not a mandatory HMDA reporter due to the location of its branches but that otherwise meets the HMDA size and lending activity requirements, to collect and maintain the mortgage loan data necessary to calculate the retail lending volume screen and distribution metrics. Such large banks will be required to collect and maintain in electronic form, as prescribed by the Board, FDIC, or OCC, as applicable, until the completion of the bank's next CRA examination in which the data are evaluated, the following data for each closed-end home mortgage loan, excluding multifamily loans, originated or purchased during the evaluation period: (1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file; (2) the date of the loan origination or purchase; (3) the loan amount at origination or purchase; (4) the location of each home mortgage origination or purchase, including county, State and census tract; (5) the gross annual income the bank relied on in making the credit decision; and (6) an indicator for whether the loan was originated or purchased by the bank. The agencies believe these data fields sufficiently allow for the calculation of all the bank's retail lending metrics for mortgage lending, clarify expectations for banks, and facilitate a more complete

[1513] *See* Q&A § ____.42(b)(3)–1.

and accurate analysis by including this information in the bank metrics.

In recognition of their more limited capacities and to avoid unduly burdening small banks and intermediate banks, the new requirements in § ____.42(a)(3)(ii) only apply to certain large banks. In this regard, the agencies are requiring HMDA-equivalent data collection only for a very limited set of large banks, including only those banks that would otherwise be required to report HMDA data but for a bank having no branches within metropolitan areas. The agencies believe this strikes an appropriate balance by evaluating mortgage lending data for all large banks with sufficient mortgage lending activity to trigger HMDA reporting requirements.

In reaching this determination, the agencies have considered commenter feedback on the issue of whether to expand the collection and maintenance of certain mortgage loan data for non-HMDA reporters. The agencies believe this decision strikes an appropriate balance between the need to collect and evaluate data from banks with substantial mortgage lending in an area and the importance of tailoring data collection burden to bank size. In response to the comments regarding the impact this change would have on the existing imbalance between banks' and non-bank mortgage lenders' level of regulatory scrutiny, the agencies note that non-bank mortgage lenders are not subject to evaluation under CRA. Additionally, to minimize data burden and restrict data collection to relevant areas, the agencies have determined not to collect appraisals data as suggested by one commenter. Although an important part of the mortgage lending process, appraisals are not conducted by banks; appraisal companies are not covered by the CRA and thus any collection or evaluation of appraisal data would be beyond the scope of this regulation.

In reaching the determination to add the new requirements for certain large banks in § ____.42(a)(3)(ii), the agencies considered that this is a targeted data collection and maintenance requirement for closed-end home mortgages that only includes data necessary for the evaluation of home mortgage lending under the Retail Lending Test.

In addition, the agencies note that the final rule provision does not include requirements for home mortgage lending data related to borrower race and ethnicity. Therefore, because the agencies will not have information on race and ethnicity related to these expanded data, the agencies cannot publish said information as suggested by commenters. The agencies note, however, that the final rule will include publication of HMDA data by income level, race, and ethnicity in final § ____.42(j). As explained in more detail in the section-by-section analysis of § ____.42(j), the relevant agency will publish on its website on an annual basis, certain HMDA data reported by large banks under 12 CFR part 1003 by income level, race, and ethnicity.

The agencies also note, in response to commenters suggesting that the agencies implement the reporting threshold of 25 closed-end loans under HMDA, that as of the date of this final rule, the reporting threshold under 12 CFR part 1003 is 25 closed-end loans.[1514]

Section ____.42(a)(4) Information Required To Be Collected and Maintained—Retail Services and Products Data

Current Approach

Under the current CRA regulations, there are no specific data collection or reporting requirements for retail services and products. Examiners, however, review information provided by a bank at the time of the examination and the bank's CRA public file that demonstrates its performance in these areas, as applicable.[1515] A bank's CRA public file is required to include, among other things, a list of bank branches with addresses and census tracts;[1516] a list of branches opened or closed;[1517] 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.[1518] Banks have the option of including information in the public file regarding the availability of alternative systems for delivering services.[1519]

Section ____.42(a)(4) Overview

The Agencies' Proposal

In § ____.42(a)(4), the agencies proposed that large banks collect and maintain information to support the analysis of a bank's delivery systems and deposit products under the proposed Retail Services and Products Test in § ____.23 based on the large bank's asset size. The agencies proposed to require that large banks with assets of over $10 billion collect and maintain the data for both branches and remote service facilities under § ____.42(a)(4)(i), data for digital and other delivery systems under § ____.42(a)(4)(ii), and responsive deposit products under § ____.42(a)(4)(iii).

To reduce the data burden of new data collection requirements for large banks with assets of $10 billion or less, the agencies proposed collecting and maintaining only the data for branches and remote service facilities under § ____.42(a)(4)(i). The agencies invited feedback on this approach, as described below.

The agencies also proposed that banks with assets of $10 billion or less that request additional consideration for digital and other delivery systems under § ____.23(b)(3) collect and maintain data for digital and other delivery systems under § ____.42(a)(4)(ii). The agencies further proposed that small banks and intermediate banks seeking additional consideration for retail services and products activities provide the data in the format used in the bank's normal course of business.

Comments Received

Several commenters responded to the agencies' request for feedback on tailoring data collection and maintenance requirements related to digital and other delivery systems and to responsive deposit products for large banks with assets of $10 billion or less. A few of these commenters supported a requirement for all large banks to collect and maintain these data, with one of the commenters suggesting also that these requirements also apply to intermediate banks. One of the commenters stated that large banks with assets of $10 billion or less should be permitted to report these data at their option. Another commenter indicated that the agencies should review the responsiveness of deposit products for large banks with assets of $10 billion or less and that any bank that cannot collect and maintain these data within the 12-month period should describe in its capacity building plan how it will comply with the data collection requirements within a 24-month period. This commenter also noted that communities should be involved with product responsiveness reviews by being invited to provide ratings to the agencies of product responsiveness, and that there may be other stakeholders that would benefit from greater transparency of the data reported by banks and of the ratings provided by consumers (if this occurs).

[1514] The CFPB issued a technical amendment, effective December 21, 2022, to reflect the closed-end mortgage loan reporting threshold of 25 mortgage loans in each of the two preceding calendar years. *See* 87 FR 7790 (Dec. 21, 2022).

[1515] *See* Q&A § ____.24(d)(4)–1.

[1516] *See* current 12 CFR ____.43(a)(3).

[1517] *See* current 12 CFR ____.43(a)(4).

[1518] *See* current 12 CFR ____.43(a)(5).

[1519] *See id.*

Final Rule

After consideration of the comments received and further internal analysis, the agencies have determined not to extend the data collection and maintenance of digital delivery systems and other delivery systems and deposit products to large banks with assets of $10 billion or less and that operate one or more branches, to reduce burden on the industry. However, as discussed in greater detail below, the agencies have determined to extend data requirements for digital delivery systems and other delivery systems to banks with $10 billion or less that do not maintain branches. The agencies believe this approach appropriately tailors the data requirements to large banks based on their business model. Moreover, and in recognition of their more limited capacity, the agencies have determined not to extend any data requirements to small and intermediate banks.

Section ____.42(a)(4)(i) Branch and Remote Service Facility Availability Data

The Agencies' Proposal

The agencies proposed in § ____.42(a)(4)(i) to require large banks to collect and maintain, until the completion of the bank's next CRA examination, the following information: (1) number and location of branches and remote service facilities; (2) whether branches are full-service facilities (by offering both credit and deposit services) or limited-service facilities, and for each remote service facility whether it is deposit-taking, cash-advancing, or both; (3) locations and dates of branch and remote service facility openings and closings, as applicable; (4) hours of operation of each branch and remote service facility, as applicable; and (5) services offered at each branch that are responsive to low- and moderate-income individuals and low- and moderate-income census tracts. While this branch information is consistent with the information currently provided in a bank's public file,[1520] the proposed requirement to collect remote service facilities data would be a change from the current practice, under which banks are not required, but have the option, to provide ATM location data in a bank's public file.[1521]

The agencies sought specific feedback on whether to require collection and maintenance of branch and remote service facility 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.,* requiring branch data but keeping remote service facility availability data optional).

Comments Received

The agencies received several comments in response to their request for feedback on whether, instead of requiring branch and remote service facility availability data, the agencies should continue the current practice of reviewing the data from the bank's public file. A few commenters supported the agencies' proposal to require banks to report data on branch and remote service facility availability under a standardized process. Commenter sentiment in support of the proposal included noting that banks should collect and report these data publicly to permit evaluation of usefulness to underserved communities. Additionally, commenter sentiment included that the agencies should use these data towards the creation of industry and market benchmarks.

By contrast, a few commenters indicated that the current practice of reviewing these data from the bank's public file should continue rather than separately requiring banks to collect and maintain these data pursuant to § ____.42. Another commenter noted that branch and remote service facility data are ''widely and publicly'' available through most banks' websites, so current practices should continue. This commenter also noted that the FDIC's Summary of Deposits data should be sufficient for identifying most banks' branch locations and that separately collecting and reporting data on branch distribution within the proposed rule seems redundant and burdensome for banks due to the FDIC's current comprehensive process. Another commenter recommended that the agencies determine whether they could perform an evaluation with data from the bank's public file and other reliable sources before requiring a new data collection; otherwise, the agencies should require collection and maintenance of the data as proposed.

Final Rule

For the reasons discussed below, the agencies are finalizing § ____.42(a)(4)(i) substantially as proposed, with technical edits to revise the heading of this paragraph and to update the reference of ''machine readable'' to ''electronic.'' No substantive change is intended. In addition, as explained below, the agencies are revising § ____.42(a)(4)(i) to conform to changes made in the final rule with respect to the inclusion of ''main office'' and the availability of branches and remote service facilities in § ____.23(b)(2) and (3), respectively, in the Retail Services and Products Test.

The agencies are finalizing the requirement that all large banks collect and maintain, as prescribed by the appropriate Federal financial supervisory agency, until the completion of the bank's next CRA examination in which the data are evaluated, retail banking services and retail banking products data, which includes the branches and remote service facilities data as proposed in § ____.42(a)(4)(i). The agencies are also including the same data collection requirements for the bank's main office if it meets the requirements of final § ____.23(a)(2). After careful consideration of the comments, the agencies believe that requiring the collection and maintenance of this information appropriately supports the analysis of a bank's branch, applicable main office, and remote service facility availability and the establishment of benchmarks required for the Retail Services and Products Test. A data collection and maintenance requirement will ensure that the agencies have the information they need to evaluate the availability of branches and remote service facilities, and also provides examiners with consistent data across all agencies. For banks, the agencies believe that a data collection requirement minimizes ambiguity as to what data the agencies will use in their evaluations. The agencies note that the final rule largely codifies in final § ____.42(a)(4) certain information that banks are currently required to provide in their public file, including, among other things, the locations of current branches and their street address, and branches opened or closed by the bank during the calendar year. In response to comments that the agencies should continue the current practice of reviewing the data from the bank's public file, the agencies believe that the data requirements are justified as the best means to obtain accurate and uniform data to evaluate a bank's retail banking services. In addition, the final § ____.42(a)(4)(i) also requires banks to collect and maintain remote service facility information, which is currently included in the bank's public file on an optional basis. However, the data will be standardized in a template to be developed by the agencies, as described below. As a result, the agencies believe that requiring collection of these data would not add significant burden to banks. In addition, final

[1520] *See* current 12 CFR ____.43(a).

[1521] *See* current 12 CFR ____.43(a)(5).

§ ____.42(a)(4)(i) requires large banks to collect and maintain an indicator of whether each branch is full-service or limited-service, and whether each remote service facility is deposit-taking, cash-advancing, or both.

The agencies have considered commenter feedback that the agencies should rely on the FDIC's Summary of Deposits data, rather than require the data collection under § ____.42(a)(4)(i) as proposed. The agencies do not believe the evaluation of branches and remote service facilities under the Retail Services and Products Test can be accomplished using the FDIC's Summary of Deposits. First, the data required in § ____.42(a)(4)(i) provides additional detailed information required to conduct the analysis under the Retail Services and Products Test, including hours of operation and services offered at each branch that are responsive to low- and moderate-income individuals and census tracts. Second, the FDIC's Summary of Deposits does not include remote service facilities and is not timely in that it is reported at the conclusion of each calendar year consistent with most other CRA data.[1522] In response to the comment suggesting that the collected data be used towards the creation of industry and market benchmarks, the agencies note that relevant community and market benchmarks for the evaluation of branch and remote service facility will be drawn from the American Community Survey and industry data, as proposed.

Section ____.42(a)(4)(ii) Digital Delivery Systems and Other Delivery Systems Data

The Agencies' Proposal

The agencies proposed data collection and maintenance requirements that would facilitate a review of whether digital and other delivery systems are responsive to the needs of low- and moderate-income individuals. Specifically, proposed § ____.42(a)(4)(ii) would require a large bank with assets of over $10 billion in both of the prior two calendar years and a large bank that had assets of $10 billion or less in either of the prior two calendar years that requests additional consideration for digital and other delivery systems, to collect and maintain the information required in proposed § ____.42(a)(4)(ii)(A) and (B) as follows: (1) the range of services and products offered through digital and other delivery systems and (2) 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 also proposed § ____.42(a)(4)(ii)(C), a general provision that would permit banks to optionally provide any information that demonstrated that digital and other delivery systems serve low- and moderate-income individuals and low- and moderate-income census tracts. The agencies sought feedback on whether the agencies should 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, or whether to allow banks the flexibility to determine which data points to collect, maintain, and provide for evaluation.

Comments Received

Most commenters addressing the agencies' request for comments on whether or not to prescribe the data a bank should collect and maintain to demonstrate responsiveness to low- and moderate-income individuals through digital and other delivery systems, were generally supportive of the agencies determining the required data points. A few commenters recommended that the data the agencies collect and maintain should align with the Bank On program.[1523] A commenter also noted that standardized fields would be needed if the agencies were to create benchmarks and compare an institution's performance against those benchmarks. Another commenter recommended that, to maintain consistency, no flexibility should be given to banks in determining which data points to collect and maintain.

By contrast, a few commenters indicated that banks should have flexibility to demonstrate responsiveness, with guidance provided in the form of examples. One of these commenters suggested that for CDFI banks the agencies defer to the process banks use to demonstrate the effectiveness of their delivery systems for the purposes of CDFI certification, and for non-CDFI banks, the agencies could provide a schedule of baseline data to ensure consistency between exams, and grant banks flexibility with regard to any additional data points they might collect and maintain for evaluation. Some commenters suggested that the agencies make any information that the agencies collect on digital and other delivery systems publicly available.

Final Rule

As discussed below, the agencies are finalizing proposed § ____.42(a)(4)(ii), renumbered in the final rule as § ____.42(a)(4)(ii)(A), with substantive, conforming, and technical edits. The agencies are finalizing as proposed the data collection and maintenance requirements pertaining to digital delivery systems and other delivery systems[1524] for large banks with assets greater than $10 billion and for large banks with assets of $10 billion or less that request additional consideration pursuant to § ____.23(b)(4).

Additionally, the agencies are revising § ____.42(a)(4)(ii)(A) to require that a subset of large banks with assets of $10 billion or less as of December 31 in either of the prior two calendar years that do not operate any branches collect and maintain digital delivery systems and other delivery systems data. The agencies are revising this paragraph to conform to changes made in the final rule with respect to the evaluation of a bank's digital delivery systems and other delivery systems in the Retail Services and Products Test, which will only evaluate these banks for their digital delivery systems and other delivery systems under § ____.23(b)(4) due to their lack of branches.[1525] As a result, these banks will only be required to collect and maintain delivery system data for their digital delivery systems and other delivery systems under § ____.42(a)(4)(ii).

The agencies are also making edits to conform to changes made to the definition of a ''large bank'' and making technical edits to better distinguish the data points that are required from those that are optional, including technical edits to renumber the paragraphs pertaining to the data banks will collect and maintain under the final rule. With respect to the conforming and technical edits, the agencies do not intend substantive changes.

The agencies are finalizing the data banks are required to collect and maintain in proposed § ____.42(a)(4)(ii)(A) and (B), renumbered in the final rule as § ____.42(a)(4)(ii)(B)(*1*) (range of retail banking services and retail banking products) and (*2*) (digital delivery

[1522] FDIC's Summary of Deposits data is reported as of June 30 of each year.

[1523] *See* Bank On, ''Open a no-overdraft Bank On certified account now!,'' *https://bankononline.org/?gclid=EAIaIQobChMI_5yN1PiogQMVSsvICh3n9Qu7EAAYASAAEgJ3FfD_BwE/.*

[1524] *See* final § ____.12 for the definitions of ''digital delivery systems'' and ''other delivery systems.''

[1525] *See* the section-by-section analysis in § ____.23(b)(4).

systems and other delivery systems activity by individuals), substantially as proposed, with clarifying edits. Specifically, the agencies are finalizing as proposed the data banks are required to collect and maintain for a bank's range of retail banking services and retail banking products in § ____.42(a)(4)(ii)(B)(*1*), but are modifying the requirement in § ____.42(a)(4)(ii)(B)(*2*), the digital delivery systems and other delivery systems activity by individuals, families, or households in low-, moderate-, middle-, and upper-income census tracts. In particular, the agencies are clarifying that banks evidence digital delivery systems and other delivery systems activity under § ____.42(a)(4)(ii)(B)(*2*) by providing data on the number of checking and savings accounts opened through digital delivery systems and other delivery systems by census tract income level for each calendar year and the number of checking and savings accounts opened digitally and through other delivery systems that are *active* at the end of each calendar year by census tract income level for each calendar year (rather than by accountholder usage as initially proposed). By requiring the number of active accounts rather than account usage as proposed, the agencies believe that the final rule reduces the burden for banks, as the number of accounts is generally less complex to monitor in bank data systems relative to account usage, and because account usage could be defined in numerous ways. The use of number of active accounts also builds on other data elements in the final rule. The agencies are also finalizing proposed § ____.42(a)(4)(ii)(C), which provides that banks required to collect and maintain digital delivery systems and other delivery systems data *may* collect and maintain additional information that demonstrates that the bank's digital delivery systems and other delivery systems serve low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

The agencies believe that requiring large banks with assets greater than $10 billion and those with assets of $10 billion and less with no branches to collect and maintain digital delivery systems and other delivery systems data is appropriate given that these data are required in the analysis of the evaluation of digital delivery systems and other delivery systems for these banks under the Retail Services and Products Test.[1526] Collecting and maintaining these data will assist the agencies in standardizing the evaluation criteria. Additionally, given the widespread use of online and mobile banking delivery systems and the expected continued growth of these systems, collection of these data supports the agencies' evaluation of digital delivery systems and other delivery systems and, accordingly, updates the agencies' evaluation of a bank's delivery systems performance. The agencies also believe that requiring the collection of these data for only these banks strikes the appropriate balance of: (1) facilitating a useful and effective review of whether digital delivery systems and other delivery systems are responsive to the needs of low- and moderate-income individuals, families, or households; (2) evaluating the delivery systems of banks with different business models, including those with national digital footprints; and (3) minimizing burden.

The agencies considered commenters' recommendations regarding which data the agencies should require banks to collect and maintain for digital delivery systems and other delivery services. The agencies believe that, as finalized, the data required by the agencies will provide consistency with respect to the evaluation of the responsiveness of digital delivery systems and other delivery systems to low- and moderate-income individuals, families, or households and communities. The data collected will also help the agencies better understand how banks continue to serve their communities as technology and bank business models evolve.

Recognizing that banks have different methods and means for assessing the effectiveness of their digital delivery systems and other delivery systems to low- and moderate-income individuals, families, or households as noted above, the final rule also permits banks the ability to provide additional information that demonstrates that digital and other delivery systems serve low- and moderate-income individuals, families, or households, thus providing certain flexibility to banks.

Banks will not report the data on digital delivery systems and other delivery systems; therefore, the agencies will make this information publicly available only to the extent it is discussed in the bank's CRA performance evaluation.

Finally, in response to comments and the agencies' own determination, the agencies intend to explore options to provide banks with interagency guidance on the submission of these data to promote clarity, consistency, and transparency, which is discussed further below.

Section ____.42(a)(4)(iii) Data for Deposit Products Responsive to the Needs of Low- and Moderate-Income Individuals

The Agencies' Proposal

For deposit products responsive to the needs of low- and moderate-income individuals, proposed § ____.42(a)(4)(iii) required large banks with assets of over $10 billion to collect and maintain data concerning: (1) 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; (2) the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period; and (3) optionally, any additional information regarding the responsiveness of deposit products to the needs of low- and moderate-income individuals and low- and moderate-income census tracts. Further, the agencies also proposed in § ____.42(a)(4)(iii) that this data would also be required for large banks with assets of $10 billion or less that request additional consideration for deposit products responsive to the needs of low- and moderate-income individuals. The agencies sought feedback on the appropriateness of the proposed data collection requirements, including whether to grant banks the flexibility to determine which data points to collect and maintain for evaluation.

Comments Received

With regard to the appropriateness of the agencies' proposed data collection elements for the evaluation of the responsiveness of deposit products, a few commenters indicated that the proposed elements were appropriate, with two of these commenters also suggesting that the agencies must standardized these elements. A commenter also opined that the proposed elements closely track what many banks already report to the National Data Hub at the St. Louis Federal Reserve for Bank On products.[1527] Two other commenters indicated that the agencies could group

[1526] *See* the section-by-section analysis of § ____.23(b)(4).

[1527] *See* BankOn, ''Open a no-overdraft Bank On certified account now!,'' *https://bankononline.org/?gclid=EAIaIQobChMI_5yN1PiogQMVSsvICh3n9Qu7EAAYASAAEgJ3FfD_BwE/*; *see also* Federal Reserve Bank of St. Louis, ''Bank On National Data Hub,'' *https://www.stlouisfed.org/community-development/bank-on-national-data-hub*.

deposit accounts by account terms and direct deposit requirements. One commenter proposed that direct deposit affordability should be determined by the FFIEC median family income data for the assessment area (MSA, etc.) and the favorability of the account terms. This commenter further recommended that, if the monthly direct deposit threshold for the accounts with the most favorable terms is more than 80 percent of the area median family income, then the deposit account would not be considered affordable. The other commenter suggested that direct deposit affordability should be determined by the FFIEC MSA income threshold for the branch location. This commenter further suggested that if the monthly direct deposit threshold is more than 80 percent of the area median family income and more than 30 percent of the customer's income on a monthly basis, the deposit product should not be considered affordable.

Final Rule

The agencies are finalizing § ____.42(a)(4)(iii) largely as proposed pertaining to the collection and maintenance of data on responsive deposit products required for banks with assets greater than $10 billion and large banks with assets of $10 billion or less that request additional consideration for their responsive deposit products under the Retail Services and Products in § ____.23(c)(3). The agencies are also making technical edits, format changes, and other minor word changes, with no substantive change in meaning intended. For instance, the final rule changes the format of the data that is required to be collected and maintained from ''machine readable'' to ''electronic'' form.

The agencies carefully balanced considerations of regulatory burden against the benefit of more clarity, consistency, and transparency with respect to CRA evaluations, while still providing banks flexibility. In particular, banks must collect and maintain the data described above, and are permitted to provide any other information that demonstrates the availability and usage of the bank's deposit products responsive to the needs of low- and moderate-income individuals and low- and moderate-income census tracts. In the final rule, the agencies clarified that ''a bank may opt to collect and maintain additional data pursuant to paragraph (a)(4)(iii)(C) of this section in a format of the bank's choosing.'' In addition, the agencies added clarifying language that optional data collected and maintained must ''demonstrate the availability and usage'' of the bank's responsive deposit products.

As discussed below, the agencies also plan to provide guidance for banks on the submission of these data to promote the clarity, consistency, and transparency of this information.

After considering the commenters' recommendations, the agencies have decided to finalize the data elements as proposed. The agencies decline to incorporate commenters' recommendations regarding grouping deposit accounts together by account terms and including direct deposit affordability as one of the elements to consider for responsive deposit accounts. With regard to commenters that suggested the agencies group deposit accounts by account terms and direct deposit requirements, the agencies believe deposit accounts are relatively heterogeneous and different banks may take different approaches in how they organize their deposit accounts with regard to affordability. With regard to commenters that suggested the agencies should use direct deposit threshold as a proxy for the depositors' median income to determine product affordability, the agencies note that banks take different approaches with regard to how their direct deposit features are structured, and depositors take different approaches with regard to how they deposit their funds, whether using direct deposit for all, part, or none of their deposits across one or more accounts. The agencies believe that banks are best positioned to determine how to present the affordability of the direct deposit features of their deposit accounts, as relevant for their distinct customer bases. Nevertheless, the agencies will take commenters' recommendations under advisement to determine if they could be used as examples examiners can consider in the evaluation.

Additional Issues

The Agencies' Proposal

The agencies invited comment on whether the proposed retail services data exist in a format that is transferrable to data collection or whether the agencies should require a standardized template to facilitate the collection and maintenance of data for the Retail Services and Products Test. The agencies considered that a template would potentially offer flexibility for providing quantitative and qualitative information, which may be particularly relevant for aspects of retail services that banks have not consistently provided to the agencies previously, or that may change over time. The agencies also invited public feedback on steps that could be taken to minimize burden of the proposed information collection requirements while still ensuring adequate information to inform the evaluation of services.

Comments Received

Comments regarding the format for information collection. In response to the agencies' request for comment on whether the proposed retail services data exist in a format that is transferable to data collection or whether a required template provided by the agencies would be sufficient in the collection of retail services and products information, several commenters provided feedback. All commenters indicated that the agencies should develop and provide a template to ensure that the data are standardized, with two of these commenters also suggesting that, prior to implementation, the agencies should release the template for public input. Another commenter indicated that the response could vary by bank, which is why the commenter supports making a template available if it is not feasible to transfer the data collection.

Comments related to burden reduction. In response to the agencies' request for feedback on what steps could be taken to reduce burden of the proposed information collection requirements, the agencies received recommendations from several commenters. Commenters' suggestions included that the agencies create templates for data requirements and to provide technical assistance and training, particularly for MDIs, and small and intermediate banks. Other recommendations included providing guides, manuals, and training programs; standardizing and automating data collection, with as much data as possible drawn from ''authoritative sources of bank profiles and community development data;'' providing strong resources to help navigate differences in definitions of various regulations, and creating a portal or listing of qualifying activities; distributing a questionnaire to banks to collect feedback on how data burden might be reduced; and requesting consistent data that provides insights about income, race, ethnicity, and location.

A few commenters generally addressed the burden related to the data requirements for retail services and products. Commenter views included that this requirement would be costly and disproportionately burdensome relative to the small impact this test would have on a bank's overall CRA rating. A commenter stated that the incremental burdens associated with maintaining data needed for the proposed test will be significant because much of these data are not currently being captured or maintained by banks. Another commenter listed reasons data will be challenging and burdensome (*e.g.,* hard to determine accurate location of customer of a particular product) and stated that the burden is not worth it. This commenter also stated that digital banking data at census tract level is inconsistent with the deposits data proposal, which aggregates data at the county level.

Final Rule

Regarding the commenter that expressed concerns that reporting data at the census tract level would be burdensome because of the difficulty in determining the accurate location of customers of a particular product, the agencies' supervisory expectations are that banks maintain current addresses for their accountholders. Geocoding technology for associating addresses with census tracts is widely available and used in the banking industry. As a result, the agencies do not expect that the requirement for large banks to collect and maintain data for their digital and other delivery systems at the census tract level will create a significant increase in burden.

Regarding the inconsistency between the deposits data collected and maintained at the county level, which the agencies will use for the purpose of calculating metrics for the Retail Lending Test and the Community Development Financing Test, and the digital delivery systems or other delivery systems data collected and maintained at the census tract level, which the agencies will use to evaluate the degree to which these products are serving low- and moderate-income individuals and low- and moderate-income census tracts, the agencies note that these data are used for different purposes. The deposits volume data at the county level are used for constructing weights and metrics; they are not evaluated with regard to the income characteristics of underlying census tracts. On the other hand, the agencies will evaluate data on accounts opened by digital delivery systems and other delivery systems with regard to the income level of the census tracts where consumers reside, as well as other data that banks may provide indicating the income levels of consumers of these products. It is appropriate that banks collect these data at different geographic levels.

Upon consideration of the comments received, the agencies intend to develop various materials for banks including data reporting guides and other technical assistance to assist banks in understanding supervisory expectations with respect to the data requirements for retail banking services and retail banking products, navigating through various definitions, and the types of responsive deposit products that could qualify for CRA consideration. In addition, the agencies intend to develop a template for the submission of data for digital delivery systems and other delivery systems as well as responsive deposit products to increase consistency for the collection and maintenance of the data and will continue to explore other tools to reduce burden. The agencies decline to publish a complete listing of retail banking services or retail banking products that could qualify for consideration, as the agencies are concerned that doing so may narrow the potential for innovative deposit products a bank could develop or offer to their customer base. However, the agencies will consider including illustrative examples of retail banking services and retail banking products in any future guides and technical assistance the agencies issue outside of the final rule. Importantly, responsive deposit products are dependent on the needs of the community which can differ. With respect to other recommendations, the agencies will continue to explore the possibility of including them in guidance, outside of this final rule.

Section ____.42(a)(5) Information Required To Be Collected and maintained—Community Development Loans and Community Development Investments Data

Section ____.42(b)(2) Information Required To Be Reported—Community Development Loans and Community Development Investments Data

Current Approach

Current § ____.42(b)(2) requires that a bank, except a small bank (including an intermediate small bank) or a bank that was a small bank during the prior calendar year, report annually by March 1 to the Board, FDIC, or OCC, as applicable, the aggregate number and dollar amount of community development loans originated or purchased by the bank during the prior calendar year. Current agency guidance provides that a large bank or intermediate small bank that seeks consideration for community development activities must be prepared to demonstrate the activities' qualifications but this can be provided in a format of the bank's choosing.[1528]

Regarding data about a bank's individual community development loans and community development investments, as well as prior period information about a bank's community development investments, examiners currently rely on loan level and investment level information provided by a bank at the time of an examination, including the number and dollar amount of loans and investments, the location of or areas benefited by these activities, and information describing the community development purpose for each community development loan and investment.[1529] Data collection, maintenance, and reporting requirements for this information is currently not included in the CRA regulations. In addition, the CRA regulations do not currently consider community development loans from prior periods that remain on the bank's books; therefore, there is no requirement for the collection and reporting of these data. As a result of the lack of data collection and reporting of individual community development loans and community development investments, the total number and dollar amount (originated and on-balance sheet) of such loans and investments nationally, or within specific geographies, is not available through reported data.

The Agencies' Proposal

Proposed § ____.42(a)(5)(i)(A) required a bank, except a small or an intermediate bank, to collect and maintain the data on individual community development loans and investments in proposed § ____.42(a)(5)(ii), in machine readable form, as prescribed by the agencies. Data to be collected and maintained about each individual community development loan or investment included: (1) general information on the loan or investment;[1530] (2) specific information on the loan or investment, such as the name of organization or entity, type (loan or investment), community development purpose, and community development loan or investment detail, which could include, for example, whether the loan or investment was a low-income housing tax credit investment or a multifamily mortgage loan;[1531] (3) indicators of the impact of the community development

[1528] *See* Q&A § ____.12(h)–8; *see also* current 12 CFR ____.21 and ____.26.

[1529] *See* Q&A § ____.22(b)(4)–1.

[1530] Proposed § ____.42(a)(5)(ii)(A).

[1531] Proposed § ____.42(a)(5)(ii)(B).

loan or investment;[1532] (4) location information;[1533] (5) other details relevant to the determination that the loan or investment meets the standards in proposed § ____.13, including indicators of whether the bank has retained certain types of documentation, such as rent rolls, to assist with verifying the eligibility of the loan or investment;[1534] and (6) the allocation of the dollar value of the community development loan or investment to specific geographic areas, if available.[1535]

Proposed § ____.42(a)(5)(i)(B) required an intermediate bank that opted to be evaluated under the Community Development Financing Test in § ____.24 to collect and maintain the data in § ____.42(a)(5)(ii), but could do so in the format used by the bank during the normal course of business.[1536] The agencies did not propose to require small banks to collect, maintain, or report any data on community development loans and investments, even if the small bank requested consideration for such activities.

The agencies also proposed to revise current § ____.42(b)(2), renumbered in the proposal as § ____.42(b)(5), to require a bank, except a small or an intermediate bank, to report annually by April 1 all the individual loan and investment data collected and maintained discussed above under § ____.42(a)(5)(ii), with the exception of the name of the organization or entity supported.

The agencies requested comment regarding several aspects of the agencies' proposal to collect, maintain, and report community development lending and investment data. With respect to collection of the data, the agencies sought feedback on other steps they could take, or what procedures they could develop, to reduce the burden of the collection of additional community development lending and investment data fields while still ensuring adequate data to inform the evaluation of the bank's community development loans and investments. The agencies also sought feedback on how a data template could be designed to promote consistency and reduce burden. With respect to reporting of the data, the agencies sought feedback on how the format and level of data reporting requirements might affect those banks required to report community development lending and investment data, as well as the usefulness of the data. For example, the agencies sought feedback on whether it would be appropriate and less burdensome to require reporting of community development lending and investment data aggregated at the county-level as opposed to the individual loan- or investment-level.

Comments Received

Comments related to collection and maintenance of community development loans and investments data. Several commenters provided general comments on the agencies' proposed community development lending and investment data requirements. These commenters were generally supportive of the agencies' proposed strategy, with one commenter noting that the proposed community development lending and investment data would make the Community Development Financing Test in § ____.24 more rigorous by allowing examiners to compare a bank against its peers to determine whether the bank is especially responsive to local needs. This commenter further noted that the community development lending and investment data would help stakeholders more accurately determine areas that are receiving considerable amounts of community development lending and investment financing and which areas are not. One commenter noted that the new data requirements would highlight gaps in financial services in underserved communities and was hopeful it would spur economic activity.

A few other commenters offered additional suggestions on how to improve data collection for community development lending and investments. For instance, a few commenters suggested that the agencies could improve data collection for the impact review section of the Community Development Financing Test in § ____.24, noting for example, that capturing contextual data on the factors, such as the number of beds in health facilities or the number of housing units that had lead paint abatement, might better capture the importance of funding health initiatives and better motivate banks to invest in those initiatives. A commenter suggested that the final rule might implement data collection and reporting requirements on the race and ethnicity of the beneficiaries of community development loans, investments, and services. Another commenter asked that the agencies make all the data publicly available.

Commenters also provided feedback on what steps the agencies might take to reduce the burden of collecting additional community development lending and investment data, including the design of a template to promote consistency and reduce burden. Most commenters who opined on this question agreed that providing a template would be useful. These commenters also provided other suggestions on how to reduce the burden of collecting community development lending and investment data. For example, one commenter suggested that the agencies should automate the template and provide it to CRA software vendors. A few commenters noted the importance of standardizing and automating data collection to minimize duplication of effort and more efficiently implement data collection using existing sources, with one of these commenters also noting that data sharing tools including standard visualizations for the bank's community and Application Programing Interface (API) for researchers would also be beneficial. A few other commenters noted that, in addition to developing the template, the agencies should develop training materials and programs for banks and the public and provide sufficient time for the industry to implement the reporting process. One other commenter suggested that a template for collecting community development lending and investment data should include data fields to record geographical targeting, partnerships, and other features that might help the qualitative evaluation become more quantitative and objective.

A few other commenters provided other recommendations to streamline data collection. For example, a commenter suggested that banks should have the flexibility to classify small business loans with a primary purpose of community development as community development loans and investments. This commenter noted that documentation for these activities could then be drawn from data to be required as part of the CFPB's section 1071 process. Similarly, another commenter noted that SBA documentation through various forms includes fields on job creation and retention, similar to those likely to be needed for CRA purposes. The agencies aim to use readily available data whenever possible.

Comments related to reporting of community lending and investment data. Several commenters responded to the agencies' request for feedback on whether the format and level of data

[1532] Proposed § ____.42(a)(5)(ii)(C).

[1533] Proposed § ____.42(a)(5)(ii)(D).

[1534] Proposed § ____.42(a)(5)(ii)(E).

[1535] Proposed § ____.42(a)(5)(ii)(F).

[1536] The agencies also noted in the proposal that intermediate banks evaluated under the status quo intermediate bank community development evaluation would not be required to collect and maintain data.

required to be reported might affect the burden on banks required to report community development lending and investment data as well as the usefulness of the data. A majority of these commenters supported the proposed rule's requirement that banks report community development lending and investment data at the individual loan or investment level. Rationale provided by these commenters varied. A few of these commenters asserted that loan or investment level data would allow for more precise tracking of community development loan or investment data, including the number and percentages of activities that met one or more of the impact review factors or specific community development categories, such as affordable housing activities. Another one of these commenters observed that large banks would have to collect individual loan- or investment-level data whether or not the data are reported at the activity level. This commenter noted that reporting at the loan- or investment-level would give the agencies and the public more granular data with which to compare banks with other banks. One commenter, while agreeing that large banks should collect and report loan- or investment-level community development data, also, suggested that banks should have the option to report data annually, with the perspective that quarterly reporting would be overly burdensome. This commenter misunderstood the proposal, as the proposal included the option to report data annually.

A few commenters provided other recommendations including that the agencies: require reporting of community development lending and investment data at an aggregated level, without reporting individual loans and investments; review the format and level of data reported by CDFIs to the Treasury data system called Awards Management Information System (AMIS), in the hopes that there might be an opportunity to capture the full profile of a bank's community development lending and investments in one system leveraging this existing reporting system to facilitate data standardization, exchange, and consolidation; include an indicator of whether a product is targeted or offered in a low- or moderate-income location or targeted to a broader low- or moderate-income community; and require banks to collect and report community development lending and investment data for activities in Native Land Areas and with entities such as Native CDFIs and tribal governments.

Publication of community development lending and investment data. A number of commenters suggested that the agencies publish community development lending and investment data. For example, one commenter encouraged the agencies to disclose data on the community development purpose of activities, even if such data are published at the aggregate level, as publication would allow the public to have greater insight into how community development lending and investment dollars are allocated and to compare trends over time. This commenter, along with a few others, also requested that community development lending and investment data be made available on a census tract level so that members of the public can determine which neighborhoods are receiving an adequate amount of community development lending and investment and which neighborhoods need more.

Final Rule

The agencies are adopting § ____.42(a)(5)(i)(A) largely as proposed with technical and clarifying edits. Specifically, the agencies are revising this paragraph to update the reference from ''machine readable'' to ''electronic.'' No substantive change is intended. In addition, to conform to changes made in § ____.24, the agencies are clarifying that the data to be collected and maintained in § ____.42(a)(5)(ii) applies to community development loans and investments originated and purchased, as originally proposed, as well the refinance, renewal, or modification of a loan or investment.

The agencies are not finalizing the requirement in proposed § ____.42(a)(5)(i)(C) that banks collect and maintain the outstanding dollar volume of community development loans and investments for previous years that are still held on the balance sheet at the end of each quarter, by March 31, June 30, September 30, and December 30. Instead, to reduce burden, the agencies are finalizing proposed § ____.42(a)(5)(i)(C), renumbered as § ____.42(a)(5)(ii)(A)(*4*)(*iii*), to require the bank to collect and maintain the outstanding balance of community development loan originated, purchased, refinanced, or renewed in previous years that remain on the bank's balance sheet as of December 31 of the calendar year for each year the loan remains on the bank's balance sheet; or an existing community development investment made or renewed in a year subsequent to the year of the investment as of December 31 for each year that the investment remains on the bank's balance sheet. This change requires the bank to collect and maintain these data based on the end of year balance instead of the average of the quarterly balance, which the agencies believe will be easier for banks to comply with. The agencies have also made technical and conforming edits to the remainder of this paragraph.

The agencies are revising proposed § ____.42(a)(5)(ii)(A) to conform to the revisions made to proposed § ____.42(a)(5)(i)(C), as described above, and § ____.24 and for organizational and clarifying purposes. The agencies are also making changes to proposed § ____.42(a)(5)(ii)(C) to conform to the changes made to § ____.15(b), including adding to the list of indicators of the impact and responsiveness of the activity whether an activity benefits or serves one or more census tracts with a poverty rate of 40 percent or higher or the activity is an investment in a project financed with LIHTCs or NMTCs. In response to commenters and the agencies' further review, the agencies are revising proposed § ____.42(a)(5)(ii)(D) to include the census tract as part of the data a bank is required to collect and maintain for the specific location information of the community development loan or investment. Finally, other technical and organizational changes were made to § ____.42(a)(5)(ii) with no change in meaning intended.

The agencies are finalizing proposed § ____.42(b)(3), renumbered in the final rule as § ____.42(b)(2), largely as proposed pertaining to the reporting of community development lending and investment data collected and maintained in § ____.42(a)(5)(ii), with revisions and minor technical and conforming edits. Specifically, in addition to finalizing § ____.42(b)(2) to exclude from reporting the name of the organization or entity supported in § ____.42(a)(5)(ii)(B)(*1*), in the final rule the agencies are also excluding the specific location information of the community development loan or investment in § ____.42(a)(5)(ii)(D)(*1*) through (*5*) to further address potential privacy issues. The agencies are further revising § ____.42(b)(2) to require that banks subject to the data reporting requirements in § ____.42(b)(2) report the census tract location of the community development loan or investment in new § ____.42(a)(5)(ii)(D)(*6*). This requirement, which was included upon consideration of commenter feedback, is intended to assist the agencies in determining if the loan or investment qualifies as community development.

As explained in the proposal, the agencies believe collecting and reporting community development lending and investment data at the loan- or investment-level is necessary to construct community development lending and investment metrics and benchmarks. Requirements for data collection and maintenance will also aid the agencies in conducting data integrity evaluations, and the agencies anticipate addressing data integrity procedures as part of interagency guidance. The agencies note that, under the final rule, banks will be required to report annually, by April 1, the data required to be collected and maintained on an annual basis until the completion of the bank's next examination period. The agencies believe some commenters may have misunderstood that the required data were to be reported on a quarterly basis, rather than reported on an annual basis using the quarterly average of the data. To clarify, the agencies are simplifying the data collection and reporting by requiring annual reporting of new money and year-end balances of activities that remain on the bank's balance sheet from prior years as opposed to quarterly averages.

In response to commenters that suggested that banks record a small business loan with a community development purpose as a community development loan or investment to receive consideration, the agencies will allow consideration of small business and small farm loans under the Retail Lending Test, as well as the relevant community development tests applicable to the bank, subject to meeting the necessary criteria (*see* the section-by-section analysis of § ____.13 for additional details).

Regarding comments to make community development lending and investments data publicly available, the agencies believe that this information will be disclosed in a number of ways, including through CRA Disclosure Statements, aggregate disclosure statements, and public performance evaluation reports. Public performance evaluations would include the metrics and benchmarks used to determine conclusions on the Community Development Financing Test for each facility-based assessment area, multistate MSA, State, and institution. The agencies believe the information in these statements and reports will provide stakeholders greater insight into how community development lending and investment dollars are allocated and compare trends over time to assist with the identification of areas where capital is most needed.

Upon consideration of the comments, the agencies are not including data on the race and ethnicity of the beneficiaries of community development activities as the agencies believe this would increase burden without providing a corresponding benefit that would assist the agencies in effectuating the rule, as finalized.

To assist banks with the collection and maintenance of community development lending and investment data, the agencies intend to develop a standardized template to gather the data in a consistent manner. Gathering of standardized data will also assist the agencies in understanding the impact and responsiveness of community development loans and investments when applying the impact and responsiveness review. The electronic form will include the impact and responsiveness factors for consistency and to reduce burden. Banks will be permitted to provide examiners additional contextual and qualitative information on community development loans and investments during the CRA examination, consistent with current practices.

The agencies will take into consideration other commenter suggestions for simplifying data collection, including the automation of the template when developing the tools and resources to implement the new rule. Under the final rule, use of the template will be required for large banks and limited purpose banks that would be large based on the asset size described in the definition of large bank. The agencies believe that requiring these banks to use the prescribed template will, in addition to reducing burden, improve the consistency of the data collected. An intermediate bank that opts to be evaluated under the Community Development Financing Test in § ____.24 may provide community development lending and investment data in the format used by the bank in the normal course of business, or may use the standardized template provided by the agencies. In addition, the agencies intend to develop other materials to assist banks with community development data collection. As suggested by commenters, the agencies are considering developing training materials and programs for banks and the public, and a data reporting guide to assist in accurate data reporting.

Section ____.42(a)(6) Information Required To Be Collected and Maintained—Community Development Services Data

Current Approach

There are no specific data collection or reporting requirements in the current CRA regulations for community development services. However, current interagency guidance explains that a bank should provide examiners with sufficient information to demonstrate its performance in these areas, as applicable,[1537] such as by providing the number of activities, bank staff hours dedicated, or the number of financial education sessions offered.[1538]

The Agencies' Proposal

To facilitate the proposed evaluation of a bank's community development services activities and the use of the proposed Bank Assessment Area Community Development Services Hours metric, proposed § ____.42(a)(6) required large banks with assets of over $10 billion to collect and maintain, until the completion of the bank's next CRA examination, the following community development services information, in machine readable form, as prescribed by the agencies: (1) number of full-time equivalent employees at the facility-based assessment area, State, multistate MSA, and institution levels; [1539] (2) total number of community development services hours performed by the bank in each facility-based assessment area, State, multistate MSA, and in total; [1540] (3) date of community development activity; [1541] (4) name of organization or entity; [1542] (5) community development purpose; [1543] (6) capacity served; [1544] (7) whether the activity is related to the provision of financial services; [1545] (8) the location of the activity; [1546] and (9) whether the bank is seeking consideration at the assessment area, statewide, or nationwide level.[1547] Although not expressly stated in proposed § ____.42(a)(6), the agencies explained in the proposal that large banks with assets of $10 billion or less would have the option, but would not be required, to collect and maintain the same community development services data in § ____.42(a)(6). However, these

[1537] *See* Q&A § ____.12(h)–8.

[1538] *See* Q&A § ____.24(e)–2.

[1539] Proposed § ____.42(a)(6)(i)(A).

[1540] Proposed § ____.42(a)(6)(i)(B).

[1541] Proposed § ____.42(a)(6)(ii)(A).

[1542] Proposed § ____.42(a)(6)(ii)(B).

[1543] Proposed § ____.42(a)(6)(ii)(C).

[1544] Proposed § ____.42(a)(6)(ii)(D).

[1545] Proposed § ____.42(a)(6)(ii)(E).

[1546] Proposed § ____.42(a)(6)(iii)(A) through (E).

[1547] Proposed § ____.42(a)(6)(iii)(F).

banks would have the option to collect and maintain data in their own format, or to use the template prescribed by the agencies.

To compute the Bank Assessment Area Community Development Services Hours Metric proposed in § ____.25(b)(2), proposed § ____.42(b)(4) would have required large banks with assets of over $10 billion to report annually by April 1: (1) the number of full-time equivalent employees at the facility-based assessment area, State, multistate MSA, and institution levels; and (2) the total number of community development services hours performed by the bank in each facility-based assessment area, State, multistate MSA, and in total.

In addition, the agencies asked for feedback regarding whether large banks with assets of $10 billion or less should be required to collect and maintain community development services data in 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, the agencies asked whether large banks with assets of $10 billion or less should have the option of using a standardized template or collecting and maintaining the data in their own format, and whether 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) would make this alternative more feasible. The agencies further asked whether the added value from being able to use these data in the construction of a metric outweighs the burden involved in requiring data collection by these banks. The agencies also asked for feedback regarding whether large banks with assets of over $10 billion should be required to collect, maintain, and report data on the number of full-time equivalent employees in order to develop a standardized metric to evaluate community development service performance for these banks.

Comments Received

A few commenters provided general feedback on the agencies' community development services data requirements. One of these commenters noted that requiring large banks to report community development data on an individual activity level would be one of the most impactful changes in the proposed rule. The other commenter suggested that the agencies clarify that there is no need to collect and report community development services data in which a bank does not intend to seek CRA credit.

Several commenters expressed differing views on whether large banks with assets of $10 billion or less should be required to collect community development services data, and if so, whether banks should have the option of using the standardized template or their own format. Many of these commenters supported requiring that all large banks report these data in the manner prescribed for banks with assets over $10 billion, with a few of these commenters also supporting a requirement that data be reported in machine-readable form. One commenter thought that intermediate banks should have the flexibility to collect and maintain data either in their own format or in a template provided by the agencies. Another commenter suggested that large banks with assets of $10 billion or less should have the option of using a standardized template or their own format, but in either case, the format should be in a machine-readable form. This commenter further noted that although a longer transition period is always desirable, the added value of using these data in the construction of a metric outweighs the burden involved in requiring data collection by these banks. Another commenter expressed an opposing view with respect to requiring these banks to provide data in a machine-readable form, noting that banks should maintain the data internally but not have to report it externally. One commenter did not support additional reporting of these data points for any large bank because of what the commenter deemed to be excessive cost burden.

Regarding the agencies' request for feedback on whether large banks with assets over $10 billion should 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, a few commenters supported the proposal. One of these commenters also noted that if a standardized metric is developed by the agencies, it would be important that data be sufficient to evaluate community development services performance. This commenter further suggested that requiring banks to report data on the number of full-time equivalent employees would help complete the profile of the bank's investment in community development services. Another commenter expressed the view that the requirement to report data on the number of full-time equivalent employees should apply to all large banks and intermediate banks, and that the performance evaluation should include a copy of the institution's most recent Employment Information Report (EEO–1) Component Data report to evaluate a bank's diversity and inclusion.

One commenter noted that it would be difficult for banks to collect, maintain, and report these data. One commenter objected to the requirement that large banks with assets of over $10 billion collect, maintain, and report these data while not requiring the same of all other banks. In this commenter's view, there is no logical reason for the different treatment. The commenter urged the agencies not to impose what they described as sweeping, burdensome, and inefficient data collection requirements.

Final Rule

After consideration of the comments, the agencies are adopting § ____.42(a)(6) pertaining to the data collection and maintenance of community development services, with changes, including technical and conforming changes. Specifically, because final § ____.25 requires all large banks to be evaluated under the Community Development Services Test (*see* the section-by-section analysis of § ____.25), the agencies are conforming proposed § ____.42(a)(6) to require all large banks to collect and maintain the community development services data in final § ____.42(a)(6)(i) and (ii). The agencies believe collection and maintenance of the community development services data for all large banks is necessary to facilitate evaluation under the Community Development Services Test. The agencies further believe that requiring these data of all large banks, rather than just banks with assets over $10 billion, will provide more consistency and clarity in the evaluation of community development services for all large banks, without significantly increasing burden. The agencies note from prior supervisory experience that many large banks already collect and maintain these data for CRA examination purposes.

However, to reduce burden and provide flexibility while maintaining consistency in the data elements, the final rule permits all large banks to collect and maintain these data in a format of the bank's choosing or in a standardized format as provided by the Board, FDIC, or OCC, as applicable, until the completion of the bank's next CRA examination. The agencies note that they intend to develop a standardized template for community development services data to improve consistency in evaluations. Large banks will have the choice to use the template or their own format.

Finally, the agencies note that small banks and intermediate banks that request consideration for community development services are not required to collect and maintain these data in a manner equivalent to large banks. However, consistent with current practice, small and intermediate banks should be prepared to provide examiners with sufficient information to demonstrate that the activities qualify as community development services, such as the number of activities, bank staff hours dedicated, or the number of financial education sessions offered.

The agencies are also making changes to the data required to be collected and maintained to conform to changes made in final § ____.25. Specifically, the agencies are not adopting the proposed Bank Community Development Services Hours Metric for banks with assets over $10 billion. As a result, the data regarding the number of full-time equivalent employees at the facility-based assessment area, State, multistate MSA, and institution levels in proposed § ____.42(a)(6)(i)(A) are no longer necessary. In addition, the agencies further revised § ____.42(a)(6)(i) by removing 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 was removed because the number of board member or employee service hours was added to the list of community development services information, proposed as § ____.42(a)(6)(ii)(A) and renumbered as § ____.42(a)(6)(i). The agencies will be able to add the number of total service hours based on the hours provided for each community development service.

The agencies added § ____.42(a)(6)(i)(F) to require the collection and maintenance of the indicators of the impact and responsiveness of the activity, as applicable, to be consistent with final § ____.15(b). The agencies note that while the impact factors were not specifically included in the data collection, these data are required for the evaluation of the Community Development Services Test pursuant to § ____.25(c)(5). Final § ____.42(a)(6)(i)(F)(*1*) through (*10*) provides the indicators required to be collected and maintained for community development services consistent with § ____.15(b).

The agencies have also revised proposed § ____.42(a)(6)(ii)(E) by removing the indicator for whether the activity is related to the provision of financial services. As explained in the section-by-section analysis of § ____.25, the agencies determined that this requirement is not necessary because the final rule requires all community development services activities to be related to the provision of financial services. Therefore, collection of this indicator in proposed § ____.42(a)(6)(ii)(E) is no longer necessary.

The agencies have also renumbered and streamlined the data requirements for the location information of the activity in proposed § ____.42(a)(6)(iii)(A) through (F). Specifically, the final rule replaces the requirement to collect and maintain the specific location of the activity, street address, city, county, State, and zip code in proposed § ____.42(a)(6)(iii)(A) through (E), with a list of the geographic areas served by the activity, specifying any census tracts, county, counties, State, States, or nationwide area served. This revised list is renumbered in the final rule as § ____.42(a)(6)(ii)(A). In addition, the geographic level for which the bank seeks consideration for the community development services activity in proposed § ____.42(a)(6)(iii)(F) has been renumbered in the final rule as § ____.42(a)(6)(ii)(B).

The agencies are not finalizing the requirement that banks with asset over $10 billion must report the number of full-time equivalent employees proposed § ____.42(b)(4). As stated above, the agencies are not requiring that banks collect and maintain the number of full-time equivalent employees at the facility-based assessment area, State, multistate MSA, and institution levels collected in proposed § ____.42(a)(6)(i)(A). As a result, the requirement to report these data no longer applies.

Because the final rule does not require that data for community development services be reported, the agencies will not publish community development services data as suggested by one commenter. With respect to the data collection requirement, and in response to a comment, while the agencies are not specifying in the final rule that if a bank does not intend to seek CRA credit the bank need not collect community development services data, the agencies note that there are no data requirements if the bank does not engage in a particular product or service that requires data collection, maintenance, or reporting under § ____.42.

Section ____.42(a)(7) Information Required To Be Collected and Maintained—Deposits Data

Section ____.42(b)(3) Information Required To Be Reported—Deposits Data

Current Approach

The current CRA regulations do not require banks to collect, maintain, or report deposits data.[1548] Instead, for small banks, total deposits and total loans data from the bank's Call Report are used to calculate the loan-to-deposit ratio for the entire bank. For banks of any size, the agencies may use total deposits allocated to each branch from the FDIC's Summary of Deposits for performance context. Further, deposits data by depositor location are not currently required to be collected or reported, but may have been used by examiners for performance context at the bank's request, if available.

The Agencies' Proposal

As explained below, the agencies proposed that deposits data would be used for several evaluation metrics, benchmarks, and weights under the applicable performance tests. In § ____.42(a)(7) (collection and maintenance) and (b)(5) (reporting), the agencies proposed an approach for the deposits data requirements tailored to different bank sizes.

Deposits Data Collection and Maintenance Requirements

Large Banks with Assets of Over $10 Billion. The agencies proposed in § ____.42(a)(7) to require large banks 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, to collect annually and maintain until the completion of the bank's next CRA examination the dollar amount of the bank's deposits at the county level, based on the addresses associated with accounts and calculated based on the average daily balances as provided in statements, such as monthly or quarterly statements. The proposal also indicated that deposits data must be collected and maintained in machine readable form prescribed by the Agency.[1549] Further, the proposed deposits data would not be assigned to branches but would instead reflect the county-level dollar amount of the bank's deposit base.[1550] As a result, county-level deposits data would be based on the county in which the depositor's

[1548] *See* current 12 CFR ____.42.

[1549] *See* proposed § ____.42(a)(7).

[1550] *See id.*

account 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.[1551] The agencies explained in the preamble to the proposal that this approach would allow for more precise measurement of a bank's local deposits by county. Furthermore, the agencies noted 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.

The agencies also explained in the preamble to the proposal 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 agencies explained that the proposed collection and maintenance of deposits data at the county level for large banks with assets of over $10 billion would permit the agencies to more accurately: (1) 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; (2) 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, (3) implement a standardized approach for deriving State-, multistate MSA-, and institution-level conclusions and ratings by weighting facility-based assessment area conclusions, retail lending assessment area conclusions, and outside retail lending area conclusions through a combination of deposits and lending volumes.

The agencies did not believe it was practicable to implement their proposal using the FDIC's Summary of Deposits data for all large banks, particularly with respect to banks with more than $10 billion in assets. For example, the agencies noted that 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 FDIC's Summary of Deposits data may have been deposited by a customer 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.[1552] The agencies noted that this limitation could introduce imprecision when using the FDIC's Summary of Deposits data to weight performance conclusions in retail lending assessment areas, outside retail lending areas, and areas for eligible community development activity. For large banks with assets of over $10 billion, the agencies believed that the benefits of precision, given the range of important measurements which are dependent on these data, outweighed the burden of requiring the collection and reporting of deposits data.

The agencies sought feedback on whether the proposed approach of requiring only large banks with assets of over $10 billion to collect, maintain, and report deposits data creates the appropriate balance between tailoring data requirements and ensuring accuracy of the proposed metrics. The agencies also sought feedback on whether large banks with assets of $10 billion or less that elect to collect and maintain deposits data also should be required to report deposits data. Relatedly, the agencies sought feedback on an alternative approach in which all large banks with assets of $10 billion or less are required to collect, maintain, and report deposits data, with the standards and requirements for these data as proposed for large banks with assets of over $10 billion. Additionally, the agencies sought 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) to begin collecting, maintaining, and reporting deposits data for large banks with assets of $10 billion or less would make this alternative more feasible. The agencies also sought comment on whether it would be preferable to require deposits data collected as a year- or quarter-end total, rather than an average annual deposit balance calculated based on average daily balances from monthly or quarterly statements.

Under the proposal, for deposit account types for which accountholder location information is not generally available, the aggregate dollar amount of deposits for these accounts would be included at the overall institution level and not at other geographic levels.[1553] The agencies explained in the preamble to the proposal that they expected that the aggregate dollar amount of deposits for accounts associated with pre-paid debit cards or Health Savings Accounts would likely be included at the institution level. The agencies sought feedback on additional clarifications regarding what deposit account types may not be appropriate to include at a county level and whether these deposits should be included at the institution level. The agencies also requested feedback on whether brokered deposits should be reported at the institution level.

For large banks with more than $10 billion in assets that collect, maintain, and report deposits data, agencies proposed in § ____.12 a definition of deposits based on two subcategories of the Call Report category of Deposits in Domestic Offices: (1) deposits of individuals, partnerships, and corporations; and (2) commercial banks and other depository institutions in the United States. The agencies proposed these two subcategories of deposits, which constitute the majority of deposit dollars captured overall in the Call Report categories of Deposits in Domestic Offices, because they best reflect a bank's capacity to lend and invest. The proposed definition excluded domestically held deposits of foreign banks and of foreign governments and institutions because these deposits are not derived from a bank's domestic customer base. The proposed definition also excluded United States, 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.

The agencies sought feedback on whether deposits for which the depositor is a commercial bank or other depository institution should be excluded from the definition and whether other categories of deposits should be included in these deposits

[1551] *See id.*

[1552] *See* FDIC ''Summary of Deposits Reporting Instructions'' 3 (June 30, 2022), *https://www.fdic.gov/resources/bankers/call-reports/summary-of-deposits/summary-of-deposits-reporting-instructions.pdf* (''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.'').

[1553] *See* proposed § ____.42(a)(7) and (b)(5).

data. The agencies explained that 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. Further, the agencies sought feedback on the appropriate treatment of non-brokered reciprocal deposits in order to appropriately measure an institution's amount of deposits, avoid double counting of deposits, and ensure that accountholder location information for deposit accounts is available to the bank that would be collecting and maintaining the data. The agencies stated 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 proposed deposits definition in § ____.12, but such deposit for the institution *receiving* the non-brokered reciprocal deposit would not qualify under the proposed definition. The agencies also sought feedback on whether bank operational systems needed to be upgraded to permit the collection at the county level based on a depositor's address and, if upgrades were needed, what would be the associated costs.

Small Banks, Intermediate Banks, and Large Banks with Assets of $10 Billion or Less. Under proposed § ____.42(a)(7), small banks, intermediate banks, and large banks with assets of $10 billion or less would not be required to collect deposits data. Instead, the agencies proposed in § ____.22(c)(3) and appendix A that the FDIC's Summary of Deposits data would be used for calculating the retail lending volume screen, as applicable, for small banks, intermediate banks, and large banks with assets of $10 billion or less, if they do not elect to collect and maintain deposits data. Under proposed § ____.24(b) and appendix B, the FDIC's Summary of Deposits data also would 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. Under proposed § ____.28 and appendix C, the Summary of Deposits data also would 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 believed that this approach would 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.

The agencies explained in the preamble to the proposal 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. Proposed § ____.42(a)(7) required large banks with assets of $10 billion or less that elect to collect deposits data to do so in a machine readable form provided by the agencies. Small banks and intermediate banks would have the option to collect deposits data in the bank's own format. The agencies indicated in the preamble to the proposal that, if a small or intermediate bank opted to collect deposits data, the agencies would use the bank's 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 explained that a bank with a significant percentage of deposits drawn from outside of assessment areas 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 deposit base when assigning ratings.

Wholesale Banks and Limited Purpose Banks. Under proposed § ____.42(a)(7), wholesale and limited purpose banks would not be required to collect or maintain deposits data.

Deposits Data Reporting Requirements

Large Banks with Assets of Over $10 Billion. The agencies proposed in § ____.42(b)(5) that large banks with assets of over $10 billion would be required to report, by April 1 of each year, the aggregate dollar amount of deposits at the county, State, multistate MSA, and 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 intended for this approach to appropriately account for deposits that vary significantly over short time periods or seasonally. The reported deposits data would inform bank metrics, benchmarks, and weighting procedures for the Retail Lending Test and Community Development Financing Test.

The agencies sought feedback on requiring large banks to report the number of depositors at the county level. The agencies explained that such data would be used to support the agencies' 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. The agencies also sought comment on whether there are steps the agencies could take or further guidance or reporting tools that the agencies could develop to reduce burden while still ensuring adequate data to inform the metrics approach.

Finally, the agencies proposed not to make deposits data reported under § ____.42(b)(5) publicly available in the form of a data set for all reporting lenders; nevertheless, the agencies requested feedback on whether they should consider an alternative approach of publishing a data set containing county-level deposits data in order to provide greater insight into bank performance.

Large Banks with Assets of $10 Billion or Less, Intermediate Banks, Small Banks, and Wholesale and Limited Purpose Banks. Under proposed § ____.42(b)(5), 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 proposed §§ ____.22(c)(3) and ____.24(b) and appendices A and B, the FDIC's 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 chose to collect and maintain deposits data for purposes of calculating its metrics and weights. The agencies explained that not requiring these banks to report these data would reduce their new data burden.

Comments Received

Comments were mixed regarding the agencies' proposed deposits data collection and reporting requirements. Some commenters were generally supportive of the agencies' proposal; while others expressed concern that the deposits data collection and reporting requirements would be overly burdensome for large banks.

Many of the commenters that expressed support for the deposits data collection and reporting requirements also suggested that the deposits data collection and reporting requirements should be expanded beyond large banks with assets of over $10 billion to include all large banks. Multiple commenters described multiple limitations of the FDIC's Summary of Deposits data and as a result, supported the proposed requirement that banks with assets of over $10 billion collect and report deposits data based on the counties in which depositors' addresses are located. One commenter noted that, although this would include a relatively small number of banks, it would include the great majority of deposits. This commenter also recommended that the Summary of Deposits data should be comprehensively reformed to better support the CRA as well as for other regulatory purposes. Another commenter was supportive of not only making deposits data collection and reporting a requirement for all large banks, but also for intermediate banks.

Another commenter asserted that deposits data requirements would not further the CRA's objectives regardless of what deposit types are included. Citing economic conditions as an example, the commenter stated that during an economic downturn, an individual's savings increases while spending decreases, which would have an impact in the demand for certain banking products and services. As a result, the commenter expressed that using a deposit-based benchmark would artificially inflate a bank's CRA performance standards during this economic downturn that may not be achievable or sustainable.

By contrast, most industry commenters that addressed the proposed deposits data collection and reporting requirements believed such requirements would be complex to implement, as well as costly and burdensome, and that as a result the deposits data already collected should instead be used. For example, a few of these commenters suggested that the deposits data already reported through the annual FDIC's Summary of Deposits data collection and reporting process should be sufficient. Another commenter noted that subjecting banks with assets of just over $10 billion to the same deposits data collection and reporting requirements as their much larger counterparts places these smaller large banks at a significant resource disadvantage, which in turn may reduce their ability to engage in community development activities. The commenter also suggested that the requirements would be a significant burden for even the largest banks because those banks will also need to make significant changes to their systems, programs, and procedures to collect the data and report it accurately. This commenter also noted that many of the data collection and reporting requirements in the proposal would require that the data be provided in a machine-readable form that has yet to be prescribed by the agencies. Another commenter stated that it may need to collect deposit data to pass the Retail Lending Test, even though the data collection and reporting requirements would not apply to the bank, because the FDIC's Summary of Deposits data may not be fully representative of its deposit sourcing for a market. The commenter noted that the burden to collect these data would be significant. A few other commenters expressed support for limiting any new data burden for these banks by maintaining the option as proposed.

One commenter stated that the agencies failed to address why requiring county-level deposits data based on the depositor's address rather than on the location of the bank branch to which the deposits are assigned is relevant to recognizing a bank's support of low- and moderate-income communities. Absent a reliable means of determining which approach is more accurate, the commenter believes the compliance costs associated with gathering depositor address data are unwarranted. As such, the commenter suggested that the agencies maintain the branch assignment method, make address-based reporting optional, and place more importance on data that provide a better picture of a community's needs.

Some commenters suggested alternatives to the agencies' proposed method of averaging annual deposits based on average daily balances included in monthly or quarterly statements. One commenter expressed that the proposed approach was burdensome, and instead suggested to collect deposits as of the beginning of the examination period and allow banks to provide performance context information to the extent there are significant changes to deposits distribution during the examination period. Another commenter recommended that deposits data should be collected and reported based on end-of-quarter or end-of-year balances. This commenter further suggested that the agencies consider creating an online platform akin to the CFPB's HMDA Loan Application Register formatting tool to provide banks with a direct and efficient manner to submit the required deposits data.

A number of commenters addressed the technical requirements of collecting, maintaining, and reporting deposits data, including the need for banks to geocode depositor addresses so that the data can be summarized at the county level. One commenter asserted that some banks complain that deposits data collection and reporting would create data burden when, in reality, they already geocode their deposits. Two other commenters suggested that deposits data should be collected at the census tract level rather than at the county level, which would provide greater insight into the patterns of reinvestment observed. These commenters further stated that there may be significant data quality issues with deposits data that have not been addressed in the proposed rule, for example when a customer might open a deposit account with an address which does not reflect where the customer lives. These commenters also noted that deposits data will not be subject to the same data integrity standards as HMDA data, and that requiring such accuracy would be overly burdensome to depository institutions.

Several commenters asked that the agencies incorporate exemptions to the deposits data requirements. For example, two commenters suggested that branch-based banks of any size should be exempt from tracking deposits by location or delineating deposits-based assessment areas. Other commenters similarly suggested that the deposits data collection and reporting requirements should not apply to banks with facility-based models, with one of these commenters asserting that banks that are mainly internet-based banks, without a brick-and-mortar presence, should be required to collect and report deposits data. A few of commenters also noted that additional guidance would be needed with regard to deposits data collection and reporting, with one of the commenters noting that there would need to be significant guidance provided for non-standard situations, such as when the physical address on record for a deposit account is very old (and has not been updated), when the recorded address is a P.O. Box, where the customer spends part of the year at one address and part of the year at a different address, or for when mail to the depositor is returned and there is no accurate address on file. Another commenter stated that the FDIC's Summary of Deposits data should be used for all banks except those that generate a substantial portion of their deposits digitally.

Regarding alternative approaches to deposits data collection and reporting requirements the agencies could consider to minimize additional data burden, commenters made several recommendations including: permit banks to use the FDIC's Summary of Deposits data rather than require them to geocode, collect, and report deposits data based on the residence of their depositors; collect and report deposits data based on an average annual deposit balance based on average daily balances from quarterly statements rather than from monthly statements; and have the option to determine the frequency by which they would collect and report deposits data (and requiring banks to commit to one specific method/frequency for each CRA examination cycle). One commenter suggested that the agencies should ''stress test'' this issue, to determine whether a quarterly average is almost as accurate as average daily balances computed monthly or quarterly, which might indicate that quarterly averages would be a viable alternative. Another commenter suggested the agencies should work with the financial industry to determine the best balance between accuracy and burden with respect to data collection, reporting, and associated metrics' calculations. One other commenter suggested that, as an alternative, banks could upload summary records they keep for qualitative analysis in the interim while they work towards building capacity to collect, maintain, and report deposits data at the appropriate interval (quarterly, semi-annually, or annually).

Regarding whether deposits sourced from commercial banks or other depository institutions should be excluded from the proposed deposits data collection and reporting requirements, multiple commenters suggested that all deposits, including those from commercial banks and other depository institutions, should be included in the deposits data. Another commenter suggested that deposits from commercial banks should not be included unless these commercial banks are designated as small, disadvantaged business enterprises or some similar category. However, this commenter also suggested that deposits sourced from minority depository institutions should be included in the deposits data. Another commenter suggested that ''mission deposits'' or non-brokered reciprocal deposits should be excluded from the deposits data, and noted that it could be problematic to identify these deposits among deposits from commercial banks or other depository institutions. Another commenter suggested that neither commercial bank deposits nor deposits from other depository institutions, such as credit unions, should be excluded. Finally, one commenter indicated that corporate, commercial bank, and other depository institution deposits should be excluded from the deposits data.

Regarding whether brokered deposits and other types of deposit accounts such as prepaid debit card accounts and Health Savings Accounts that may not include depositor location information should be reported at the institution level, commenters generally agreed that deposits without depositor location data should be reported at the institution level. A few commenters suggested that accounts for which Customer Identification Program information is not required are unlikely to have customer location data and might be treated as a category at the institution level. One of these commenters suggested that banks could include depositor information for deposit accounts for which Customer Identification Program information is collected. Another commenter also noted how consideration of prepaid debit card accounts can be complicated because many are one-time use cards; they can be sold in retail establishments with no collection of customer information; and geographic mobility is a feature of these accounts. This commenter suggested that the agencies should consider the purpose of the deposit products, for example if a CDFI bank were to raise prepaid card deposits from across the United States with the intention of using those deposits to fund a national lending program to help low- and moderate-income individuals improve their credit, rather than the geographic location from which deposits are collected or products delivered. Another commenter suggested that these types of accounts should have some locational information, whether location of sale or location of employer, and that the agencies should investigate available data on these types of products to see if a more specific geography can be attributed to these products than at the institution level. Another commenter suggested that the agencies should conduct research to determine whether deposit location might be identified at the county level, but if not, this commenter stated that these types of deposits should be considered at the institution level.

Regarding the appropriate treatment of non-brokered reciprocal deposits, the few commenters that addressed this issue agreed with the proposed approach. These commenters noted that non-brokered reciprocal deposits should be considered as a deposit for the bank sending the non-brokered reciprocal deposit, but they should not be considered as a deposit for the bank receiving the reciprocal deposit. Two of these commenters indicated that they supported this approach to ensure CDFI banks are not penalized for accepting CRA and impact-motivated deposits. Multiple other commenters stated they supported the approach to prevent double-counting of deposits included in these transactions. A commenter offered a technical suggestion to align terminology used in the CRA regulation with that included in the Federal Deposit Insurance Act (FDI Act) and corresponding FDIC regulations, which do not speak in terms of institutions sending non-brokered (or brokered) reciprocal deposits and instead describe an agent institution sending or placing a ''covered deposit'' through a deposit placement network and receiving reciprocal deposits in the same aggregate amount. The commenter therefore suggested that the final rule exclude all reciprocal deposits (whether or not brokered) that a bank receives and include all covered deposits that a bank places on a reciprocal basis (whether or not they become non-brokered reciprocal deposits for the receiving institution) to provide a more workable description of ''deposits'' for purposes of the CRA metrics.

In response to the question regarding whether bank operations systems currently permit the collection of deposit information at the county-level, commenters expressed different views. A commenter indicated that its operations systems would need to be modified to capture this information because they do not currently geocode depositors' addresses, noting that the cost for such modifications would need to be determined through vendor due diligence. Another commenter suggested that the capacity to collect the information and its associated costs may vary by bank, but it is important for the agencies to get available data that can be used for branch level assessments. One more commenter indicated that CDFI banks report that the cost of modifying and upgrading operations systems would be significant (with one member financial institution indicating a cost between $30,000 and $50,000). In contrast, a few commenters indicated that bank systems exist for collecting these sorts of data (such as those used for reporting Bank On account data), that many banks already geocode their deposits data, and that it should not be burdensome or costly for financial institutions that do not already utilize these systems to do so.

Regarding steps the agencies might take to reduce the burden associated with the reporting of deposits data, a few commenters made several recommendations. Two commenters suggested the agencies develop a geocoding platform. Other commenters suggested the agencies provide sufficient transition time for the existing financial services data systems providers that currently collect, geocode, validate, and report data for CRA and fair lending compliance purposes to create deposits data-based applications. This commenter indicated its expectation that as an ''add on'' function, this solution should not be particularly expensive. One other commenter suggested that CDFIs should be able to rely on information they already submit related to their annual CDFI certification. The commenter also suggested that the agencies provide technical assistance grants to help banks below $1 billion obtain the technological resources necessary to comply with the proposed data collection, recordkeeping, and reporting requirements with priority, or a potential set aside, for MDIs or CDFIs. Two commenters suggested the agencies should coordinate with other agencies to standardize data definitions and formats in order to both use data already collected when possible and to otherwise automate reporting through integration of existing software and file types. One other commenter similarly recommended that the agencies automate reporting with integration of current software or develop a certain file type so that the data can be parsed by the agencies' systems uniformly. Another commenter suggested that the agencies should clarify that in the case of an omnibus account (*e.g.,* in a sweep program or prepaid program) a bank can treat the depositor's address as that of the accountholder of record. Similarly, this commenter suggested the agencies clarify that a bank can rely on a depositor's address in its system of records, which is typically collected at account opening, and that the CRA regulations' proposed data collection requirements do not impose a new obligation on banks to periodically request current address information from customers.

Nearly all comments received responding to whether the agencies should consider the alternative approach of publishing a dataset containing county-level deposits data were supportive of the agencies publishing such a dataset. Several commenters indicated that the agencies not proposing to publish these data limits the public's ability to hold banks accountable. Other commenters made various recommendations concerning the manner in which the data should be published, including that, if possible, the data should be published at the lowest available level of aggregation, such as at the census tract or zip code level. One of these commenters also asserted that the agencies should consider publishing data by income category of census tracts or by census tracts with respect to percentages of minority consumers. Another commenter stated that the more granular the data, the more the data can help with identifying performance gaps of a specific branch. This commenter also stated that if an alternative approach can help with this effort, then the agencies should consider it, but that, since these data would be used to support agency analysis of deposits data in devising alternative approaches, the agencies should determine if the data collection is still needed after the analysis has been completed. Another commenter suggested the agencies consider the alternative with publication of Geographic Information Systems maps of the assessment area. One other commenter suggested that the agencies provide deposit market-share data as it is today; use deposits data to develop customer physical location data internally; and decide whether to anonymize depositor data or provide that deposits data collection requirements do not result in privacy violations between banks and their customers.

Final Rule

The agencies are adopting proposed § ____.42(a)(7) regarding the collection and maintenance of deposits data substantially as proposed with technical edits for clarification and to conform to other changes made in the final rule. Specifically, the agencies are revising this paragraph to update the reference ''machine readable'' to ''electronic'' with no change in meaning intended.

The agencies are also revising this paragraph to clarify that the dollar amount of deposits at the county level is based on ''deposit location'' as defined in § ____.12, and to conform to the definition of deposit location in the final rule, which provides more detailed guidance to banks regarding how to determine the location of deposits associated with deposit accounts. In addition, to clarify how banks are to collect and maintain deposits data for account types for which a deposit location is not available, the agencies are adding language stating that such deposits data must be collected and maintained at the nationwide area. Specifically, recognizing that there is no reasonable method for assigning deposits to a local area in cases where a depositor address is not available, the agencies determined that it is appropriate to consider these deposits at the nationwide area. These deposits would not be included in calculations for bank-specific metrics or aggregate benchmarks for any local geographic area, but would be included in calculations at the nationwide area or institution level (*e.g.,* for the community development investment metric). An alternative to collecting, maintaining, and reporting these data at the nationwide area is to not consider them at all, which the agencies did not consider appropriate given that these deposits are financial resources available to the bank.

The agencies are revising this paragraph to indicate that a large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years must collect and maintain deposits data. This change was made to conform to changes made in § ____.12 regarding how assets data are used in the definitions of large bank, intermediate bank, and small bank.

The agencies are also adding to this paragraph the phrase ''in which the data are evaluated,'' to clarify how long a bank must collect and maintain the deposits data. More specifically, the final rule clarifies that these data must be maintained ''until the completion of the bank's next CRA examination in which the data are evaluated,'' rather than ''until the completion of the bank's next CRA examination,'' as provided under the proposal. This clarification is made to ensure that these data are maintained until they are evaluated in a CRA examination, which may not be the bank's next CRA examination.

Lastly, the agencies are revising this paragraph to indicate that ''any other bank'' that opts to collect and maintain deposits data must do so in the same form and for the same duration as is required of large banks with assets greater than $10 billion. This is an expansion of the proposed language, which required these data only for ''a large bank that had average assets of $10 billion or less.'' This change was made to improve the efficiency and accuracy of calculations using deposits data, including those for bank metrics and benchmarks used in the Retail Lending Test and Community Development Financing Test, as well as for the weighting calculations used for creating benchmarks and conclusions. Deposits data collection and maintenance requirements remain optional for banks with assets of $10 billion or less, but if they do opt to collect and maintain these data, as just noted, they must do so in the same form and for the same duration as is required of large banks with assets greater than $10 billion.

The agencies are also adopting proposed § ____.42(b)(5) substantially as proposed, renumbered in the final rule as § ____.42(b)(3)(i) and (ii), regarding the reporting of deposits data. The agencies are making one substantive addition, requiring banks with assets of $10 billion or less that opt to collect and maintain deposits data to also report these data. The agencies are also making technical edits for clarification and removal of superfluous language in the regulatory text. Specifically, the agencies are clarifying in new § ____.42(b)(3)(ii) that the data collected and maintained by large banks in § ____.42(a)(7) for which deposit location is not available must be reported at the nationwide area. This clarification is necessary to ensure that the full set of deposits are reported for banks included in this paragraph. Specifically, the agencies are revising this paragraph to update the reference ''machine readable'' to ''electronic'' with no change in meaning intended.

The agencies are adding a requirement for banks with assets of $10 billion or less that opt to collect and maintain deposits data that they must also report these data. The agencies made this change to improve the efficiency and accuracy of calculations using deposits data, including those for bank metrics and benchmarks used in the Retail Lending Test and Community Development Financing Test, as well as for the weighting calculations used for creating benchmarks and conclusions. The data reporting requirement remains optional for banks with assets of $10 billion or less, but if they do opt to collect and maintain these data, they must also report these data in the same form and for the same duration as is required of large banks with assets greater than $10 billion.

The agencies are also revising this paragraph to indicate that a large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years must report deposits data. This change was made to conform to changes in § ____.12 regarding how assets data are used in the definitions of large banks, intermediate banks, and small banks.

Additionally, the agencies added language to this paragraph indicating that a bank that reports deposits data for which a deposit location is not available must report these deposits at the nationwide area, conforming with the requirement for collecting and maintaining these data in final § ____.42(a)(7). These deposits would not be included in calculations for bank-specific metrics or aggregate benchmarks for any local geographic area, but would be included in calculations at the nationwide area or institution level (*e.g.,* for the community development investment metric). An alternative to reporting these data at the nationwide area is not reporting them at all, which the agencies did not consider appropriate given that these deposits are financial resources available to the bank.

The final rule does not include the language in proposed § ____.42(b)(5) which stated that the agencies ''will not make deposits data reported under this paragraph publicly available in the form of a data set for all reporting banks.'' The agencies do not intend this as a substantive change from the proposed approach. Instead, the agencies realize that it is not necessary or appropriate for the final rule to indicate what is not included in the examination and evaluation process, or, in this case, what data will not be published as part of the evaluation process.

Lastly, the agencies revised this paragraph to indicate that ''any other bank'' that opts to collect and maintain deposits data must report these data in the same form and for the same duration as described in this paragraph for large banks with assets greater than $10 billion. This is an expansion to the proposed language indicating this data requirement is only for ''a large bank that had average assets of $10 billion or less.'' This change was made to improve the efficiency and accuracy of calculations using deposits data, including those for bank metrics and benchmarks used in the Retail Lending Test and the Community Development Financing Test, as well as for the weighting calculations used for creating benchmarks and conclusions. This deposits data collection and reporting requirement remains optional for banks with assets of $10 billion or less, but if they do opt to collect and maintain these data, they must do so in the same form and for the same duration as is required of large banks with assets greater than $10 billion.

Deposits data requirements—generally. The final rule maintains the proposed approach to require data collection, maintenance, and reporting only for banks with assets of over $10 billion. Upon consideration of the comments, the agencies have determined that this approach achieves an appropriate balance between the burden required to collect and report these data and the benefit that will result from using these data in the final rule. The agencies believe that large banks with assets greater than $10 billion have the capacity to collect, maintain, and report these data.

The agencies believe that including the distribution of these banks' deposits by depositor location is an important aspect of the effort to modernize CRA. Banking has evolved over the past several decades, particularly since the advent of the internet, to the point that physical bank branch locations are no longer a sole proxy for the local communities served by banks, with the exception of banks that remain primarily branch-based in their operations, which are likely to be smaller institutions.

As discussed in the agencies' proposal, the final rule approach leverages these data in a number of ways that the FDIC's Summary of Deposits data do not allow for, including assigning weights to Retail Lending Test and Community Development Financing Test performance in areas outside of facility-based assessment areas. In addition, the agencies believe that the collected, maintained, and reported deposits data will more accurately reflect the location of a bank's depositors than would the FDIC's Summary of Deposits data, which will result in more accurate metrics and benchmarks. The agencies believe that the approach adopted in the final rule will capture a substantial majority of all bank deposits data,[1554] thereby significantly improving the accuracy of aggregate benchmarks that use deposits data, such as the Market Volume Benchmark used for the Retail Lending Volume Screen, and the benchmarks used for the Community Development Financing Test.

The agencies considered, but are not adopting, an alternative approach of extending the deposits data collection and reporting requirement to all large banks, including those with assets of $10 billion or less and intermediate banks. The agencies determined that this approach would place a significant burden on these banks and would only yield the enhanced data for a relatively small additional share of industry deposits.[1555] The agencies believe that these banks may have lesser capacity than large banks with assets of over $10 billion to comply with the requirement, such as the ability to geocode depositor

[1554] *See* FDIC analysis of 2015–2020 FDIC's Summary of Deposits data shows that in each of these years, deposits in banks with assets greater than $10 billion comprised over 80 percent of deposits in all banks. *See* Joseph R. Harris III, Caitlyn R. Kasper, Camille A. Keith, and Derek K. Thieme, ''2020 Summary of Deposits Highlights,'' Table 3 (2021), *https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2021-vol15-1/article2.pdf.*

[1555] *See id.*

addresses and summarize depositor data at the county level on an ongoing basis.

In the final rule, banks with assets of $10 billion or less may elect to collect, maintain, and report deposits data as required of larger banks. Under the proposed rule, in contrast, such a bank would have the option to collect and maintain deposits data, but would not have been required to report deposits data that the bank elected to collect and maintain. The agencies believe that requiring banks that elect to collect and maintain deposits data to also report these data will enhance the consistency of reporting requirements and allow these data to be incorporated into aggregate benchmarks. This will result in any bank opting into having collected and maintained deposits data included in their metrics also having their deposits data included in the benchmarks against which they are evaluated. The agencies do not believe that this change increases complexity or burden, because collecting and maintaining deposits data would remain optional for banks with assets of $10 billion or less, as in the proposed approach.

The agencies considered, but are not adopting, suggestions to use the FDIC's Summary of Deposits data for large banks with assets of over $10 billion to reduce complexity, instead of requiring deposits data collection, maintenance, and reporting. The agencies believe that large banks with assets of over $10 billion are likely to already have systems in place for geocoding deposits or, due to existing requirements to geocode HMDA loans, small business loans, and small farm loans, systems that can be adapted to produce these data. The agencies believe that using Summary of Deposits data for these banks may inflate these banks' deposits in areas where branches are located and dilute deposits in areas where these banks do not have branches but where their depositors are located. Because the great majority of industry deposits are held by these banks, the agencies believe this would have a distorting effect on the creation of benchmarks for all banks as well as on the creation of metrics for these banks. Finally, the agencies considered that Summary of Deposits data include deposits from government and foreign sources, which the agencies believe is preferable to exclude from CRA evaluations, as discussed below.

The agencies have considered commenter feedback that suggested requiring these data of large banks with assets only slightly over $10 billion places these banks at a disadvantage with regards to their ability to engage in community development activities. However, the agencies believe that most large banks, and particularly most large banks with assets of over $10 billion, have access to systems capable of identifying the addresses of their depositors and systems capable of geocoding addresses. As mentioned above, banks of this size are typically required to geocode addresses of their small business loans and small farm loans, as well as HMDA loans (for those required to report HMDA data). To the extent there are any such banks that do not already possess the systems needed to handle these data requirements, bank service providers are capable of providing support to banks. Therefore, the agencies do not believe that this requirement would impact a bank's ability to engage in community development activities or any other type of CRA activity. With regard to addressing the limitations of the FDIC's Summary of Deposits data, these limitations are known to the agencies; the agencies believe that addressing such limitations is outside the scope of this final rule.

The agencies are sensitive to concerns that there may be banks with assets of $10 billion or less that may be disadvantaged by using the FDIC's Summary of Deposits data, particularly with regard to the Bank Volume Metric used in the Retail Lending Volume Screen as part of the Retail Lending Test, and the metrics used in the Community Development Financing Test. The agencies considered that, as noted by multiple commenters, the Summary of Deposits data may not accurately represent a bank's deposits in a market, which could impact the bank's metrics. In addition, the agencies considered that the inclusion of government deposits and deposits from foreign entities in the Summary of Deposits data could negatively impact a bank's metrics relative to a bank that is collecting and reporting deposits data, since government and foreign entity deposits are excluded from the collected and reported data. For these reasons, the agencies are permitting banks with assets of $10 billion or less to opt to collect, maintain, and report deposits data. The agencies believe that this option addresses concerns that Summary of Deposits data could negatively impact a bank's metrics, because a bank with assets of $10 billion or less can determine whether the benefit of collecting and reporting these data is in their best interest. The agencies believe this decision is best left to each individual bank in this size category, based on their own circumstances, rather than imposing a requirement for these banks.

With respect to the alternative approach discussed in the proposal to publish a county-level deposits data set in order to provide greater insight into bank performance, the final rule does not provide that the agencies publish bank-specific deposit information at the county level in a published data set. While the agencies considered that this alternative could increase the transparency of CRA evaluations, and that such a data set could help to inform other policies and community development efforts beyond CRA, the agencies determined that the potential benefits are outweighed by other considerations. These considerations stem from an overarching intent by the agencies to make data publicly available as necessary for transparency in the examination process, but otherwise to protect privacy and competitive concerns for consumers and banks by not publishing data that is not necessary to support transparency. This concern is particularly important for data that has not been collected and reported previously, such as deposits data. The agencies intend to develop tools to provide information regarding metrics, benchmarks, and weights in different geographic areas using reported lending and deposits data. In addition, the agencies believe that the information included in a bank's public CRA performance evaluation will provide sufficiently detailed information on bank performance. While the final rule does not provide that the agencies would publish a county-level deposits data set, the agencies note that deposits information pertaining to facility-based assessment areas, which may consist of a single county, would be included in performance evaluations and in data tools for the purpose of calculating metrics, benchmarks and weights.

The agencies considered a comment that the agencies failed to address why requiring county-level deposits data based on depositor's address rather than the location of the bank branch to which the deposits are assigned is relevant to recognizing a bank's support of low- and moderate-income communities. The agencies believe that collecting and reporting these deposits data is necessary for large banks with assets over $10 billion for the construction of metrics, benchmarks, and weights, which inform the conclusions and ratings that reflect a bank's support of low- and moderate-income communities. The agencies believe that deposits data aggregated at the county level, based on depositor addresses, will provide a better measure of the volume of deposits sourced by the bank from depositors in that area, than would deposits aggregated at the location of the bank branch to which they are assigned. The agencies consider deposits in a bank from an area to be representative of a bank's capacity to conduct retail lending and community development financing in that area.

The agencies also considered an approach of summarizing deposits data at an even finer geographic level, such as census tracts. While this would enable better identification of deposits in low- and moderate-income communities, the agencies recognize the need to protect depositor privacy and to limit bank data collection and reporting burden. Additionally, the agencies note that although deposits data are used to calculate metrics, benchmarks, and weights, the rule does not use deposits data collected pursuant to § ____.42(a)(7) to evaluate the distribution of deposits themselves, including by the low- or moderate-income characteristics of areas from which deposits are received. This distinction explains why the agencies require some other data for which these distributions are evaluated to be reported at a finer geographic scale (*i.e.,* by census tract income level), but such specificity is not necessary for these deposits data. Finally, pursuant to §§ ____.16 and ____.17, under the final rule approach, large bank facility-based assessment areas and retail lending assessment areas must consist of at least an entire county. As a result, census tract-level deposits data are not necessary to calculate metrics, benchmarks, and weights pertaining to large banks.

In response to the commenter that argued against requiring deposits data due to the impact of economic cycles (downturns) on the appropriateness of using deposits in benchmarks, the agencies note that the data used for an individual bank's metrics and the market benchmarks against which that bank's metrics are compared are always drawn from the same geographic areas and for the same time period. Any impact of economic cycles would impact both individual bank metrics and market benchmarks. The amount of community development financing activity (or retail lending activity) that a bank would need to report in order to perform well in comparison to benchmarks would fluctuate in tandem with economic changes impacting all banks reporting data for the benchmark for the same geographic area. This is an important feature of how these benchmarks function, and is very much a benefit, rather than a liability, of using deposits data in these benchmarks.

Averaging annual deposits based on average daily balances. The agencies are also finalizing deposits data collection as proposed with regard to basing deposit amounts on average annual deposits based on average daily balances included in monthly or quarterly statements. The agencies believe it is important to include the most timely and accurate deposit amounts as reasonably possible in calculations used in the final rule. The final rule approach reflects seasonal changes that may occur over the course of a year, as well as year-to-year changes over the course of an evaluation period. In addition, the final rule approach would ensure that the timing of the deposits data incorporated into a bank's evaluation aligns with the timing of the retail lending and community development financing data. For example, the agencies considered that the Retail Lending Volume Screen should measure a bank's retail lending over the evaluation period relative to its deposits over the evaluation period. Alternatives suggested by commenters to use deposit information at the time of the bank's examination, or from end-of-quarter or end-of year balances during the evaluation period rather than average daily balances, could result in a mismatch in the timing of the deposits data and timing of other data that are incorporated in the same metrics and benchmarks. Furthermore, the agencies considered that banks typically calculate average daily balances at monthly or quarterly intervals to support issuing banking statements, which reduces the potential burden of the final rule approach.

The agencies considered a comment to create an online platform for banks to submit their deposits data. The agencies expect that the final rule approach of requiring deposits data collection and reporting using an electronic form, as prescribed by the agencies, will achieve many of the same efficiencies that would be achieved by creating an online platform, such as ensuring consistent data formatting and enabling data integrity checks during the submission process. Although the agencies have not finalized the specific mechanism through which banks will submit their reported deposits data, the agencies will take commenter feedback into consideration as they develop this mechanism.

Exemptions to deposits data requirements. As noted above, the agencies are finalizing the deposits data collection and reporting for large banks with assets of over $10 billion, and are not providing exemptions based on whether a bank is primarily branch-based, as suggested by some commenters. The agencies believe that having deposits data at the county level based on depositor addresses is an important and appropriate aspect of the modernization of the CRA regulations, is responsive to changes in the geographic distribution of bank customers relative to bank branches, and resolves other challenges with the use of the FDIC's Summary of Deposits data discussed above. These changes are relevant to branch-based banks as well as banks with a more digitally-based business model. The agencies also believe that the proposed approach of using depositor addresses included in the Customer Identification Program or another documented address is an appropriate strategy for identifying depositor locations; banks are expected to maintain timely and accurate information regarding their accountholders.

Data integrity. The agencies are sensitive to commenter concerns that deposits data will not be subject to the same data integrity standards as data reported pursuant to the HMDA requirements. The agencies believe that deposits data based on depositor location will be accurate, because this information is required by the Customer Identification Program regulation, and because banks have important business reasons to maintain accurate addresses beyond compliance with the final rule. The agencies acknowledge that there are situations in which a customer may use an address that does not reflect the location of where they live, such as a place of work, or a P.O. Box, but believe that customer address information is generally accurate.

The agencies note, in response to comments regarding the need for additional guidance for banks required to report deposits data, that they already produce a data guide for CRA, which they intend to update in accordance with the changes in the final rule. The agencies will consider whether additional guidance is necessary outside of the final rule to address non-standard situations such as when the physical address on record for a deposits account has not been updated for a significant amount of time or when the customer spends part of the year at one address and part of the year at a different address.

Other approaches to deposits data collection to reduce burden. The agencies appreciate the recommendations made by commenters on different approaches to reduce burden. However, after further consideration, the agencies believe that the strategies to use depositor addresses included in the CIP, which is a part of a bank's requirements through the Bank Secrecy Act, or other documented address, and to include deposits for which there is no available address at the nationwide area, sufficiently reduce the burden of this approach. The agencies believe that the decision to use deposits data that banks are already maintaining, as well as the decision to extend the applicability of the new deposits data collection and maintenance requirements to January 1, 2026, as discussed in the section-by-section analysis of § ____.51, should address commenter concerns that a longer transition time might be necessary for collecting and reporting these deposits data.

In addition, the agencies note that there is an ongoing effort by the FFIEC, which the agencies are a part of, to develop and deliver an improved geocoding system. As noted, the agencies believe that banks that are subject to the requirements to collect, maintain, and report deposits data under the final rule already have access to geocoding systems adaptable to geocode depositor addresses, and thus any residual burden, if any, is relatively incremental. The agencies believe that the transition times are sufficient for any adaptations or development that may be necessary for these systems.

In response to the comments received suggesting that CDFIs should be able to rely on information they already submit related to their annual CDFI certification to meet the deposits data reporting requirement, and that the agencies should coordinate with other agencies to standardize data definitions and formats in order to both use data already collected when possible, the agencies are unaware of any existing data reporting requirements by other agencies, including the CDFI Fund, that are similar to the deposits data collection included in the final rule. To the extent that the CDFI certification process includes information about CDFI bank deposits or depositors, the agencies note that the vast majority of banks are not certified CDFIs, so there would be little benefit in attempting to use data included in the CDFI certification process.

The agencies do not believe it appropriate to require ''stress testing,'' as suggested by a commenter, to determine whether reporting quarterly average deposits data might be as accurate as average daily balances computed monthly or quarterly, thereby reducing reporting burden. The agencies considered that banks already calculate and maintain monthly or quarterly account balances based on average daily balances for the purposes of generating account statements, and as a result, the agencies believe that it is reasonable to use these data in CRA evaluations. Also, in response to a comment suggesting an alternative approach of requiring banks to upload summary deposits records they keep for qualitative analysis as an interim approach while they build capacity to collect, maintain, and report deposits data, the agencies believe that summary records of deposits data would not enable the agencies to construct metrics, benchmarks, and weights required under the performance tests, and that it is appropriate to use county-level data as provided in the final rule.

Treatment of deposit accounts which do not have depositor addresses. Consistent with most commenters responding to how to handle deposit accounts that do not have depositor addresses, the agencies believe that these concerns are appropriately addressed by incorporating deposit accounts for which no depositor address is available at the institution level, reported to the nationwide area. The agencies believe that this approach is preferred relative to the alternative of requiring banks to identify locations where accounts were opened (*e.g.,* where prepaid cards were purchased) or to identify specific locations to assign to these deposit accounts. In addition, the agencies note that including these deposit accounts at the nationwide area ensures that these deposits are included in the Bank Nationwide Community Development Financing Metric and Benchmark, as well as the Bank Nationwide Community Development Investment Metric and Benchmark.

Appropriate treatment of non-brokered, reciprocal deposits. Regarding non-brokered, reciprocal deposits, under the final rule, these deposits will be collected and reported by the sending bank, which is the bank that would have collected the deposits from their original depositors and thus would have the associated relationships with the depositors' communities. Banks receiving these reciprocal deposits do not need to collect and report associated depositor location data for CRA purposes. The rationale for this decision is that the underlying deposits included in the reciprocal deposit transaction are already accounted for by the sending bank; for that reason, these transactions are better considered as transfers between banks than as deposits. In addition, because the sending bank originally collected the deposits from customers, the agencies believe that the sending bank is more able to collect, maintain, and report depositor location information than the receiving bank.

In response to a commenter's concern with the specific terminology used in the regulation with regard to non-brokered, reciprocal deposits, the agencies note that reciprocal deposits are not mentioned in the final rule; therefore, there is no issue with (or possibility of) using terminology from the FDI Act or other regulations. However, effectively, these deposits will be handled in a manner consistent with what the commenter is suggesting.

Bank operations systems. The agencies understand the concern by some commenters regarding the potential burden created by the need to upgrade bank operations systems. However, the agencies believe that banks with assets of over $10 billion will generally possess either internal capabilities or vendor relationships with capabilities to aggregate deposits data at the county level, as required in the final rule. The agencies believe that large banks, especially those with assets of over $10 billion, typically possess in-house data systems or use vendor data systems with geocoding capabilities. For example, geocoding is routinely used to identify the census tracts in which mortgage loans, small business loans, and small farm loans are located.

In response to commenters that argued banks have systems for reporting deposits data, such as those used for reporting Bank On account data, the agencies note that Bank On data is reported at the zip code level—part of the depositor's street address—and does not require geocoding. For banks that do not already have access to geocoding systems that are required or opt to collect and report deposits data, such systems are readily available in the marketplace.

Regarding the suggestion from commenters that the agencies provide sufficient time for financial service data systems providers to create deposits data-based applications, the final rule provides for a longer transition period than proposed. As explained in the section-by-section analysis of final § ____.51, the agencies believe that providing additional time for transitioning to the provisions balances the concerns raised by commenters for an adequate transition period with the needs of banks' communities, including low- and moderate-income neighborhoods, to benefit from modernized CRA regulations.

The agencies also considered the comments regarding the use of deposit data collected pursuant to § ____.42 as opposed to the FDIC's Summary of Deposits data in the denominator for the

Bank Assessment Area Community Development Financing Metric. The split in commenters' views on this issue reflects the inherent tradeoffs associated with each option. While use of collected deposits data would make the Bank Assessment Area Community Development Financing Metric more accurate, collecting data on deposits would be a new data collection requirement that results in additional burden on banks. In contrast, although using Summary of Deposits data in the denominator eliminates the burden on banks to collect data, it may not accurately reflect the amount of deposits drawn from a particular geographic area.

The agencies are adopting the final rule as proposed because it balances the tradeoff between increased burden associated with collecting, maintaining, and reporting deposits data and the accuracy of the deposits data. Under the final rule, large banks with assets of over $10 billion as of December 31 in both of the prior two calendar years will be required to collect, maintain, and report deposits data. The agencies believe that it is important to tailor the requirement to require collection, maintenance, and reporting of deposits data in order to limit this requirement for smaller banks with fewer resources. The agencies have determined that, due to the greater resources of banks over $10 billion, these banks generally have the capacity to collect, maintain, and report more accurate deposits data. Furthermore, the agencies have considered the significant downsides of not having accurate deposits data for banks with assets above $10 billion. For example, as noted above, deposits in these banks constitute a substantial majority of deposits in all banks; the agencies considered that use of collected deposits data for these banks therefore supports accurate calculation of benchmarks. For banks with $10 billion or less in assets as of December 31 of either of the prior two calendar years, the final rule uses FDIC's Summary of Deposits data in the denominator, thereby limiting the burden for these banks.

Nonetheless, because certain banks with $10 billion or less in assets as of December 31 of either of the prior two calendar years may have dispersed deposits or the assignment of their deposits under the FDIC's Summary of Deposits may not reflect the actual location of the deposits, the final rule provides these banks with the option to collect, maintain, and report deposits data. The agencies believe that providing this option mitigates the potential negative consequences of using FDIC's Summary of Deposits data in the denominator because banks that would not perform well compared to their peers using Summary of Deposits data will have an incentive to collect, maintain, and report deposits data pursuant to § ____.42.

Section ____.42(c) Data on Operations Subsidiaries or Operating Subsidiaries

Section ____.42(d) Data on Other Affiliates

Current Approach

Under the current CRA regulations, a bank is not required to include the activities of any of its affiliates even if the affiliate is an operations subsidiary or operating subsidiary [1556] of the bank. Instead, the current CRA regulations require that, if a bank elects to have loans by an affiliate under § ____.42(d) considered for purposes of the lending or community development test or an approved strategic plan, the bank must also collect, maintain, and report the data for these loans as if it had originated or purchased these loans directly. For home mortgage loans, the bank must also be prepared to identify the home mortgage loans reported under Regulation C [1557] by the affiliate.[1558]

The Agencies' Proposal

The agencies proposed to require the inclusion of relevant activities of a bank's operations subsidiaries or operating subsidiaries, as applicable, for purposes of evaluating the bank's performance tests. The agencies proposed new § ____.42(c) to require that all banks collect, maintain, and report any retail lending, retail services and products, community development loans or investments, and community development services activities of a bank's operations subsidiaries or operating subsidiaries, as applicable, to the extent these subsidiaries engage in these activities. Proposed § ____.42(c) also required the bank to identify the home mortgage loans reported by the operations subsidiaries or operating subsidiaries under Regulation C,[1559] if applicable, or collect and maintain home mortgage loans by these subsidiaries that the bank would have collected and maintained under proposed § ____.42(a)(3) had the loans been originated or purchased by the bank.

The agencies further proposed to revise current § ____.42(d) pertaining to the collection, maintenance, and reporting of a bank's affiliate activities. Similar to current § ____.42(d), the agencies' proposal required banks to collect, maintain, and report the data on loans by an affiliate (other than an operations subsidiary or operating subsidiary) that they elect to have considered for purposes of the CRA regulations if the bank would have collected, maintained, and reported these activities had the bank engaged in them directly. The agencies also proposed to require the bank to identify the home mortgage loans reported by an affiliate (other than an operations subsidiary or operating subsidiary) under Regulation C,[1560] if applicable, or collect and maintain such loans as would be required for the bank under proposed § ____.42(a)(3) had the loans been originated or purchased by the bank.

Comments Received

A few commenters addressed this aspect of the agencies' proposal. One of these commenters stated that the agencies should not include lending by a subsidiary in the bank's CRA evaluation. Another commenter noted that the proposed rule was unclear with regard to whether the proposed data collection for operations subsidiaries or operating subsidiaries, as applicable, and other affiliates was intended as an expansion of other data reporting requirements, such as home mortgage loan reporting under Regulation C or small business loan reporting under Regulation B (Section 1071 Final Rule), even when those separate regulations would not otherwise require such reporting. Although supportive of the proposed requirement that activities of operations and operating subsidiaries should be evaluated as part of a bank's overall CRA performance, this commenter was opposed to an expansion of reporting requirements housed in other regulations and also asserted that banks should retain the flexibility, when multiple options are available, to elect the performance test under which the agencies evaluate the activities of an operations or operating subsidiary. Another commenter asked the agencies to clarify that an affiliate's activities need to be included in the bank's data collection and reporting only to the extent that the category of retail or community development lending or community development investment is included in the bank's evaluation. This commenter further stated that the agencies should exempt

[1556] *See* the section-by-section analysis of § ____.21(b).

[1557] 12 CFR part 1003.

[1558] *See* current 12 CFR ____.42(d).

[1559] 12 CFR part 1003.

[1560] *Id.*

functionally regulated subsidiaries[1561] from a bank's performance evaluation and data collection and reporting requirements. The commenter asserted that mandatory inclusion of these subsidiaries within CRA examinations would exceed the agencies' statutory authority under the Gramm-Leach-Bliley Act (GLBA).

Final Rule

The agencies are finalizing proposed § ____.42(c) and (d) pertaining to a bank's data requirements related to the activities of the bank's operations subsidiaries or operating subsidiaries, as applicable, and its other affiliates, respectively, as proposed, with non-substantive revisions intended for clarity.

The agencies have determined that, with respect to operations subsidiaries or operating subsidiaries, as applicable, mandatory data collection, maintenance, and reporting for these entities is appropriate to enable the agencies to capture all of the activities of operations subsidiaries or operating subsidiaries in banks' CRA evaluations, in recognition that banks exercise a high level of ownership, control, and management of their operations subsidiaries or operating subsidiaries. As discussed in the section-by-section analysis of § ____.21(b), the agencies do not believe that mandatory inclusion of functionally regulated subsidiaries within a bank's CRA examination would exceed the agencies' statutory authority under GLBA. Therefore, the activities of a bank's operations subsidiary or operating subsidiary will be evaluated in the bank's CRA evaluation and the relevant data requirements will apply, unless the operations subsidiary or operating subsidiary is independently subject to the CRA.

In response to commenters that expressed concern that these data requirements would expand the reporting requirements in other regulations, the agencies are clarifying that the data requirements under § ____.42(c) and (d), for operations subsidiaries or operating subsidiaries, as applicable, and other affiliates, respectively, are not intended to, and do not, expand the data reporting requirements for other regulations such as home mortgage loans under Regulation C or small business loans under Regulation B (CFPB's Section 1071 Final Rule) (once section 1071 data become available). The agencies are also clarifying that the data requirements in § ____.42(d) for the bank's other affiliates are triggered only if the bank elects to have certain activities of the bank's affiliate considered for purposes of the bank's CRA evaluation.

Section ____.42(e) Data on Community Development Loans and Community Development Investments by a Consortium or a Third Party

Current § ____.42(e), provides that a bank that elects to have the agencies consider community development loans by a consortium or third party for purposes of the lending or community development tests or an approved strategic plan, must report for those loans the data that the bank would have reported under current § ____.42(b)(2) had the loans been originated or purchased by the bank.

Consistent with the current rule, in proposed § ____.42(e), the agencies required banks that elect to have community development loans or investments by a consortium or third party considered for purposes of the CRA regulations, to collect, maintain, and report the community development lending and investments that the bank would have collected, maintained, and reported under proposed § ____.42(a)(5) and (b)(3) had the community development loans or investments been originated or purchased by the bank.

The agencies received no comments regarding the proposed data on community development loans and investments by a consortium or a third party in proposed § ____.42(e) and are finalizing as proposed, with minor technical and conforming changes.

Section ____.42(f) Assessment Area Data

Current Approach

Under current § ____.42(g), a bank, except a small bank or a bank that was small during the prior calendar year, which includes intermediate small banks, must collect and report annually by March 1 a list for each assessment area showing the geographies within the area.[1562]

The Agencies' Proposal

The agencies proposed to revise current § ____.42(g), renumbered as proposed § ____.42(f), to change the date in which banks are required to collect and report assessment area data, and to provide a separate provision for data regarding facility-based assessment areas and retail lending assessment areas. Specifically, the agencies proposed to change the date banks are required to collect and report assessment area data from March 1 to April 1. The agencies also proposed to require in § ____.42(f)(1), that a bank, except a small bank or an intermediate bank, collect and report to the Board, FDIC, or OCC, as appropriate, annually by April 1 a list for each facility-based assessment area showing the States, MSAs, county or county equivalents, and metropolitan divisions within the facility-based assessment area. Consistent with the current regulations, the proposal required small banks and intermediate banks to maintain assessment area data in their CRA public files, including a map of each facility-based assessment area, but these banks would not be required to report the data under § ____.42(f)(1).[1563]

In proposed § ____.42(f)(2), the agencies required large banks to collect and report to the Board, FDIC, or OCC, as appropriate, annually by April 1, a list for each retail lending assessment area showing the MSAs and counties within each retail lending assessment area, as applicable.

The agencies requested feedback regarding whether small banks that opt to be evaluated under the metrics-based Retail Lending Test should be required to collect, maintain, and report related data or whether it is appropriate to use data that a small bank maintains in its own format or by sampling the bank's loan files. The agencies also requested feedback on whether a tool to identify retail lending assessment areas based on reported data would be useful.

Comments Received

Most commenters addressing the agencies' request for feedback on whether a retail lending assessment area tool would be useful expressed support for a number of reasons, including that it could provide helpful information to the general public and banks. Although

[1561] Under 12 U.S.C. 1844(c)(5), the term ''functionally regulated subsidiary'' means any company—(1) that is not a bank holding company or a depository institution; and (2) that is—(i) a broker or dealer that is registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); (ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; (iii) an investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); (iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or (v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities.

[1562] Current 12 CFR ____.42(g).

[1563] *See* proposed § ____.43(a)(6).

supportive of a tool, a commenter expressed some concern that collecting and tailoring the data needed for defining its potential retail lending assessment areas each year would be a labor-intensive task.

One commenter responded to the agencies' request for feedback regarding data requirements should a small bank opt to be evaluated under the Retail Lending Test. In this commenter's view, if a small bank opts into the metrics-based test, it would be appropriate for the agencies to provide the bank the option to use data that it maintains in its own format or sample the bank's loan files. The agencies received no other comments regarding the proposed assessment area data.

Final Rule

The agencies received no specific comments regarding the changes in proposed § ____.42(f) pertaining to a bank's data requirements for facility-based assessment areas in proposed § ____.42(f)(1) and retail lending assessment areas in proposed § ____.42(f)(2) or the change in date for annual reporting, and are finalizing those changes as proposed, with a few revisions. Specifically, the agencies are revising the language in proposed § ____.42(f)(1) to clarify that the data collected and reported annually by April 1 for the bank's facility-based assessment areas is as of December 31 of the prior calendar year or the last date the facility-based assessment area was in effect, provided the facility-based assessment area was delineated for at least six months of that year. While the delineation of facility-based assessment areas is a continuous process within the bank, this clarification ensures that the timing of the reported data for facility-based assessment areas is consistent across banks: either as of December 31 of the prior calendar year or as of the date that the facility-based assessment area was most recently delineated.

The language in final § ____.42(f)(1), ''provided the facility-based assessment area was delineated for at least six months of the prior calendar year,'' was added to ensure that a facility-based assessment area was in existence for a sufficient time period to evaluate the lending around a bank's facility. For example, if a bank closed the sole branch in a county the first part of the year, the facility-based assessment area would not be evaluated as such for that year. Similarly, in a situation where a branch is opened in the latter part of a calendar year which creates a new facility-based assessment area, that new facility-based assessment area would not be reported. If those facility-based assessment areas that are not reported for the year have sufficient lending to trigger a retail lending assessment area, they should be reported as such for that calendar year.

The agencies are also revising the language in proposed § ____.42(f)(2) to clarify that data collected and reported by April 1 for the bank's retail lending assessment areas is for the prior calendar year.

The agencies believe that collection and reporting of data for facility-based assessment areas and retail lending assessment areas is appropriate because the agencies measure a bank's performance under the CRA in these areas. Specifically, these data improve the agencies' understanding of areas served by a bank and help assess whether the bank is meeting the credit needs of its communities through an evaluation of various tests. For example, the agencies require these data to assist examiners in the analysis of borrower and geographic distributions under the Retail Lending Test (*see* the section-by-section analysis of § ____.22), distributions which are needed to construct the metrics and benchmarks the agencies use to evaluate the bank's performance.

The agencies considered commenter feedback that including a retail lending assessment area tool would be useful to banks and to the general public. The section-by-section analysis of § ____.17 includes discussion of data tools that the agencies intend to make available regarding retail lending assessment areas.

The agencies have also considered the comment regarding assessment area data requirements for small banks that opt to be evaluated under the Retail Lending Test. The agencies have determined that additional assessment area data requirements for these banks would be burdensome and would outweigh any potential benefit of requiring the data. Such data are readily available in the bank's CRA public file, which under the final rule must be made available on a bank's website, if the bank maintains one.

Finally, as noted in the proposal, the agencies' proposed change in date from March 1 to April 1 for annual collection and reporting of assessment area data is intended to conform to other changes proposed in § ____.42.

Section ____.42(g) CRA Disclosure Statement

Under current § ____.42(h), the agencies prepare annually a CRA Disclosure Statement for each bank that reports certain data under § ____.42. The statement provides information on small business and small farm lending and community development loans with respect to banks that are subject to those reporting requirements.

The agencies proposed to continue the preparation of the CRA Disclosure Statement as required in current § ____.42(h), renumbered in the proposal as § ____.42(g), with revisions to conform to changes made throughout the proposal. Specifically, consistent with the current regulations, the CRA Disclosure Statement would contain, on a State-by-State basis, specified demographic information about the areas in which the bank operates. The agencies proposed expanding the CRA Disclosure Statement to include not only the number and amount of small business and small farm loans reported by the bank in its facility-based assessment areas, but also those reported by the bank in its retail lending assessment areas and outside retail lending areas. Similarly, the statement would be expanded to not only include the number and amount of community development loans reported as originated or purchased by the bank, but would also include 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.

The agencies received no comments on the changes to proposed § ____.42(g) and are finalizing those changes as proposed, with a technical change to accurately represent that the responsibilities for preparation of CRA Disclosure Statements correspond to the agencies' or the agencies' ''appointed agent.'' The agencies also made conforming and non-substantive word revisions to this section. The agencies believe it is appropriate to make the changes described above in proposed § ____.42(g) to conform to other changes made to the data requirements in § ____.42. After the transition to the section 1071 data takes effect, there is no additional data disclosure burden created by the CRA final rule with regard to small business and small farm lending data.[1564]

[1564] The transition amendments included in this final rule will permit the agencies to transition the CRA data disclosure requirements for small business loans and small farm loans to the CFPB's section 1071 data. This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to transition to the CFPB's section 1071 data for small

Continued

Section ____.42(h) Aggregate Disclosure Statement

In current § ____.42(i), the agencies prepare an aggregate disclosure statement for all banks subject to reporting under § ____.42. The aggregate disclosure statements indicate, for each geography, the number and amount of small business and small farm loans originated or purchased by all reporting institutions, except that the agencies 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 an institution.[1565]

The agencies proposed to continue the preparation of aggregate disclosure statements as required in current § ____.42(i), renumbered in the proposal as § ____.42(h), with revisions to conform to other changes made throughout the proposal. Specifically, in addition to the reporting of small business and small farm loans, as under the current regulations, for each MSA or metropolitan division (including those that cross a State boundary) and the nonmetropolitan portion of each State, the agencies proposed expanding aggregate disclosure statements to include community development loans and community development investments for each MSA or metropolitan division and the nonmetropolitan portion of each State. Similar to the content required under the current CRA regulations, these aggregate 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. Further, as in the current rule, the agencies proposed that they 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.

The agencies received no comments on the changes to proposed § ____.42(h) and are finalizing those changes as proposed, with a technical revision to accurately represent that the responsibilities regarding the preparation of aggregate disclosure statements correspond to the agencies' or the agencies' ''appointed agent.'' The agencies also made conforming and non-substantive revisions to this section to accurately describe at what level the aggregate data would be reported. The agencies believe it is appropriate to make the changes described above in proposed § ____.42(h) to conform to other changes made to the data requirements in § ____.42.[1566]

Section ____.42(i) Availability of Disclosure Statements

Under current § ____.42(j), the agencies make the individual bank CRA Disclosure Statements and aggregate disclosure statements ''available to the public at central data depositories'' and ''publish a list of the depositories at which the statements are available.'' The agencies proposed to revise current § ____.42(j), renumbered as proposed § ____.42(i), to make the CRA Disclosure Statements in proposed § ____.42(g) and aggregate disclosure statements in proposed § ____.42(h) ''available on the FFIEC's website,'' codifying the current interagency process.

The agencies received no comments on proposed § ____.42(i) and are finalizing as proposed, with a technical change to rename the heading of this section to ''Availability of disclosure statements'' from ''Central data depositories.'' Because proposed § ____.42(i) replaced ''central data depositories'' in the regulatory text of the current rule with the FFIEC's website in the regulatory text of the proposal, the agencies believe the heading in final § ____.42(i) more accurately reflect the new regulatory text.

Section ____.42(j) HMDA Data Disclosure

Current Approach and the Agencies' Proposal

CRA performance evaluations do not currently report data on lending by borrower race or ethnicity. However, for mortgage lending, race and ethnicity data are collected and reported by most banks subject to the large bank CRA lending test through HMDA. Tabulations of the HMDA data by race or ethnicity for each of the reporting banks within their assessment areas are not easily accessible online, nor are they currently included in CRA performance evaluations.

In furtherance of the agencies' objective to promote transparency, the agencies proposed in § ____.42(j) a new requirement to disclose in the CRA performance evaluation of a large bank the distribution of borrower 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. The agencies proposed to disclose this information for each year of the evaluation period using data currently reported under HMDA.[1567] Furthermore, the agencies proposed to disclose the number and percentage of the bank's home mortgage loan originations and applications by race and ethnicity and compare that data to the aggregate mortgage lending of all lenders in the assessment area and the demographic data in that assessment area.[1568] Proposed § ____.42(j)(3) provided that the disclosure of race and ethnicity of the bank's home mortgage loan originations and applications in the bank's CRA performance evaluation would not impact the conclusions or ratings of the bank.

Comments Received

Most commenters generally supported the agencies' effort to increase transparency of a bank's mortgage lending operations through the disclosure of HMDA data by race and ethnicity in CRA exams. Commenters in support of the agencies' proposal noted that this disclosure would be an important step towards increasing transparency.

However, several commenters expressed their disappointment in the agencies' clarification that this disclosure would not impact an institution's CRA ratings. In these commenters' view, this is a factor they believe is essential to help combat racial inequities in bank lending and other banking products and services and suggested that HMDA data should play a larger role in the CRA examination process and CRA ratings. Some of these commenters and a few others, noted that simply disclosing HMDA data that is already public would not provide meaningful transparency and recommended that the agencies require banks to publish home lending data tables and maps that show disaggregated HMDA data by race and ethnicity in a prominent place on their websites. Several commenters suggested that HMDA data by race and ethnicity should be presented in all bank CRA exams, not simply those of large banks, to enable the public to readily compare a bank's performance to its peers and demographic benchmarks. A few other commenters described various places

business loan and small loan data under the CRA regulations. The agencies will provide notice of the effective date of this amendment in the **Federal Register** once the CFPB section 1071 data are available.

[1565] *See* current 12 CFR ____.42(i).

[1566] *See also supra* note 145.

[1567] *See* proposed § ____.42(j)(1).

[1568] *See* proposed § ____.42(j)(2).

where HMDA data could be used in the CRA examination process, including for example, as an explicit lending benchmark or metric when creating assessment areas, as an impact review factor, and as a justification for discrimination downgrades. One commenter suggested that the agencies publicly share HMDA data by race and ethnicity—specifically American Indians, Alaska Natives, and Native Hawaiians—with interested stakeholders on an annual basis, and annually provide to these groups an updated longitudinal analysis of HMDA data trends involving particular racial and ethnic groups and a discussion of which large banks are improving and which are not. A few commenters also suggested disclosing data on non-mortgage loan types based on race and ethnicity such as CFPB's section 1071 data, once available.

Some commenters opposed the agencies' proposal. Commenters opposed to the agencies' proposal to disclose HMDA data by race and ethnicity in CRA performance evaluations stated various reasons for their opposition. One commenter asserted that the HMDA and the CRA statutory purposes are different, and that HMDA data should not be commingled with the CRA. Another commenter stated that HMDA data are used extensively in fair lending reviews, while the CRA has always focused on income. A few commenters stated that disclosing demographic data without appropriate context could be confusing or misleading to the public. One of these commenters noted that these data could suggest to the public that the bank is engaging in discrimination while the CFPB and the FFIEC have stated many times that HMDA data are a screening tool and cannot alone establish discrimination. Two commenters stated that, because this information would not be part of the data used for CRA examinations and thus not part of the written evaluation, requiring publication of HMDA data would be outside the scope of CRA. One of these commenters specifically stated that this HMDA provision seeks to strengthen the purpose of a regulation that falls outside the agencies' rulemaking authority, is unrelated to a bank's CRA performance and the agencies' fair lending oversight, and lacks sufficient context by itself to convey an accurate and comprehensive picture of bank marketing and advertising practices. One other commenter suggested that, instead of including HMDA data in the performance evaluation, examiners should provide a summary of their findings and any disparities that correlate to, or are offset by, a bank's other performance metrics. Finally, a few other commenters opposed the disclosure of HMDA data for other reasons, including that it would be an unjustified duplication of reporting and would not increase transparency because HMDA data are already available to the public; there are already sufficient existing data metrics to measure a bank's mortgage lending without HMDA data; it could improperly incentivize banks to allow racial and ethnic characteristics of applicants to influence credit decisions; and if the data will not be included in CRA conclusions, it is a burden that is not justified by the regulation.

Final Rule

The final rule adopts proposed § ____.42(j), with modifications as described below. The agencies are not finalizing in proposed § ____.42(j)(1), disclosure of the HMDA data by race and ethnicity required in final § ____.42(j)(2) in the bank's CRA performance evaluation. Instead, based on the comments received and upon additional agency consideration, final § ____.42(j)(1) provides that the relevant agency will publish annually, based on the data reported by large banks under 12 CFR part 1003, the data in § ____.42(j)(2) by borrower income level, race, and ethnicity. In final § ____.42(j)(2), the Board, FDIC, or OCC, as applicable, will publish on their respective websites, for each large bank's facility-based assessment areas, and as applicable, its retail lending assessment areas: (1) the number and percentage of originations and applications of a large bank's home mortgage loans by borrower or applicant income level, race, and ethnicity; (2) the number and percentage of originations and applications of aggregate mortgage lending of all lenders reporting HMDA data in the facility-based assessment area and as applicable, the retail lending assessment area; and (3) demographic data of the geographic area. By publishing this information on their websites, the agencies are making the existing public data available in a more user-friendly format. The agencies also continue to believe that public disclosure of these data in each assessment area will increase the transparency of a bank's mortgage lending operations.

To increase public awareness that the HMDA data by income level, race, and ethnicity in § ____.42(j)(2) is available, the final rule adopts two new provisions. First, under § ____.42(j)(3) of the final rule, upon publishing the data required in § ____.42(j)(2), the agencies will "publicly announce" that the data has been published on the agency's website. Second, as explained in the section-by-section analysis of § ____.43(b)(2), the final rule also requires a large bank to include a written notice in their public file that the HMDA data published by the agency is available on the agency's website.

Finally, consistent with the agencies' proposed § ____.42(j)(3), renumbered in the final rule as § ____.42(j)(4), the final rule provides that the information published by the agencies with respect to race and ethnicity will not independently impact the CRA conclusions and ratings of a large bank. As explained by the agencies in the proposal, the disclosure in the final rule also would not constitute a lending analysis for the purpose of evaluating redlining risk factors as part of a fair lending examination. The agencies will publish the HMDA data by borrower income level, race, and ethnicity on their own websites, not in the CRA performance evaluation as initially proposed. The agencies have determined that this approach appropriately provides the intended transparency of publishing these data, without adding to the length and complexity of CRA performance evaluations. Including these data on the agencies' websites will provide a more user-friendly way to access the HMDA data—whether by income, race, and ethnicity—in a single place. In this manner, the data will be readily available to all stakeholders to analyze trends involving lending to various groups in the communities served by the bank. HMDA data by income level will continue to be included in the CRA performance evaluation.

With respect to commenters suggestions that HMDA data by borrower race and ethnicity should play a larger role in the CRA examination process and should independently impact a bank's CRA ratings, the agencies reiterate that the HMDA data is not the only information used to determine whether a fair lending violation occurred, and would typically not be sufficient, by itself, to demonstrate that redlining exists. However, to the extent the HMDA data supports a conclusion that a violation occurred in the context of a fair lending examination, the final rule also provides in § ____.28 that the agency's evaluation of a bank's CRA performance rating is adversely affected if the relevant agency's fair lending examination concludes that discrimination occurred based on its analysis of the HMDA data.

The agencies have considered comments opposing the publication of tabulations of the HMDA data by borrower race and ethnicity for each bank on the ground that the purposes of the CRA and HMDA are different in that HMDA data on race or ethnicity are used in fair lending examinations while the CRA focuses on income. HMDA data by borrower race and ethnicity are used in fair lending examinations, and the agencies believe that CRA and fair lending obligations are mutually reinforcing. For example, under the existing CRA regulations and under the final rule, the results of the fair lending examination can affect a bank's CRA rating.[1569] In addition, the agencies note that they are not publishing the HMDA data by race and ethnicity in the CRA performance evaluations as initially proposed, but on their own websites to provide this already-existing public data in a specific and user-friendly format. The agencies have also considered commenters concerns that disclosure of the HMDA data would improperly incentivize banks to use racial characteristics in credit decisions. The agencies note that the commenters did not provide evidence for the assertion that a more accessible presentation of information that is currently available to the public would result in such an outcome. In addition, the agencies examine banks to ensure their lending meets safety and soundness and consumer protection requirements, including fair lending laws and regulations. The agencies believe that these laws and regulations, along with examinations to ensure compliance, provide adequate safeguards against racial characteristics becoming an impermissible basis for credit decisions under the final rule.

In response to some commenters that raised issues about potential burdens related to HMDA data publication, the final rule provides that the agencies take existing HMDA data and publish it on the agency's website. The operative provisions of the final rule do not increase regulatory burden for large banks in a perceptible manner.

The agencies considered commenters suggestion that disclosure of these tabulations would be duplicative since HMDA data are publicly available, or that it would not meaningfully increase transparency. The agencies believe that providing the distribution of the bank's home mortgage loan originations and applications by income level, race, and ethnicity in each of the bank's assessment areas will increase the transparency of a bank's mortgage lending operations. Although the HMDA data are publicly available, the agencies currently do not provide these specific tabulations to the public, as previously noted. In addition, by publishing these tabulations on the relevant agency's website and publicly announcing that they are available, the agencies believe the data will be accessible to more stakeholders to analyze trends involving lending to various groups within the communities served by the bank.

The agencies are sensitive to commenter concerns that disclosing HMDA data without appropriate context could be confusing or misleading. The agencies intend to address this issue in part by providing a statement, along with the release of the tabulations of the HMDA data in § ____.42(j)(2), regarding some of the limitations of the data. The agencies also acknowledge that while the information on race and ethnicity within the HMDA data can be used to analyze and identify fair lending risks, they are not the only data used to make a determination of whether a fair lending violation occurred. However, as explained in the proposal, separate from this disclosure, to the extent that analysis of HMDA reportable mortgage lending along with additional data and 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* the section-by-section analysis of § ____.28(d)).

Upon consideration of the comments, the agencies decline to extend the tabulations by race and ethnicity of HMDA data to all banks, rather than just large banks. The agencies decided to focus the tabulation of publication of HMDA data on the agencies' websites on just large banks because these institutions are the most significant mortgage lenders among banks.

Finally, regarding commenters' recommendations to disclose data on non-mortgage lending based on race and ethnicity, such as CFPB's section 1071 data, the agencies decline to expand disclosure of data based on race and ethnicity. The agencies' purpose for disclosing HMDA data by race and ethnicity in the proposal was, and in this final rule is, to increase transparency in a bank's mortgage lending operations. Disclosing data for non-mortgage lending by race and ethnicity would be outside the scope of the agencies' proposal. In addition, racial and ethnic data on non-mortgage lending, such as the CFPB's section 1071 data, are not available for disclosure at this time. The agencies do not believe it is a prudent course of action to address the disclosure of the data before preliminary issues such as access to the data itself are resolved.

Section ____.43 Content and Availability of Public File

Section ____.43(a) Information Available to the Public

Current Approach

Under the current CRA regulations, a bank is required to maintain a public file that includes specific information related to the bank's branches, services, and performance in helping meet community credit needs.[1570] The public file must include all written comments received from the public for the current year and each of the two prior calendar years related to the bank's performance in helping to meet community credit needs, along with any responses by the bank,[1571] and a copy of the public section of the bank's most recent CRA performance evaluation.[1572] The public file is also required to include: a list of the bank's current branches, their street addresses, and geographies; [1573] a list of branches that have opened or closed during the current year and each of the prior two calendar years; [1574] a list of services generally offered at the bank's branches, and if a bank chooses, information regarding alternative delivery systems; [1575] and a map of each of the bank's assessment areas.[1576] A bank may opt to add any other information to its public file.[1577]

The Agencies' Proposal

The agencies proposed to maintain the current requirements in § ____.43 regarding information that banks must include in their public files, with additional clarification regarding specific aspects of those requirements. Consistent with a technical change throughout the regulatory text, the agencies proposed replacing the term ''geographies'' with the term ''census tracts'' to specify the geographic level at which a bank must provide information on its current branches, and branches that have been opened or closed during the current year and each of the prior two calendar years.

In addition, the agencies proposed technical changes to current § ____.43(a)(5), regarding the list of services that a bank must include in its

[1569] *See* current 12 CFR ____.28(c)(1)(i) and final § ____.28(d)(3)(i).

[1570] *See* current 12 CFR ____.43(a).

[1571] *See* current 12 CFR ____.43(a)(1).

[1572] *See* current 12 CFR ____.43(a)(2).

[1573] *See* current 12 CFR ____.43(a)(3).

[1574] *See* current 12 CFR ____.43(a)(4).

[1575] *See* current 12 CFR ____.43(a)(5).

[1576] *See* current 12 CFR ____.43(a)(6).

[1577] *See* current 12 CFR ____.43(a)(7).

public file. Proposed § ____.43(a)(5) referred to ''retail banking services,'' as defined in proposed § ____.12,[1578] rather than ''services'' as it is described in current § ____.43(a)(5).[1579] Current § ____.43(a)(5) also states that, ''[a]t its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, banking by telephone, computer, or mail, loan production offices, and bank-at-work programs).'' [1580] Proposed § ____.43(a)(5) revised the current provision to reflect changes to the types of alternative systems commonly used—specifically, the proposal referred instead to ''mobile or online banking, loan production offices, and bank-at-work or mobile branch programs.''

The agencies also proposed changes to the information that large banks would need to include in their public file related to assessment areas. Specifically, the agencies proposed to update current § ____.43(a)(6) to replace the reference to ''assessment area'' with ''facility-based assessment area and retail lending assessment area,'' thus requiring a bank to include in its public file ''[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.'' [1581]

Comments Received and Final Rule

The agencies received no comments regarding the technical changes described above in proposed § ____.43(a) and are finalizing those revisions as proposed. In addition, the agencies are clarifying ''current year'' requirements in the following public file provisions:

- Section ____.43(a)(1), which requires a bank to include in the public file all written comments received from the public for the current year and each of the two prior calendar years related to the bank's performance in helping to meet community credit needs, along with any responses by the bank; and
- Section ____.43(a)(4), which requires a list of branches opened or closed by the bank during the current year and each of the prior two calendar years.

Specifically, these provisions are revised to require a bank to update its list of branches opened and closed (§ ____.43(a)(1)) and written public comments (§ ____.43(a)(4)) for the current year ''on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December 31.'' This is in addition to each of the two prior calendar years. Based on supervisory experience, the agencies believe that the term ''current year'' is ambiguous, and therefore, are clarifying that banks are required to update their public files with this information on a designated quarterly basis. The agencies believe that regulatory burden will be reduced by mitigating confusion regarding whether banks must continuously update the public file with the list of branches opened and closed, and with comments received during the current year.

Finally, the agencies received one comment relating to the assessment area map requirement in proposed § ____.43(a)(6). Specifically, this commenter recommended that the public file maintain at least five years of assessment area maps that include the majority-minority census tracts and the original date of the acquisition or establishment of a branch. After consideration of this comment, the agencies are finalizing the requirement for assessment areas in § ____.43(a)(6) as proposed with a clarification to make clear that a bank is required to include in its public file a map of retail lending assessment areas, ''as applicable.''

The agencies believe that more extensive map requirements beyond the agencies' proposal, especially maintaining five years of maps, would be overly burdensome for banks. In addition, the agencies consider the focus of CRA to be on low- and moderate-income census tracts, rather than majority-minority census tracts. Finally, the agencies believe that requiring banks to include the original date of the acquisition or establishment of a branch is duplicative and unnecessary, since the establishment date for bank branches is already publicly available from the FDIC's website.

Section ____.43(b) Additional Information Available to the Public

Current Approach

Current additional public file requirements vary based on a bank's size and circumstances. A bank, except a small bank or a bank that was a small bank in the prior calendar year, must include in its public file for each of the prior two calendar years the following information for the bank and, if applicable, its affiliates: a copy of the bank's CRA Disclosure Statement [1582] and, if a bank has elected to have one or more categories of its consumer loans considered, the number and amount of each category of consumer loans made by the bank and its affiliates (1) to low-, moderate-, middle-, and upper-income individuals; (2) located in low-, moderate-, middle-, and upper-income census tracts; and (3) located inside the bank's assessment areas and outside of the bank's assessment areas.[1583] HMDA reporting institutions must include a statement in the public file that their HMDA data may be obtained on the CFPB's website, as well as the name of any affiliate whose home mortgage lending the bank elected to have considered in its CRA evaluation and a written notice that the affiliates' HMDA data may be obtained on the CFPB's website.[1584]

Under current requirements, 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 [1585] and, if it elects to be evaluated under the lending, investment, and service tests, it must include the information that other banks subject to these tests must report, as provided above.[1586] A bank evaluated according to an approved strategic plan must include a copy of the plan in its public file.[1587] Finally, a bank that received less than a ''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 and update the description quarterly.[1588]

[1578] ''*Retail banking services*'' was defined in the proposal to mean, ''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.'' Proposed § ____.12.

[1579] The current regulation describes ''services'' as including ''hours of operation, available loan and deposit products, and transaction fees'' that are ''generally offered at the bank's branches.'' Current 12 CFR ____.43(a)(5).

[1580] Under the FDIC's CRA regulations, current 12 CFR 345.43(a)(5) describes alternative delivery systems as ''RSFs, RSFs 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.''

[1581] *See* proposed § ____.43(a)(6).

[1582] *See* current 12 CFR ____.43(b)(1)(ii).

[1583] *See* current 12 CFR ____.43(b)(1)(i).

[1584] *See* current 12 CFR ____.43(b)(2).

[1585] *See* current 12 CFR ____.43(b)(3)(i). At its option, a bank may include in its public file additional data on its loan-to-deposit ratio. *See id.*

[1586] *See* current 12 CFR ____.43(b)(3)(ii) (cross-referencing current 12 CFR ____.43(b)(1)).

[1587] *See* current 12 CFR ____.43(b)(4).

[1588] *See* current 12 CFR ____.43(b)(5).

The Agencies' Proposal

The agencies proposed to revise current § ____.43(b)(1) to reflect the proposed designations of banks as "small," "intermediate," and "large," such that this provision instead would apply to "large" banks. The agencies also proposed to remove current § ____.43(b)(1)(i), because consumer loans would not be considered under the proposed Retail Lending Test for banks subject to this provision.

As a result of the proposed removal of current § ____.43(b)(1)(i), the agencies proposed to renumber current § ____.43(b)(1)(ii), requiring a bank (other than a small bank or an intermediate bank) to include in its public file a copy of the bank's CRA Disclosure Statement, to § ____.43(b)(1). Proposed § ____.43(b)(1) required that banks subject to data reporting requirements described in proposed § ____.42 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, and any other affiliates, if applicable, may be obtained on the FFIEC's website. This would be a change from current § ____.43(b)(1)(ii), which requires a bank to include the CRA Disclosure Statement itself in its public file. Proposed § ____.43(b)(1) also differed from current § ____.43(b)(1)(ii) in adding reference to the CRA Disclosure Statement of a bank's operations subsidiaries or operating subsidiaries, and any other affiliate of the bank, if applicable.

The agencies also proposed to revise current § ____.43(b)(2), pertaining to information that must be available to the public for banks that are required to report home mortgage loan data under HMDA. Proposed § ____.43(b)(2) referenced not only affiliates whose home mortgage lending the bank opted to have considered as part of its CRA evaluation, but also operations subsidiaries or operating subsidiaries whose home mortgage lending is required to be considered under the proposal.[1589]

In addition, the agencies proposed to remove current § ____.43(b)(3)(ii), which requires small banks that elected to be evaluated under the lending, investment, and services test to include in their public file the information required under current § ____.43(b)(1)(i) and (ii) described above.

Further, the agencies proposed technical revisions to current § ____.43(b)(5), regarding public file requirements for banks with a less than "Satisfactory" rating, for clarity. Proposed § ____.43(b)(5) reflected current § ____.43(b)(5), but specified that quarterly updates must occur by March 31, June 30, September 30, and December 31.

Comments Received and Final Rule

The agencies received no comments regarding the changes in proposed § ____.43(b)(1) or the removal of the requirements under current § ____.43(b)(1)(i) and (b)(3)(ii) and are finalizing these revisions as proposed. Specifically, with respect to § ____.43(b)(1), the agencies believe adding the reference to the CRA Disclosure Statement of a bank's operations subsidiaries or operating subsidiaries, and its other affiliates, if applicable, reflects that in some cases the activities of operations subsidiaries or operating subsidiaries, as defined in § ____.12 (proposed and final), as well as the activities of other affiliates, will be considered in a bank's CRA evaluation.[1590]

The agencies also believe that retaining current § ____.43(b)(1)(i) and (b)(3)(ii), is unnecessary. With respect to § ____.43(b)(1)(i), in the final rule, consumer loans, with the exception of automobile loans as specified in the section-by-section analysis of § ____.22, will no longer be considered under the Retail Lending Test; therefore, a bank is no longer required to include in its public file the information required in § ____.43(b)(1)(i). Instead, the agencies will consider the qualitative aspects of consumer loans (except automobile loans) only under the Retail Services and Products Test as explained in the section-by-section analysis of § ____.23. Therefore, removing current § ____.43(b)(1)(i) is appropriate. With respect to § ____.43(b)(3)(ii), with the removal in the final rule of current § ____.43(b)(1)(i), as just explained, the only requirement remaining in current § ____.43(b)(1) would be the CRA Disclosure Statement in § ____.43(b)(1)(ii). Because a small bank is not required to report CRA loan data under § ____.42 (proposed and final), a CRA Disclosure Statement would not be prepared for a small bank to place in its public file. Therefore, the requirements in current § ____.43(b)(3)(ii) no longer apply to small banks, making the provision unnecessary. The agencies also made technical changes to the inline header of § ____.43(b)(1) to make clear that this paragraph applies to any bank subject to the data reporting requirements under § ____.42 and to update the FFIEC's website link for where the CRA Disclosure Statement may be obtained.

The agencies are also adopting proposed § ____.43(b)(2), with modifications related to the disclosure of the HMDA data on borrower race and ethnicity in final§ ____.42(j). *See* the section-by-section analysis of § ____.42(j). Proposed § ____.43(b)(2) pertains to the requirement that HMDA-reporting banks include in their public file a written notice that the bank's HMDA data in § ____.42(j) can be obtained at the CFPB's website. Specifically, the agencies are renumbering proposed § ____.43(b)(2) as § ____.43(b)(2)(i), and are adopting new § ____.43(b)(2)(ii), which requires a large bank to include in their public file a written notice that the HMDA data published by the Board, FDIC, or OCC, as applicable, under § ____.42(j)(1) is available on the Board's, FDIC's, or OCC's website (*see* the section-by-section analysis of § ____.42(j)). The agencies are adopting this new provision to increase transparency and awareness of a bank's mortgage lending operations. After the transition to the section 1071 data takes effect, banks required to report HMDA data and small-business lending data will also be required to include in their public file a written notice that the bank's small business loan and small farm loan data is available at the CFPB's website.[1591]

The agencies are finalizing proposed § ____.43(b)(4) with a technical change to clarify that a bank evaluated under a strategic plan must include a copy of the plan in its public file while the plan is in effect.

With respect to proposed § ____.43(b)(5), the agencies received one comment which, as discussed above, pertained to public file requirements for banks with a less than "Satisfactory" rating. The commenter suggested that when a bank receives a "Low Satisfactory" conclusion for an assessment area or a subtest, the bank should be required to submit a public improvement plan with measurable performance goals (the same or similar to metrics on CRA examinations) indicating how a bank will improve its

[1589] *See* proposed § ____.21(c)(1).

[1590] *See* the section-by-section analysis of § ____.21(b).

[1591] The transition amendments included in this final rule will permit the agencies to transition the CRA data collection and reporting requirements for small business loans and small farm loans to the CFPB's section 1071 data. This is consistent with the agencies' intent articulated in the preamble to the proposal and elsewhere in this final rule to transition to the CFPB's section 1071 data for small business loan and small loan data under the CRA regulations. The agencies will provide notice of the effective date of this amendment in the **Federal Register** once the CFPB section 1071 data are available.

performance. The agencies have considered this comment and are finalizing § ____.43(b)(5) as proposed. Since final § ____.43(b)(5) requires that 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 agencies believe this provision covers the suggested ''improvement plan'' made by the commenter.

Section ____.43(c) Location of Public Information

Section ____.43(d) Copies

Section ____.43(e) Timing Requirements

Current Approach

Under current § ____.43(c), a bank's entire public file must be available for public inspection upon request at no cost: (1) at its main office; and (2) if a bank operates in more than one State, at one branch office in each of these States.[1592] At each branch, upon request, a bank must make available for inspection the bank's most recent CRA performance evaluation and a list of services provided by the branch, as well as, within five calendar days of the request, all of the information in the public file relating to the branch's assessment area.[1593]

Under current § ____.43(d), when requested, a bank must also provide a copy of its CRA public file either on paper or in another form acceptable to the person making the request, and may charge a reasonable fee to cover copying and mailing costs.[1594]

Under current § ____.43(e), a bank is required to ensure, unless otherwise provided in § ____.43, that the information required by § ____.43 is current as of April 1 of each year.

The Agencies' Proposal

The agencies proposed to revise current § ____.43(c)(1) to require any bank with a public website to include its CRA public file on its website to increase accessibility. If a bank does not maintain a public website, the agencies proposed that a bank would have to maintain public file information consistent with current rules—namely, at the main office and, if an interstate bank, at one branch office in each State.[1595]

Consistent with current § ____.43(c)(2)(i), proposed § ____.43(c)(2)(i) required that a bank must make available to the public a copy of the public section of the bank's most recent CRA performance evaluation and a list of services provided by the branch.[1596] Proposed § ____.43(c)(2)(ii) required that, within five calendar days of the request, a bank make available all of the information in the public file relating to the branch's ''facility-based assessment area.'' The agencies proposed to refer to ''facility-based assessment area'' rather than ''assessment area'' to reflect the proposed changes to the CRA evaluation framework regarding assessment areas. *See, e.g.* the section-by-section analysis of §§ ____.16 and ____.17.

Proposed § ____.43(d) required banks to provide, on request, either in paper or in a digital form acceptable to the person making the request, copies of the information in the bank's public file. As allowed currently, banks would be able to charge reasonable copying and mailing costs for the provision of paper copies.

In addition, the agencies proposed to revise current § ____.43(e) to require that, except as otherwise provided in proposed § ____.43, a bank ensures that its public file contains the information required by proposed § ____.43 ''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.''

Comments Received and Final Rule

The agencies are finalizing proposed § ____.43(c), pertaining to the location of information that a bank must make available to the public, with technical changes for clarity. The agencies received only a few comments on this section; all commenters supported the agencies' proposed revisions to § ____.43(c). As explained in the proposal, the agencies believe that updating this provision to allow any bank with a public website to include its CRA public file on the bank's public website, will make a bank's CRA public file more readily accessible to the public.

The agencies are revising proposed § ____.43(c)(1) with a technical change to separate the location requirements for a bank's public file. Under final § ____.43(c)(1), all information required for the bank's public file must be maintained on the bank's website, if the bank maintains one. Under final § ____.43(c)(2), the agencies are clarifying the requirements for banks that do not maintain a website. As proposed, final § ____.43(c)(2)(i) requires that a bank must maintain all the information required for the bank's public file at the main office, and, if an interstate bank, at one branch office in each State. Final § ____.43(c)(2)(ii) clarifies that at each branch, the bank is required to maintain a copy of the public section of the bank's most recent CRA performance evaluation and a list of services provided by the branch. This clarification is consistent with the requirements that banks must make available at each branch under current CRA regulations, as well as the agencies' intent under proposed § ____.43(c)(2), as described in the proposal.[1597]

The agencies are adopting § ____.43(d) and (e) as proposed. The agencies did not receive comments on proposed § ____.43(d), regarding a bank's obligation to provide copies of its CRA public file on request, and proposed § ____.43(e), requiring a bank to maintain three years of information and ensure that its public file is current as of April 1 of each year, except as otherwise provided in § ____.43. With respect to the revisions in § ____.43(e) to maintain the information for three years, most banks, with certain exceptions, are evaluated during a three-year examination cycle, and as a result, the agencies believe that the public is best served when a bank maintains the information on its activities and any changes that may have occurred since the bank's last CRA performance evaluation. The agencies also believe that this expansion will result in minimal, if any, associated burden to banks since under the final rule, banks will be required to maintain their public file in digital form (if the bank maintains a website), as provided in § ____.43(c)(1). The agencies note that certain provisions in § ____.43 have other timing requirements under which the bank must maintain information in its public file. For example, as explained in the section-by-section analysis of § ____.43(a)(1), a bank must maintain all written comments received by the bank and any responses to the comments by the bank, for the current year, updated on a quarterly basis, and the prior two calendar years.

Section ____.44 Public Notice by Banks

Current Approach

Under the current CRA regulations, a bank must provide in the public lobby of its main office and each of its

[1592] *See* current 12 CFR ____.43(c)(1).

[1593] *See* current 12 CFR ____.43(c)(2).

[1594] *See* current 12 CFR ____.43(d).

[1595] *See* proposed § ____.43(c)(1).

[1596] Proposed § ____.43(c)(2) should have reflected, consistent with current § ____.43(c)(2), that a bank must make the information in proposed § ____.43(c)(2)(i) and (ii) available to the public at each branch. The final rule is revised to clarify this.

[1597] *See* 87 FR 33884, 34004 (June 3, 2022).

branches the appropriate public notice, as set forth in appendix B (CRA Notice), that includes information about the availability of a bank's public file, the appropriate Federal financial supervisory agency's CRA examination schedule, and how a member of the public may provide public comment.[1598] A branch of a bank having more than one assessment area must include certain content in the notice for branch offices.[1599] Bank affiliates of a holding company must include the second to the last sentence of the notice.[1600] Bank affiliates of a holding company that is not prevented by statute from acquiring additional banks must also include contact information of the bank's Federal regulatory agency so that the public may request information about applications covered by the CRA filed by the bank's holding company.[1601]

The Agencies' Proposal

The agencies did not propose substantive changes to the CRA public notice requirements in current § ____.44 and current appendix B, renumbered in the proposal as appendix F.[1602] Under proposed § ____.44 and proposed appendix F, banks would continue to be required to provide in the public area of their main office and each of their branches the CRA Notice. Consistent with current requirements, 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 would not be required for proposed retail lending assessment areas.[1603] The agencies also proposed retaining the required content for bank affiliates of a bank holding company.[1604] To update the notice, the agencies proposed adding instructions for submitting comments on a bank's performance in meeting community credit needs not only by mail, but also electronically.[1605]

Comments Received and Final Rule

The agencies are adopting § ____.44 and appendix F substantively as proposed.[1606] The agencies received few comments concerning these proposed CRA public notice provisions. One commenter supported the agencies' proposal regarding the public notice a bank is required to post in the public area of its main office and at each of its branches. Another commenter asked that the agencies consider requiring that banks post the required notice not only as currently required, but also prominently display the bank's CRA ratings in branch entrances and on the bank's public websites to make CRA ratings more transparent and publicly visible.

The agencies have considered comments received on these provisions and believe that disclosing the bank's CRA rating in the bank's CRA performance evaluation, which will be available on the bank's public website, if it maintains one, and on agency websites, is appropriate and consistent with the requirements of the CRA. Posting a bank's CRA rating in branch entrances and on the bank's public website could be misinterpreted without the appropriate context, including, as required under the statute, a ''statement describing the basis for the rating.''[1607]

Section ____.45 Publication of Planned Examination Schedule

Current Approach and the Agencies' Proposal

Under current § ____.45, 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. The agencies proposed to revise current § ____.45 to provide greater specificity and to reflect the agencies' actual practice of publishing the examination schedule. Specifically, proposed § ____.45 required that the relevant agency ''publish 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.'' As noted in the proposal, the agencies intended to provide additional advance notice to the public of the examination schedule and codify the agencies' current practice.[1608]

Comments Received

Several commenters supported the proposal stating that it would facilitate public engagement in the CRA process and enable banks to better respond to community needs. Several others asked that the agencies consider providing at least 90 days for the public to comment on CRA examinations. A few other commenters also recommended that the agencies provide a registry where interested groups could sign up for notifications when performance reviews are scheduled so that they can provide timely comments. One commenter suggested that the agencies encourage public comments to be made at any time, including outside the normal CRA schedule. One commenter expressed the view that the current approach was appropriate and believed there was no need for changes regarding publishing the planned examination schedule.

Final Rule

In the final rule, the agencies are revising proposed § ____.45 to provide that the agencies will publish, 30 days in advance of each calendar quarter, a list of banks scheduled for CRA examinations for the next two quarters. As explained in the proposal, the agencies intended to codify the current practice. The current practice is to publish a list of banks scheduled for CRA examinations for the next two quarters at least 30 days in advance of the beginning of each calendar quarter, not 60 days. Although the current regulation requires publication of a list of banks scheduled for CRA examinations for the upcoming calendar quarter at least 30 days in advance of that quarter, the agencies' practice for several years has been to publish a list of banks scheduled for CRA examinations for the next two quarters to allow interested parties more time to review and provide meaningful comments on a bank's performance before a CRA examination. By publishing a list of banks scheduled for CRA examinations in the upcoming two calendar quarters, 30 days in advance of each calendar quarter, the agencies effectively provide at least 120 days advance notice for upcoming CRA examinations.

Regarding the recommendation of some commenters that the agencies provide a registry for interested groups to sign up for notifications when performance reviews are scheduled so they can provide timely comments for scheduled examinations, the agencies note that any member of the public can sign up to receive the agencies' notifications, including those communicating the next two quarters of scheduled CRA examinations. As discussed in the section-by-section analysis of § ____.46, the agencies

[1598] *See* current 12 CFR ____.44 and current appendix B.

[1599] *See id.* The additional required content is bracketed in appendix B: ''[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).]''

[1600] *See* current 12 CFR ____.44 and current appendix B (''We are an affiliate of (name of holding company), a bank holding company.'').

[1601] *See* current 12 CFR ____.44 and current appendix B (''You may request . . . an announcement of applications covered by the CRA filed by bank holding companies.'').

[1602] *See* proposed § ____.44 and proposed appendix F.

[1603] *See id.*

[1604] *See id.*

[1605] *See* proposed appendix F.

[1606] *See supra* note 145.

[1607] 12 U.S.C. 2906(b)(1)(A)(iii).

[1608] *See* 87 FR 33884, 34004 (June 3, 2022).

recognize that transparency and public engagement are fundamental aspects of the CRA evaluation process and, therefore, encourage communication between members of the public and banks before, during, and after a CRA examination is scheduled.

Section ____.46 Public Engagement

Section ____.46(a) General

Section ____.46(b) Submission of Public Comments

Section ____.46(c) Timing of Public Comments

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.

The Agencies' Proposal

The agencies proposed a new provision in the CRA regulations to clarify and promote community engagement in the CRA examination process. Specifically, proposed § ____.46(a) affirmatively stated that the agencies ''encourage[ ] communication between members of the public and banks, including through members of the public submitting written public comments'' and also expressly stated that the agencies ''take these comments into account in connection with the bank's next scheduled CRA examination.'' [1609] This new provision specified that comments encouraged and considered include those that address ''community credit needs and opportunities *as well as* regarding a bank's record of helping to meet community credit needs.'' [1610] Proposed § ____.46(b) provided that members of the public may submit comments electronically to the relevant agency. Proposed § ____.46(c) explained that comments received by the agencies before the close of an examination would be considered in connection with that examination, while comments received after the close date of an examination would be considered in connection with the subsequent CRA examination.

The agencies requested feedback on other ways the agencies could encourage public engagement, and whether the agencies should ask for public comments on community credit needs and opportunities in specific geographic areas.

[1609] Proposed § ____.46(a).

[1610] *Id.* (emphasis added).

Comments Received

Additional ways to encourage public engagement. The agencies received many comments from a wide range of commenters. In general, the vast majority of these commenters supported the proposed public engagement provisions in § ____.46, expressing the view that public input is an important element in the CRA examination process, which the agencies should routinely solicit. Many of these commenters also argued that the current CRA rules and the proposal do a poor job of encouraging and valuing community input, asserting that community comments on examinations are not solicited and, when provided, are ignored or not taken seriously. These commenters offered numerous recommendations intended to promote public engagement and increase transparency and accountability on the part of examiners to consider the comments as part of the examination process. Recommendations included specific actions the agencies could take, for example: elevating the importance of public comments regarding the extent to which banks meet community needs; providing public commenters the ability to submit comments to the appropriate agency's website; developing clear instructions about to whom to send CRA comments and when the due date is for comments on specific CRA examinations; establishing a public registry for stakeholders who opt in to being contacted by examiners when a CRA evaluation is being conducted in their communities and service areas and a calendar of examinations with links for stakeholders to provide comments; and forwarding all public comments to the appropriate bank and requiring that banks post comments and their responses on the bank's website.

Commenters also made several other suggestions for agency action, including the following: publishing a list of organizations that submitted comments, identified by those led by people of color and women to encourage input from a diverse range of organizations; increasing the number of local community interviews and conducting proactive outreach with a variety of stakeholders, including community residents and historically-underserved groups, regarding bank performance and identification of the impact of activities on community needs; evaluating how well banks solicit and incorporate feedback from community stakeholders; providing details on how the agencies factor community input into the CRA evaluation; issuing a guidance document—similar to the illustrative list of activities—that would help banks identify vulnerable communities and build relationships to drive investment to those communities; assembling directors of community organizations by geographic area; using an opt-in system to notify interested parties when performance reviews are scheduled; and including provisions in the regulation that provide for strict actions against any bank that retaliates against community members because of any non-related community action, including comments filed under the proposal.

Commenters also recommended that the agencies impose certain requirements on banks to increase public engagement, for example: providing information to customers on how to comment on CRA performance periodically, including when opening an account; creating community advisory boards to facilitate public engagement; complying with the terms of Community Benefits Agreements; soliciting input from community groups, including climate and environmental organizations on bank practices relating to climate, displacement, discrimination, and other harmful practices, as well as how banks can best leverage their resources to get CRA consideration for community development activities; requiring documentation detailing public outreach to, and engagement with, organizations; and, as noted, requiring that banks post comments and their responses on the bank's website.

By contrast, a few commenters expressed the view that additional public engagement was not necessary and that the agencies already have community contacts that are consulted over the course of a CRA examination.

Comments related to the agencies' request for feedback regarding public comments on community credit needs and opportunities in specific geographic areas. Several commenters addressed the agencies' request for feedback regarding public comments on community credit needs and opportunities in specific geographic areas. All but one of these commenters stated that seeking and encouraging public comment in specific census tracts is necessary to address the particular needs of each community and provided several recommendations. For example, a few commenters noted that asking specific questions about community credit needs and bank performance would be helpful to examiners in probing whether banks have created specific programs responsive to identified needs and would be useful in conducting selfassessments and identifying unmet credit needs and other opportunities. Commenter feedback also included that any final rule must include requirements to ensure that community participation opportunities are accessible to people with disabilities and people with limited English proficiency, emphasizing the importance of culturally-appropriate communications and accessibility with respect to people with disabilities or limited language skills. Another commenter suggested that the agencies engage people who live in the specific geographic areas of interest and that U.S. Treasury Department-certified CDFIs may be able to help facilitate the process. One commenter noted that providing the public an opportunity to comment on their community credit needs and opportunities in specific census tracts might not be relevant for a small or intermediate bank's assessment areas due to the size and business model of that bank.

Final Rule

The agencies are adopting proposed § ____.46(a) through (c), providing for the submission and timing of written public comments on community credit needs and opportunities, as well as the bank's record of helping meet community credit needs, largely as proposed, with one revision in § ____.46(b). Specifically, the agencies removed the word ''electronically'' to make clear that comments may be provided both electronically and by mail. The agencies believe that the public engagement provisions, as finalized, will improve public engagement by establishing a regulatory process whereby the public can provide input on community credit needs and opportunities in connection with a bank's next scheduled CRA examination. This approach would be a compliment to, not a substitute for, examiners seeking feedback on bank performance from members of a bank's community through community contacts as part of the CRA evaluation. The agencies also believe that the final rule will increase transparency by clarifying the agencies' treatment of public comments in connection with CRA examinations.

The agencies have considered the comments received and appreciate the recommendations made. The agencies are sensitive to commenters' concerns regarding the level of importance given by the agencies to CRA public comments. Each agency has developed and maintains comprehensive internal procedures to consider CRA public comments and complaints, and CRA protests related to covered applications. Further, the agencies' interagency examination procedures also include requirements for examiners to review and consider CRA comments received by the bank or the respective agency. As explained in more detail in the section-by-section analysis of § ____.45, the agencies changed their practice several years ago, to lengthen the period for advanced notice of scheduled CRA examinations, and in this final rule are codifying this practice to give more time for the public to submit comments to the bank and/or its respective agency.

Regarding commenters' recommendations for increasing public engagement, the agencies have determined that some of the commenter recommendations are currently undertaken by the agencies such as publishing a calendar of examinations with links for stakeholders to provide comments and the due date and instructions for comments to be considered on specific CRA examinations. Examiners also accomplish several of commenters' recommendations related to outreach and consideration of public comments on the extent to which bank performance meets community needs by using community contacts in conjunction with a CRA examination. Examiners conduct interviews with local community contacts to gather information that assists in the development of performance context, to determine opportunities for participation by banks in helping to meet local needs, to understand perceptions on the performance of banks in helping to meet local credit needs, and to provide a context on the community to assist in the evaluation of a bank's CRA performance. While these processes address some of commenters recommendations related to outreach and the importance of public comments, the agencies will consider other recommendations, including the recommendation to factor community input into CRA examinations when developing training, guidance, and examination procedures for this final rule. Other recommendations will be implemented in other sections of this final rule, as discussed further in the section-by-section analyses of §§ ____.43 through ____.45.

The agencies believe that other recommendations are appropriately implemented in § ____.46 and other sections of this final rule. For example, the agencies believe that developing separate instructions regarding to whom to send comments and when comments are due is unnecessary. The final rule's provision for public notice by banks in § ____.44 and the provision for submission of public comments in § ____.46(b), instruct the public to send comments to the relevant agency's via electronically or by mail, as applicable. Thus, commenters may send their comments to the appropriate agency or to their bank, and the bank is required to place all comments and the responses to those comments regarding the bank's CRA performance in its public file as required under § ____.43(a).[1611] The agencies are sensitive to commenters' recommendation to require a response to all comments received; however, the agencies note that a bank response may not be appropriate in all instances (*e.g.,* complimentary comments, ''off-topic'' comments).

Similarly, § ____.46(c) provides the timing under which comments will be considered for a particular examination. Although the agencies considered establishing a specific window or a due date under which comments would be considered on specific CRA examinations, the agencies determined that this would carry the potential for inaccuracies, as well as challenges updating this information in a timely manner, as examination dates are subject to change depending on a wide variety of factors. As reflected in the final rule, the agencies believe that, if a comment is received during an examination, it is appropriate to consider the comment during that examination as these comments could contain important information that could affect the evaluation.

The agencies also agree with the commenters' suggestion that all comments received by the agencies should be forwarded to the appropriate bank. As explained below in the section-by-section analysis of § ____.46(d), the agencies are required under the final rule to forward to the bank all public comments received by the agencies regarding a bank's CRA performance. The agencies note that § ____.43(a)(1), as finalized, requires banks to include in their public file all written comments and bank responses, if applicable, 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. The final rule also requires, under § ____.43(c)(1), that the public file must be maintained on the bank's website if the bank maintains one. Therefore, all comments will be on

[1611] For further discussion of final § ____.43, see the corresponding section-by-section analysis above.

a bank's website to the extent a bank maintains one.[1612]

Regarding suggestions that the agencies establish a separate public registry and a calendar of examinations, the agencies note, as explained above, in the section-by-section analysis of § ____.45, that the public will be able to sign up to receive the agencies' notification for which calendar quarter examinations are scheduled so that the public can prepare comments. Also, in § ____.45, the final rule provides that the agencies will publish a list of banks scheduled for CRA examinations for the next two quarters, 30 days in advance of each calendar quarter. The agencies believe that these provisions will help ensure that the public has sufficient time for the public to prepare and provide comments on upcoming examinations.

Regarding the suggestion that the agencies publish a list of organizations led by people of color and women, the agencies note that the race, ethnicity, and gender of the individuals that lead these organizations is not necessarily known to the agencies, and that maintaining privacy and confidentiality is essential. For more information and discussion regarding the agencies' consideration of comments related to race- and ethnicity-related provisions for the final rule, see section III.C of this **SUPPLEMENTARY INFORMATION.**

The agencies believe that other recommendations would be best addressed outside the final rule. For example, although the agencies will not, as part of this final rule, be establishing a separate registry for comments, or developing an illustrative list of vulnerable communities similar to the illustrative list of community development activities in § ____.14, the agencies will continue to explore options related to these suggestions outside of the rule. This includes consideration of developing a portal to accept bank-specific comments from the public for agencies that do not already provide this tool, and other ways for the public to provide feedback on community credit needs and opportunities in specific geographic areas as a complement to, but distinct from, feedback on individual bank performance. In addition, each agency has a community affairs department that can be an effective resource to banks for identifying and connecting with vulnerable communities and populations. Community affairs departments also have contacts and conduct outreach with local community organizations throughout the country.

[1612] *See id.*

The agencies have also considered commenters' recommendations that the agencies evaluate how well banks solicit and incorporate feedback, and that the agencies impose certain requirements on banks to increase public engagement. The agencies recognize the critical role of public engagement in helping banks meet the credit needs of their communities. In considering these comments and the importance of public engagement, the agencies note that there are a multitude of ways that a bank can obtain valuable feedback from the public and its community, and these mechanisms are not equally effective for all banks and all communities. For this reason, the agencies believe that effective public engagement can be promoted by allowing banks to tailor their public engagement initiatives to their size and the unique characteristics of their communities, rather than for the agencies to prescribe the manner in which they must occur. In this regard, the agencies believe that agency training and outreach with banks can play an important role in encouraging accessibility to the public participation process with respect to, for example, people with disabilities or limited language skills, and will continue to consider ways to encourage inclusive community participation in the CRA process. Importantly, the CRA evaluation itself focuses on the results the bank produces from incorporating public feedback.

Finally, the agencies are appreciative of commenters' suggestions that public comments on community credit needs and opportunities and bank performance are necessary and should be provided through a portal at any time. Each agency will consider whether to establish outside of this final rule a way for the public to provide feedback on community credit needs and opportunities in specific geographic areas.

Section ____.46(d) Distribution of Public Comments

Consistent with current practice, proposed § ____.46(d) provided that the relevant agency ''forward all public comments received regarding a bank's CRA performance to that bank.'' Proposed § ____.46(d) also provided that each agency ''may also publish the public comments on its public website.'' Although the agencies did not receive any comments specifically addressing this provision, the agencies did receive comments requesting that the agencies forward public comments to the appropriate bank as explained above in the section-by-section analysis of § ____.46(a) regarding ways to increase public engagement. On consideration of the comments and further deliberation, the agencies are finalizing the portion of proposed § ____.46(d) providing that the agencies will forward all public comments received regarding a bank's CRA performance to the bank, and removing the reference to the agencies publishing public comments on their public websites.

The final rule memorializes the agencies' current practice of forwarding public comments received by the agencies to the appropriate bank for review and, if appropriate, a response to the issues raised in the public comment. The agencies believe that the process of forwarding the comments to the bank is critical in order to make adjustments and improvements, if needed, to the bank's efforts to serve its communities. Providing for the forwarding of these comments in the final rule will recognize the value of this practice, and help ensure consistency in its application, which the agencies believe will benefit banks in their efforts to meet the credit needs of their communities, as well as the communities they serve.

The agencies are also revising proposed § ____.46(d) by removing language from the regulatory text that states that each agency ''may also publish the public comments on its public website.'' The agencies have determined that agency-posted comments represent only a subset of comments received regarding banks in relation to the CRA and, therefore, would be incomplete, are redundant to a bank's public file,[1613] and further strain agency resources.

In relation to proposed § ____.46, the agencies requested feedback on whether the agencies should publish bank-related data, such as retail lending and community development financing metrics in advance of completing an examination to provide additional information to the public. As discussed below, most commenters responding to the agencies' request for feedback on this question generally believed that public availability of data is an important aspect of helping to determine whether banks are meeting the needs of their communities under the CRA. However, a few commenters did not support publishing certain data, including metrics, ahead of the conclusion of an examination.

As discussed in more detail in the section-by-section analysis of § ____.42, many commenters supported expanding

[1613] *See* current 12 CFR ____.43(a)(1) and final § ____.43(a)(1), discussed in the section-by-section analysis of final § ____.43(a).

the data collection and reporting requirements applicable to banks with assets of over $10 billion, to all large banks, with some commenters also recommending that the agencies' proposed deposits, lending, and community development data be made publicly available. Some of these commenters also recommended that the agencies develop a list of economic indicators for metropolitan and rural areas that could be used by the public to develop comments regarding performance context. Such economic indicators could include housing cost burdens, vacancy rates, unemployment rates, and percent of households in poverty, as well as homeownership and small business ownership rates. One commenter suggested that demographic indicators should include racial and ethnic breakdowns. One commenter recommended that the agencies work with the CFPB to release additional HMDA data, such as the number of units financed by a multifamily loan. Another commenter suggested the agencies make publicly available bank Call Reports, assessment area maps, HMDA data, the CRA public file, and the CFPB's section 1071 data.

Several commenters recommended various ways in which the data could be published in connection with the examination for added transparency. For example, some commenters recommended that the data be provided in various forms, such as, online with descriptions and definitions, as appropriate, that a lay person could understand; on the bank's website and on other government websites; and in a dashboard showing bank performance and benchmarks. Other commenters recommended that certain metrics in performance evaluations be published, including, for example, activities that meet one or more impact criteria.

In contrast, several commenters opposed making data publicly available in connection with an examination for several reasons, including that: the data is compiled in connection with a CRA evaluation and should be made public only when the final report of examination is delivered; and early release could cause misleading conclusions since the data is not final and adjustments are often made in response to examiner feedback and to ensure data integrity. One commenter warned that without a formal process for feedback and how the specific feedback would impact the final outcome on the bank's CRA rating, the process of examinations could be delayed and administrative burdens could be added to the agencies.

The agencies appreciate commenter suggestions and feedback regarding publication of data and recognize the importance of making information about a bank performance accessible to the public. The agencies considered comments suggesting that it would be helpful to publish metrics in advance of an examination to better inform public comments on bank performance and promote transparency. However, the agencies have determined that publishing metrics in connection with an examination is not feasible with respect to banks that do not report data, and might add delays to the completion of the CRA examination, or at minimum, complicate scheduling depending on who prepares the data, the available systems and tools to calculate the metrics, and how far in advance the metrics would be made public. Furthermore, bank metrics are based on data that are typically subject to validation prior to calculation of metrics and performance analysis. However, the agencies note that the final CRA evaluation includes data, facts, and conclusions for public disclosure and will take into account suggestions on the type of information that could be made available in the final CRA evaluation, such as information on the impact and responsiveness review for the Community Development Financing and Community Development Services Tests.

The agencies also appreciate suggestions regarding publication of data on economic indicators that could help the public develop comments regarding performance context. The agencies will consider these recommendations outside of the rule and will continue exploring the possibility of publishing additional data to inform public comment.

Section ____.51 Applicability Dates and Transition Provisions

The Agencies' Proposal

In proposed § ____.51, the agencies included provisions regarding the transition from the current CRA regulations to amended CRA regulations. In general, the agencies proposed a final rule effective date of the first day of the first calendar quarter that begins at least 60 days after publication in the **Federal Register**.[1614] Additionally, the agencies proposed staggered applicability dates for various provisions of the regulations.[1615] The agencies also proposed to begin conducting CRA examinations pursuant to the proposed performance tests two years after **Federal Register** publication of the final rule,[1616] and that in assessing a bank's CRA performance the agencies would consider a loan, investment, or service that was eligible for CRA consideration at the time the bank conducted the activity or at the time the bank entered into a legally binding commitment to make the loan or investment.[1617] Finally, the agencies proposed timing provisions regarding, respectively, continued applicability and sunset of the current regulations and applicability of the proposed regulations with respect to strategic plans.[1618]

As discussed further below, the agencies received numerous comments on these proposed transition provisions from various stakeholders and have increased the transition periods in the final rule by one year and, where appropriate, have made other changes to proposed § ____.51 in the final rule.

Section ____.51(a)(1) Applicability Dates in General

The Agencies' Proposal

In § ____.51(a)(1), the agencies proposed that the following provisions would become applicable to banks, and banks must comply with any requirements in these provisions, beginning on the first day of the first calendar quarter that is at least 60 days after publication of the final rule: (1) authority, purposes, and scope (proposed § ____.11); (2) facility-based assessment areas (proposed § ____.16); (3) performance standards for small banks (proposed § ____.29(a)); (4) intermediate bank community development performance standards (proposed § ____.29(b)(2)); and intermediate bank performance ratings (proposed § ____.29(b)(4)); (5) effect of CRA performance on applications (proposed § ____.31); (6) content and availability of public file (proposed § ____.43); (7) public notice by banks (proposed § ____.44); (8) publication of planned examination schedule (proposed § ____.45); (9) public engagement (proposed § ____.46); (10) applicability dates, and transition provisions (proposed § ____.51). In the proposal, the agencies explained that they believed that setting an applicability date for these provisions on the final rule's effective date is appropriate and would not present significant implementation burden to banks because the agencies proposed

[1614] *See* proposed § ____.51(a)(1).

[1615] *See* proposed § ____.51(a)(2).

[1616] *See* proposed § ____.51(b)(1).

[1617] *See* proposed § ____.51(b)(2).

[1618] *See* proposed § ____.51(c).

only minor amendments to these provisions relative to the current CRA regulations.

Comments Received

The agencies received numerous comments on the proposed applicability date for these provisions, with most commenters taking the position that the proposed applicability date provided banks insufficient time for implementation purposes and some commenters offering alternatives. Several commenters also stated that the final rule should be effective at the beginning of a calendar year to avoid subjecting banks to two regulatory frameworks during a single calendar year.

Final Rule

After reviewing the comments, the agencies have determined that establishing the same applicability date for all performance tests would reduce complexity and confusion for both the banking industry and agency examiners. Therefore, the agencies are amending the proposal to provide in final § ____.51(a)(2)(i) that the applicability date for the small bank performance evaluation [1619] and the intermediate bank performance evaluation [1620] will be January 1, 2026—the same date as for the final rule's other performance tests.

The agencies continue to believe, as proposed, that the final rule's effective date is appropriate for the remaining provisions listed above in light of the nature of the changes and their limited transition burden.

The final rule also makes a clarifying change to replace the language calculating the applicability date with the final rule's actual effective date. In addition, the agencies are making a technical change in final § ____.51(a)(1) by removing the following phrase included in the proposal: ''this part is applicable to banks, and banks must comply with any requirements in this part.'' The agencies acknowledge that including this phrase would have been inaccurate because some of the relevant provisions apply to the agencies rather than banks.

Section ____.51(a)(2) Specific Applicability Dates

Section ____.51(a)(2)(i)

The Agencies' Proposal

In § ____.51(a)(2)(i), the agencies proposed that the following provisions would be applicable to banks, and that banks must comply with any requirements in these provisions, one year after publication of the final rule in the **Federal Register**: (1) definitions (except for the definitions of ''small business'' and ''small farm'') (proposed § ____.12); (2) community development definitions (proposed § ____.13); (3) qualifying activities confirmation and illustrative list of activities (proposed § ____.14); (4) impact review of community development activities (proposed § ____.15); (5) retail lending assessment areas (proposed § ____.17); (6) areas for eligible community development activity (proposed § ____.18); (7) performance tests, standards, and ratings, in general (proposed § ____.21); (8) Retail Lending Test (proposed § ____.22); (9) Retail Services and Products Test (proposed § ____.23); (10) Community Development Financing Test (proposed § ____.24); (11) Community Development Services Test (proposed § ____.25); (12) wholesale or limited purpose banks (proposed § ____.26); (13) strategic plan (§ ____.27); (14) assigned conclusions and ratings (proposed § ____.28); (15) certain provisions for intermediate banks (proposed § ____.29(b)(1) and (3)); (16) certain data collection and data reporting requirements (proposed § ____.42(a) and (c) through (f)); and (17) appendices A through F. The agencies explained that they believed that a one-year transition period would provide banks with the appropriate time to implement these provisions.

Comments Received

The agencies received numerous comments on this provision. The vast majority of commenters stated that the one-year transition period in proposed § ____.51(a)(2)(i) was insufficient, with many suggesting alternatives ranging from 18 months to five years. Several commenters further stated that the proposed one-year transition period would undermine efforts to modernize and improve the CRA framework and referenced the scale and complexity of the proposal as the basis for their concern. Other commenters focused on the time needed for stakeholders to implement the new regulations, including to build, test, and operationalize a new CRA program, and to marshal and deploy the requisite financial, technological, compliance, operational, administrative, and personnel resources. Several commenters compared implementing a new CRA framework to the significant undertaking required to implement HMDA amendments.

Commenters stated that a longer transition period was necessary for the agencies themselves to prepare for a new CRA framework. These commenters referenced the need for the agencies to: clarify elements of the new framework; verify that the final ratings framework is properly calibrated; proactively engage with stakeholders; and allow any economic impact from the final rule to normalize. Other commenters suggested that the agencies use the transition period to focus on regulatory infrastructure, interagency coordination, examiner recruitment and training, publication of the list of permissible and non-permissible community development activities, and standardization of their resources (*e.g.,* examination procedures and performance evaluation templates). Another commenter stated that banks should not be required to implement the final rule until the agencies publish the final rule's metrics, benchmarks, multipliers, and thresholds.

Commenters also focused on how the proposed transition period would negatively impact banks of different sizes and stated that all banks needed more time. One of these commenters suggested that the agencies tailor the implementation schedule based on bank size. This commenter stated that if larger banks, which the commenter asserted are the best equipped to adjust to a final CRA framework, were the first banks required to implement the new regulations, the agencies could learn from this experience and address any unintended consequences before smaller banks were required to implement the new framework.

Many commenters focused on the specific effects that the proposed rule would have on bank processes, procedures, programs, systems, and controls and stated that it would take longer than one year to implement these changes. For example, a commenter stated that it will need to rebuild virtually all facets of its bank-wide CRA program. Another commenter stated that the proposal would not provide sufficient time to coordinate the necessary compliance, financial, operational, and technological rollout.

Numerous commenters addressed the staffing needs associated with implementing and administering the new regulations, noting that many banks would need to hire new staff or reassign existing staff and to train all staff on the new regulations and related systems. A few commenters noted that nationwide labor shortages may affect the ability of banks to transition to a new framework.

Many other commenters noted that, as proposed, banks would be required to comply with the current CRA framework while implementing a new

[1619] *See* proposed § ____.29(a).

[1620] *See* proposed § ____.29(b).

CRA framework. Some commenters also referenced dual compliance obligations related to Federal and State CRA laws. Additionally, a commenter stated that providing banks with an extended transition period would ensure that credit unions do not benefit from a comparatively advantageous regulatory environment.

Many commenters addressed the expected concurrent transitioning to both a new CRA framework and the CFPB's section 1071 framework. Some noted that the dual CRA and section 1071 transitions could exacerbate staffing challenges, threaten the integrity of relevant data, present technological challenges, and lead to unintended consequences. One commenter noted the budgetary considerations associated with implementing both frameworks. Other commenters encouraged the agencies and the CFPB to coordinate on CRA and section 1071 implementation. Several commenters stated that regulatory requirements should be designed to avoid dual collection and reporting.

Numerous commenters noted that many stakeholders would need to rely on third-party vendors to implement a new CRA framework. At least one commenter noted that in prior rulemakings, banks' ability to test products and implement the rules was delayed because vendors did not have enough time to develop the requisite products. Commenters also noted that the demands on vendors would be exacerbated by the need to implement both the section 1071 regulations and new CRA regulations.

Several commenters emphasized the importance of ensuring that the transition period provides sufficient time for training stakeholders on the new rule and how the agencies would apply it, with at least one commenter suggesting interagency training. One commenter suggested that the agencies summarize the final rule's applicability dates to help with the transition. Another commenter suggested that the comment period remain open during the training period. Other commenters stated that the agencies should outline the support they will provide to banks, especially with respect to assessment area and data collection provisions.

The agencies also received specific comments about the transition to implementing the proposed facility-based assessment area and retail lending assessment area provisions, noting that it will take time for banks to establish corresponding administrative oversight and to meet the new benchmarks. Another commenter stated that the agencies should allow banks to have implementation and compliance flexibility.

Some commenters offered the view that the agencies should evaluate the final rule after implementation. For example, a commenter stated the agencies should study what does and does not work with the new regulations and, as needed, update the CRA framework after implementation. Other commenters suggested that the agencies test the final rule on banks of different sizes and then, if necessary, revise or clarify the final rule. A commenter encouraged the agencies to invite public comment on the new rule after the first examinations under the final rule.

Another commenter stated that the Retail Lending Test and the Community Development Financing Test should not be effective until a bank's evaluation period that begins at least three years after the agencies publish the community and market benchmarks necessary to assess compliance with these performance tests.

Many commenters specifically referenced the proposed data collection and maintenance requirements when explaining why a one-year transition period was insufficient. One commenter noted that the proposal would require banks to collect and format data that they currently do not collect, while other commenters focused on the challenges of ensuring the quality and integrity of a bank's data within the proposed transition period.

Final Rule

After considering the comments received, the agencies are revising proposed § ____.51(a)(2)(i) to provide additional time relative to the proposal for transitioning to these provisions and to provide that the applicability date begins at the start of a calendar year. Pursuant to final § ____.51(a)(2)(i), banks will have until January 1, 2026, to comply with the following: final §§ ____.12 through ____.15, ____.17 through ____.30, and ____.42(a); the data collection and maintenance requirements in final § ____.42(c) through (f); and final appendices A through F. The agencies moved this applicability date to the beginning of the calendar year to align the data collection and maintenance with evaluation periods, which typically consist of whole calendar years.

Additionally, the final rule provides that the definitions of "small business" and "small farm" in final § ____.12 take effect on January 1, 2026, instead of one year after the performance tests as proposed, to align with the corresponding performance standards. This change is necessary because the definitions of "small business" and "small farm" are relevant to, among other things, determining which loans, investments, or services meet the community development criteria under final § ____.13, evaluating a bank's small business and small farm lending under the Retail Lending Test, and evaluating a bank's retail banking services and retail banking products under the Retail Services and Products Test. In the current regulations, "small business" and "small farm" are not explicitly defined, and therefore, if these definitions are not effective until one year after the new performance standards are applicable, banks will be unable to determine with certainty what these terms mean.

The final rule also makes a technical correction to provide that the data collection and maintenance requirements under final § ____.42(a), but not the data reporting requirements under final § ____.42(b), are applicable on January 1, 2026. As described in the proposal's preamble, the agencies intended to have the final rule's reporting requirements take effect one year after the collecting and maintenance requirements, but this intent was not accurately reflected in the proposed regulatory text.[1621] As discussed below, the reporting requirements under final § ____.42(b) through (f) are applicable one year later, on January 1, 2027, with data reporting required by April 1 beginning in 2027.

The agencies also are making the same technical change in final § ____.51(a)(2)(i) and (ii) as discussed above regarding final § ____.51(a)(1) to remove the proposed bank applicability and compliance language because some of the relevant sections apply to the agencies, and not to banks.

The agencies believe that providing until January 1, 2026, or January 1, 2027, as applicable, for these provisions balances the concerns raised by commenters for an adequate transition period with the needs of banks' communities, including low- and moderate-income neighborhoods, to benefit from modernized CRA regulations. Further, the agencies believe that, with consideration given to bank size, banks have the resources necessary to adjust to the new regulatory framework during this revised transition period. As commenters suggested, during the transition period the agencies will be

[1621] *See* 87 FR 33884, 34005 (June 3, 2022) ("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 1of the year following the first year of data collection.").

focused on interagency coordination and developing templates, tools, and training to help banks implement the new CRA framework. The agencies also note that they provided a shorter transition period for some of the substantive provisions in the 1995 interagency CRA final rule.[1622]

The agencies also believe that the transition periods in the final rule are appropriate because of the final rule's approach of tailoring performance standards and data requirements by bank size and business model. Small banks are generally not subject to the new performance standards in the CRA final rule unless they opt into the Retail Lending Test. Intermediate banks and small banks will not be subject to any additional data collection or reporting requirements under the final rule, thereby limiting transition burden. Further, the final rule updates the asset-size thresholds for determining which banks are considered small banks and which are intermediate banks, such that approximately 609 banks that would have been designated as intermediate small banks under the current regulations will now be considered small banks and 135 banks that would have been large banks under the current regulations will now be considered intermediate banks.[1623] Under the final rule, newly designated intermediate banks that were formerly large banks will have reduced reporting requirements.[1624] The agencies believe that large banks that are subject to any additional CRA requirements are large enough to manage the transition in the allotted time. In many cases, such as the requirement to geocode deposits, the banks likely already collect the requisite data, reducing the associated challenges that they might otherwise confront.

Further, the agencies believe that the changes made to the final rule will assist banks in transitioning to the final rule. Specifically, the final rule includes changes to the provisions regarding retail lending assessment areas, resulting in fewer banks having to delineate retail lending assessment areas and, for those that do, generally having to delineate fewer retail lending assessment areas.[1625] Additionally, the final rule revised the proposed Retail Lending Test such that open-end home mortgage loans and multifamily loans will not be evaluated as major product lines under that performance test. The agencies have also reduced burden by revising the final rule such that a bank subject to the Retail Lending Test will only have its automobile loans evaluated if the bank is a majority automobile lender or the bank opts to have its automobile loans evaluated.

In response to commenters who suggested a tailored implementation period, as noted above the default performance test applicable to for small banks will be the same as under the current regulations. Small banks will have as much time as necessary to transition to being evaluated under the Retail Lending Test if they eventually opt to do so. Additionally, as explained in greater detail in the section-by-section analysis for final § ____.42, the new data collection, maintenance, and reporting requirements in the final rule apply only to large banks or, in some cases, only to large banks with assets of greater than $10 billion. The final rule is tailored to ensure that only banks with sufficient resources are subject to the data collection and maintenance requirements that are applicable on January 1, 2026, and the data reporting requirements that are applicable on January 1, 2027.

The agencies acknowledge that the final rule will impact bank processes, procedures, programs, systems, and controls. However, as discussed above, the agencies believe that the final rule's revised implementation period is sufficient for banks to implement necessary changes. As noted, the agencies expect to develop tools and training to help banks transition to and implement the new regulatory requirements.

With regard to staffing concerns, the agencies understand that banks may need to hire additional staff or that bank staff may need to be reassigned to work on CRA implementation. However, based on the agencies' supervisory experience, banks have demonstrated the ability to comply with major changes to other regulatory requirements. The agencies believe that implementing the final rule's requirements represents a comparable transition for banks.

Although the agencies understand that banks must comply with current CRA regulations while implementing the new CRA framework, this would be true of any transition period provided in the final rule.[1626] The agencies acknowledge that some States have their own CRA laws and regulations that apply to State-charted banks and savings associations, but the agencies do not possess authority in connection with these State laws and regulations or any control over when or if these States might update their CRA regulations to conform with the final rule.

The agencies understand that many banks will rely on third-party vendors to assist with implementing the final rule. The agencies acknowledge the suggestion that the transition period should be longer for banks that rely on vendors; however, the agencies believe that providing a longer transition period for these banks would unfairly disadvantage other banks that handle the majority, or all, of their compliance needs internally. The agencies further believe that the increased transition time in the final rule provides sufficient time for banks working with vendors to implement the amended regulations. The agencies also recognize that banks may need to implement both the Section 1071 Final Rule and the amended CRA regulations on overlapping timelines. However, for the reasons discussed above, the agencies believe the transition period provides sufficient time before many final rule provisions are applicable on January 1, 2026. Moreover, the agencies eventually intend to leverage section 1071 data, which will minimize data collection, maintenance, and reporting burden on large banks.

The agencies are committed to maintaining an open dialogue with stakeholders during the implementation period. This will allow all parties, including the agencies, to learn from the implementation process and develop best practices. As discussed above, the agencies agree that interagency training will be vital during this period and intend to develop training for banks, examiners, and other key stakeholders to ensure that they understand the regulatory requirements. The agencies expect to issue clarifying guidance to address relevant issues that arise following publication of the final rule.

Section ____.51(a)(2)(ii)

The Agencies' Proposal

In proposed § ____.51(a)(2)(ii), the agencies provided that the proposed § ____.12 definitions of "small business"

[1622] *See* 60 FR 22156, 22176 (May 4, 1995) (providing a transition period of less than one year for the data collection requirements in the 1995 CRA rule).

[1623] *See* the section-by-section analysis for final § ____.12 for more information.

[1624] Under the current rule, small banks, which include intermediate small banks, do not have any data collection, maintenance, or reporting requirements.

[1625] *See* the section-by-section analysis for final § ____.17.

[1626] During the period between the final rule's effective date and the applicability dates in the final rule for certain provisions, the current CRA regulations will remain applicable for these provisions. *See* discussion of § ____.51(a)(2)(iii), below. (The final rule includes each agency's current CRA regulation in new appendix G and sunsets these appendices as of the final applicability date, at which time all provisions of the final rule will be applicable.)

and ''small farm'' (which are based on the gross annual revenue size) would be applicable two years after the **Federal Register** publication of a final rule. The agencies explained that the applicability date for these definitions would be on or after the CFPB makes the section 1071 regulations effective. The agencies sought feedback on whether to tie the applicability date of these definitions to when the CFPB finalized its section 1071 rulemaking or to provide an additional 12 months after the CFPB finalized its rulemaking. The agencies also asked when they should sunset the ''small business loan'' and ''small farm loan'' definitions.

Additionally, the agencies proposed that banks that are required to collect new CRA data under amended CRA regulations starting 12 months after publication of the final rule be required to report data to the appropriate Federal financial supervisory agency two years after **Federal Register** publication of a final rule, by April 1 of the year following the first year of data collection and maintenance. The agencies believed that the applicability dates for these provisions would give banks sufficient time to implement the proposed data collection, maintenance, and reporting framework. The agencies also proposed that the data disclosure requirements in proposed § ____.42(b) and (g) through (i) would become applicable the year following the first year of data collection.

Comments Received

Most commenters that provided input on this aspect of the proposal indicated that they required additional time than proposed to comply with new small business lending and small farm lending definitions. Some stated that the new definitions should not be applicable in the middle of a bank's evaluation period and, in these cases, banks should be allowed to use the current definitions. With respect to the agencies' question on the timing of the applicability of the new CRA small business and small farm definitions in light of the section 1071 rulemaking, commenter views were mixed. Several commenters supported tying the effective dates to the effective date of the section 1071 rulemaking, but others supported provision of an additional year. A commenter requested that the agencies exhibit flexibility, while another explained that providing banks with time for data validation and analysis using consistent definitions would promote accurate metrics for both the CRA and section 1071 frameworks. Another commenter stated that it was difficult to evaluate the agencies' CRA proposal because the section 1071 rulemaking was not yet final.

With respect to the agencies' question on sunsetting the current small business loan and small farm loan definitions, commenters' suggestions included sunsetting the current definitions: at the end of the calendar year after the new definitions are effective; within 12 months of publication of a CRA final rule; when banks transition to reporting section 1071 data; one year after banks implement the section 1071 regulations; and when the current small business loan and small farm definitions are not applicable to any examination data.

Numerous commenters also addressed the transition period for the data reporting requirements in the rule, stating that the proposed transition period is insufficient. As with the data collection and maintenance requirements, many commenters addressed the issues related to transitioning to both a new CRA framework and the CFPB's section 1071 regulations. Other commenters said that banks should not be required to report data under two different CRA frameworks in the same calendar year. Another noted that CDFI banks already have an unsupportable amount of data reporting due by March 1. One commenter stated that all banks, particularly large and complex ones, will need to invest significant resources to set up new data collection, maintenance, and reporting mechanisms and recommended a longer transition period for new reporting requirements that is at least 36 months before the beginning of a bank's first evaluation period.

Final Rule

To align the data reporting requirements with the January 1, 2026, applicability date in the final rule for the data collection and maintenance requirements, the final rule provides that all data reporting requirements are applicable on January 1, 2027, instead of two years after publication in the **Federal Register**, as proposed. Because final § ____.42(b) provides that banks are required to report data by April 1 of the year following the collection of data, this means that banks will have more than three years following the publication of the final rule before they will need to report data under the final rule. As with the data collection and maintenance requirements and as explained in the section-by-section analysis for final § ____.42, the final rule's new data reporting requirements are applicable to large banks.

As noted above, the agencies are finalizing the proposed § ____.12 definitions of ''small business'' and ''small farm,'' and changing the applicability date for these definitions to January 1, 2026, to align with the performance standards. Without this change, there would be ambiguity in the amended regulations in instances where those defined terms are used, including in final §§ ____.13, ____.22, and ____.23.

With respect to the agencies' transition to using section 1071 data, as indicated in the section-by-section analysis for final § ____.12, the agencies have removed proposed references to section 1071 data in the final rule's regulatory text. Instead, the agencies are including amendments in the final rule that provide for a transition to section 1071 small business and small farm lending data once these data becomes available. These transition amendments implement the intent of the agencies articulated in the proposal to leverage section 1071 data while accounting for the current uncertainty surrounding the availability of that data. Specifically, when effective, these transition amendments will add appropriate references to the Section 1071 Final Rule, remove references to Call Report-based small business and small farm data, and make other corresponding changes to the final rule regulatory text.

The agencies are not including an effective date for these section 1071-related transition amendments in the final rule. Instead, once the availability of section 1071 data is clarified, the agencies will provide appropriate notice in the **Federal Register** of the effective date of the transition amendments. The agencies expect that the effective date will be on January 1 of the relevant year to align with the final rule's data collection and reporting, benchmark calculations, and performance analysis, which all are based on whole calendar years.

Section ____.51(a)(2)(iii)

Because the current CRA regulations will continue to apply until the above applicability dates take effect, the agencies have included in their agency-specific amendments a new appendix G that contains the current CRA regulations. The agencies have also added a new paragraph (a)(2)(iii) to § ____.51 that references this appendix. Specifically, this paragraph provides that, prior to the applicability dates in paragraphs (a)(2)(i) and (ii) of the section, banks must comply with the relevant provisions of the CRA regulations in effect on the day before the final rule's effective date, as set forth in appendix G. This paragraph further provides that, the relevant provisions set forth in appendix G continue to be applicable to CRA performance evaluations pursuant to 12 U.S.C. 2903(a)(1) that assess activities that a bank conducted prior to the date the final rule became applicable, except as provided in paragraphs (c) and (d), as discussed below. Appendix G will be effective until January 1, 2031, when the agencies expect the appendix to no longer be necessary.

Section ____.51(b) HMDA Data Disclosures

Section ____.51(c) Consideration of Bank Activities

The Agencies' Proposal

Proposed § ____.51(b)(1) provided that the agencies would begin conducting CRA examinations pursuant to the 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, and for strategic plan banks, beginning two years after **Federal Register** publication of a final rule. The preamble to the proposed rule noted that examinations conducted after this date would evaluate bank activities conducted during the prior year, for which the proposal's requirements related to bank activities would already be effective. The agencies further explained in the preamble to the proposed rule that CRA examinations conducted immediately after this date would use modified procedures until peer data and applicable benchmarks become available.

Proposed § ____.51(b)(1) also provided that the agencies would comply with the HMDA data disclosure requirements in § ____.42(j) beginning two years after publication of a final rule.

Proposed § ____.51(b)(2) provided that in assessing a bank's CRA performance, the agencies would consider any loan, investment, or service that was eligible for CRA consideration at the time that the bank conducted the activity or entered into a legally binding commitment to make the loan or investment.

Comments Received

The agencies received numerous comments on timing and related challenges regarding CRA examinations under a final rule, with several suggesting specific approaches to address these challenges. Some commenters expressed concern that, for many banks, the next examination would be based on two different CRA frameworks and that the first banks to be examined under the new framework would be at a disadvantage. Another commenter urged the agencies to provide banks with more time to understand how their performance will be measured in order to make any necessary course corrections. Many other commenters suggested alternatives for when examinations under the new framework should begin. For example, commenters suggested that examinations should begin when banks have had sufficient time or a full examination cycle to collect and report data under the amended regulations or in the calendar year following adequate data collection. Other alternatives suggested are when the agencies have collected and shared with banks two or more years of data and 24 months after the data collection requirements are applicable.

Final Rule

After carefully considering the comments, the agencies are removing the start dates for examinations pursuant to the amended regulations' performance tests from final § ____.51. This change will allow each agency to set its own policies and procedures for conducting examinations under the amended regulations, including those that cover periods when both CRA frameworks apply. The agencies will carefully consider the comments received when developing these policies and procedures. Not including the start dates for examinations in the final rule also ensures that the new performance standards will not be applied retroactively to banks' performance in calendar years prior to 2026.

The agencies are revising proposed § ____.51(b)(1), renumbered in the final rule as § ____.51(b), to reflect the increased length of the transition period in the final rule. Final § ____.51(b) provides that each agency will publish HMDA data disclosures pursuant to final § ____.42(j) on its respective website beginning on January 1, 2027. Final § ____.42(j) provides that the Board, FDIC, or OCC, as applicable, will publish HMDA demographic information for large banks on their respective websites. *See* the section-by-section analysis for § ____.42(j).

The agencies are finalizing as proposed final § ____.51(b)(2), renumbered in the final rule as § ____.51(c). Under the final rule, in assessing a bank's CRA performance the agency will consider any loan, investment, or service, or product that was eligible for CRA consideration at the time the bank conducted the activity or at the time that the bank entered into a legally binding commitment to make the loan or investment.

Section ____.51(d) Strategic Plans

Section ____.51(d)(1) New and Replaced Strategic Plans

Section ____.51(d)(2) Existing Strategic Plans

The Agencies' Proposal

The agencies proposed in § ____.51(a)(2)(i) that the strategic plan provisions in proposed § ____.27 would be applicable one year after publication of a final rule. Proposed § ____.51(c) provided that the current regulations would apply to any new strategic plan (including a strategic plan that replaces an expired strategic plan) that is submitted to an agency for approval on or after the date of the final rule's publication in the **Federal Register** but before proposed § ____.27 would be applicable. Strategic plans approved under this paragraph would generally remain in effect until the expiration date of the plan.[1627] Proposed § ____.51(c) further provided that a strategic plan in effect as of the publication date of the final rule would remain in effect until the expiration date of the strategic plan.

Comments Received

The agencies received only one specific comment on proposed § ____.51(c). This commenter recommended that the effective date of amended regulations relating to strategic plans be the later of the following: (1) the day after the bank's current Strategic Plan expires; and (2) when the asset-size category-based performance tests are applicable to banks not subject to a strategic plan. The commenter stated that this will ensure that banks that choose to be evaluated under a strategic plan are given enough time to comply with the new requirements if implementation requirements are delayed.

Final Rule

The agencies are revising proposed § ____.51(c), renumbered as final § ____.51(d), to provide that the current regulations will apply to any new strategic plan (including a strategic plan that replaces an expired strategic plan) that is submitted to an agency for approval between the date that the final rule is published in the **Federal Register** and November 1, 2025. The agencies

[1627] Specifically, the Board and the FDIC proposed in § ____.51(c)(2) that a strategic plan in effect as of the effective date of a final rule would remain in effect until the expiration date of that plan, and the OCC proposed in § 25.51 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.

have updated the date in this provision to reflect the increased transition period in the final rule for § ____.27. Additionally, the agencies are revising final § ____.51(d) to provide that the agencies will not accept any strategic plan submitted on or after November 1, 2025, and before January 1, 2026, the applicability date of the final § ____27. The agencies are making these changes to ensure there is sufficient time for each agency to make decisions about submitted strategic plans under the current regulations before the final rule's strategic plan provisions are applicable. Under the current regulations, the agencies have 60 days to act on a complete strategic plan once it is received.[1628] Therefore, implementing a cut-off date of November 1, 2025, for strategic plans allows the agencies time to review a strategic plan under the current regulations before addressing strategic plans received on or after January 1, 2026, and acting on such plans under the amended regulations. As a technical change, the final rule also clarifies that the current regulations will only apply to such a strategic plan submission that the agency has determined is a complete plan consistent with the requirements of current 12 CFR ____.27.

The agencies are finalizing the provision that a strategic plan subject to final § ____.51(d)(1), instead of approved under the relevant paragraph of the proposed rule (proposed § ____.51(d)(1)), remains in effect until expiration of the plan. This technical correction recognizes that the agencies do not approve a strategic plan under § ____.51(d)(1). Similarly, the agencies are finalizing as proposed § ____.51(c)(2), renumbered as final § ____.51(d)(2), providing that a strategic plan in effect as of the publication date of the final rule in the **Federal Register** remains in effect until the expiration date of the plan.

The agencies believe that the final rule appropriately addresses the commenter's suggestion because a strategic plan approved by the agencies under the current regulations remains in effect until expiration of the plan, and the new strategic plan provisions are applicable on January 1, 2026, the same time that the performance standards are applicable.

Section ____.51(e) First Evaluation Under This Part on or After February 1, 2024

The agencies are revising proposed § ____.51 to add a new paragraph (e), which provides that in its first performance evaluation under the final rule a large bank that has 10 or more facility-based assessment areas in any State or multistate MSA, or nationwide, as applicable, and that was subject to evaluation under the agencies' CRA regulation prior to February 1, 2024, 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 facility-based assessment area conclusion, calculated as described in paragraph g.2.ii of appendix D, of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas in that State or multistate MSA, or nationwide, as applicable. In a large bank's second examination under the final rule and thereafter, the requirement in final § ____.28(b)(4)(ii) will apply if a large bank has a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State, multistate MSA, or nationwide, as applicable.

The agencies believe this phased approach is appropriate because, for a large bank's first examination under the final rule, both this requirement—that a large bank receives an overall assessment area conclusion of at least ''Low Satisfactory'' in 60 percent or more of its facility-based assessment areas and retail lending assessment areas if it meets a threshold number of facility-based assessment areas and retail lending assessment areas—and the concept of retail lending assessment areas will be new. Therefore, at first, it is appropriate to only apply the minimum ''Low Satisfactory'' requirement to large banks with the most facility-based assessment areas in States, multistate MSAs, and nationwide, as applicable, as well as to provide banks with additional time to consider their performance under the Retail Lending Test in retail lending assessment areas. See the section-by-section analysis of § ____.28(b)(4)(ii) for a detailed discussion of this requirement.

V. Regulatory Analysis

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), an agency must consider the impact of its rules on small entities. Specifically, section 3 of the RFA requires an agency to provide a final regulatory flexibility analysis (FRFA) with a final rule unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities[1629] and publishes this certification and a statement of its factual basis in the **Federal Register**.

OCC

The OCC currently supervises 1,060 institutions (commercial banks, trust companies, Federal savings associations, and Federal branches or agencies of foreign banks, collectively banks),[1630] of which approximately 661 are small entities under the RFA.[1631] The OCC estimates that the final rule will impact approximately 617 of these small entities,[1632] of which the OCC anticipates that 560 entities will be small banks, 46 entities will be intermediate banks, and 6 entities will be limited purpose banks, as defined under the final rule, and 5 entities will be evaluated based on an OCC-approved strategic plan.

The OCC estimates the annual cost for small entities to comply with the final rule will be, on average, approximately $18,304 dollars per bank (143 hours[1633] × $128 per hour[1634]). In general, the OCC classifies the economic impact on

[1628] *See* current 12 CFR ____.27(g).

[1629] Small Business Administration (SBA) regulations currently define small entities to include banks and savings associations with total assets of $850 million or less, and trust banks with total assets of $47.0 million or less.

[1630] Based on data accessed using FINDRS on August 23, 2023.

[1631] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions ($850 million) and trust companies ($47 million). Consistent with the SBA General Principles of Affiliation in 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, 2022, 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.'' 13 CFR 121.201 fn. 8.

[1632] These 617 small entities are those OCC-regulated banks with total assets of $850 million or less or trust banks with total assets of $47.0 million or less that are subject to the OCC's CRA regulation.

[1633] In response to two comment letters the agencies received on the OCC's RFA analysis of the proposed rule, the OCC revised its hours per bank estimate in the final rule to 143 hours. The OCC arrived at this estimate by calculating a weighted average based on 120 hours for small entities classified as small or limited purpose pursuant to the final rule, 2,200 hours for small entities classified as strategic plan pursuant to the final rule, and 200 hours for small entities classified as intermediate pursuant to the final rule.

[1634] To estimate the compensation rate, the OCC reviewed May 2022 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 used $128.05 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (5.1 percent as of Q1 2023), plus an additional 34.3 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2022 for NAICS 522: credit intermediation and related activities).

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. The OCC defines a substantial number as five percent or more of OCC-supervised small entities, or 31 small entities for purposes of this final rule. Based on these thresholds, the OCC estimates the final rule will have a significant economic impact on approximately 14 small entities, which is not a substantial number.[1635] Therefore, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Board

For the reasons described below, the Board is certifying that the final rule will not have a significant economic impact on a substantial number of small entities. Board-supervised institutions that will be subject to the final 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 Board estimates that approximately 464 Board-supervised RFA small entities would be subject to the final rule.[1636] Of these, approximately 427 would be considered small banks under the final rule, and approximately 37 would be considered intermediate banks under the final rule. The final rule defines ''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.

The final rule includes a new evaluation framework for evaluating the CRA performance of banks that is tailored by bank size and business model. For example, the final rule establishes an evaluation framework containing 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 final rule includes data collection, maintenance, and reporting requirements necessary to facilitate the application of various tests.

Because the final rule maintains the current small bank evaluation process and the small bank performance standards, the final rule does not generally impose any new requirements with significant burden on Board-supervised small entities with less than $600 million in assets. Under the final rule, banks must collect, maintain, and report data on the activities of their operations subsidiaries or operating subsidiaries (unless the subsidiaries are independently subject to the CRA), as applicable. The Board estimates that this requirement impacts approximately 139 banks with an estimated annual burden of 38 hours per bank. For supervised small entities that are defined as intermediate banks under the final rule, *i.e.,* banks with assets between $600 million and $850 million, the final rule would add some additional compliance burden because these banks would be subject to the new Retail Lending Test. However, the Board does not believe that these requirements would impose a significant economic impact on banks. Specifically, with respect to the Retail Lending Test, these intermediate banks would not be subject to regulatory data collection and maintenance requirements for retail loans. In addition, these intermediate banks would be subject to community development performance standards that are substantially similar to the criteria for evaluating community development performance today. However, these intermediate banks could choose to be evaluated under the Community Development Financing Test and would then be required to collect and maintain the loan and investment data applicable to that test.

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 final rule. For the reasons described above, the Board is certifying that the final rule would not have a significant economic impact on a substantial number of small entities.

FDIC

The RFA generally requires an agency, in connection with a final rule, to prepare and make available for public comment a FRFA that describes the impact of the final rule on small entities.[1637] However, a FRFA is not required if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.[1638] The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[1639]

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. While some of the expected effects of the final rule are difficult to quantify, the FDIC believes that the final rule is unlikely to have a significant impact on a substantial number of small entities. Therefore, the FDIC certifies that the final rule will not have a significant economic effect on a substantial number of small entities. The FDIC's rationale for its determination is discussed below.

As of March 31, 2023, the FDIC supervises 3,012 insured depository institutions (IDIs), of which 2,306 are

[1635] In response to comment letters, the OCC also evaluated the impact of the final rule using a wage rate $150 per hour. Using this hourly rate, the OCC estimated the annual cost for small entities to comply with the final rule will be on average approximately $21,450 dollars per bank (143 hours × $150 per hour), and the final rule will have a significant economic impact on 20 small entities, which is not a substantial number.

[1636] Consistent with the General Principles of Affiliation in 13 CFR 121.103, the assets of all domestic and foreign affiliates are counted toward the $850 million threshold when determining whether to classify a depository institution as a small entity. 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.

[1637] 5 U.S.C. 601 *et seq.*

[1638] 5 U.S.C. 605.

[1639] The SBA defines a small banking organization as having $850 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.'' 13 CFR 121.201 (as amended by 87 FR 69118, effective Dec. 19, 2022). 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.'' 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of RFA.

defined as small entities by the SBA (''SBA-small entities'') for purposes of the RFA.[1640] The final rule would affect all FDIC-supervised institutions, therefore the FDIC estimates that the final rule would affect all 2,306 small entities. To avoid confusion the small and intermediate size categories of the final rule are referred to as ''CRA-small'' and ''CRA-intermediate'' to distinguish them from ''SBA-small entities'' in certain places below. Also, as the final rule renames the current ''intermediate small'' category as ''intermediate,'' for ease of reading the ''intermediate small'' category is referred to below as ''intermediate.''

As discussed in the **SUPPLEMENTARY INFORMATION**, the final rule would make CRA examinations more transparent and objective through the use of quantitative metrics and thresholds, thereby helping ensure that all relevant activities are considered and that the scope of the performance evaluation more accurately reflects the communities served by each institution. The final rule increases the asset size thresholds for the CRA-small and CRA-intermediate categories. This change will have an immediate effect on the examination requirements of some of these banks. Under the final rule, the total asset threshold for CRA-small IDIs changes from less than $376 million in total assets as of December 31 in either of the prior two calendar years, to less than $600 million in total assets as of December 31 in either of the prior two calendar years. Further, the final rule raises the minimum asset size for CRA-intermediate IDIs from $376 million in total assets as of December 31 in both of the prior two calendar years to $600 million in total assets as of December 31 in both of the prior two calendar years. Also, under the final rule the maximum asset size for CRA-intermediate IDIs increases from $1.503 billion in total assets as of December 31 in either of the prior two calendar years to $2 billion in total assets as of December 31 in either of the prior two calendar years. The asset size thresholds would be adjusted annually for inflation under the final rule, as they are under the current framework. Finally, limited purpose SBA-small entities, and SBA-small entities operating under strategic plans, would remain in their respective categories under the final rule.

Under the current framework, 1,759 of the 2,306 SBA-small entities are CRA-small, 527 are CRA-intermediate, 17 operate according to approved strategic plans, and three are designated as wholesale or limited purpose banks. Under the final rule, 2,104 of the 2,306 SBA-small entities are CRA-small, 182 are CRA-intermediate, and the number of institutions operating under strategic plans or that are limited purpose are unchanged. The final rule's upward adjustment of the asset size threshold for CRA-small banks reclassifies 345 institutions from CRA-intermediate to CRA-small.

CRA-small banks under the final rule have the option of continuing to have their CRA performance evaluated under the current CRA-small bank lending test or of opting into the Retail Lending Test. Similar to the current evaluation framework, under the final rule CRA-small banks rated ''Satisfactory'' may receive additional consideration for qualifying activities to attempt to achieve an institution-level rating of ''Outstanding.''

CRA-intermediate banks under the final rule are evaluated under the new Retail Lending Test and the current framework's community development test for CRA-intermediate banks, or may opt into the final rule's Community Development Financing Test. Similar to the current evaluation framework, under the final rule if rated ''Satisfactory'' an intermediate bank may receive additional consideration for other qualifying activities to attempt to achieve an institution-level rating of ''Outstanding.''

Additionally, SBA-small entities are likely to incur costs associated with making changes to their policies, procedures, and internal systems in order to comply with the final rule. However, the FDIC believes that these costs are likely to be low for the vast majority of SBA-small entities because, as mentioned previously, under the final rule CRA-small banks' performance will be evaluated under the current CRA-small bank lending test. As there are 1,759 SBA-small banks—representing 76 percent of all 2,306 SBA-small entities—in the CRA-small category under both the current and final rule's framework, the FDIC expects the vast majority of SBA-small entities to be only modestly affected by the final rule.

The agencies received two public comments on the RFA analysis in the NPR. Both of these commenters asserted that the estimated cost of complying with the NPR would be substantially higher than what the OCC—the only agency to provide estimated cost burdens for SBA-small banks in the NPR—had estimated. While the comments were not directed at the FDIC, the FDIC reviewed the comments and determined that while the commenters' claims may reflect their experiences or their institutions' experiences, the FDIC notes that compliance costs may vary substantially across institutions and the agencies' estimates are meant to be overall averages. As previously discussed, the FDIC incorporated a number of changes into the final rule as a result of public comments received regarding compliance burden. The agencies believe the initial burden estimates remain appropriate and have not made any changes to those estimates for this final rule.

In addition, some commenters addressed the agencies' PRA burden estimates for the information collection requirements of the proposed rule. The commenters generally believed that the agencies' estimates of annual burden were too low. The FDIC notes that PRA burdens, like compliance costs, may vary across institutions, and the agencies' PRA burden estimates are meant to be overall averages. The FDIC calculated the estimated burden associated with the rule, including implementation costs, based on the agencies' extensive experience with CRA compliance and estimating associated burden. The FDIC believes the estimates of burden hours are accurate related to the recordkeeping, reporting, and disclosure requirements of the final rule.

For the reasons described above, the FDIC certifies that the final rule will not have a significant effect on a substantial number of small entities.

Paperwork Reduction Act

Certain provisions of the final 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.

Comments Received

The agencies received four comments that appear to relate to the PRA addressing the agencies' estimated burden costs on the information collection requirements of the proposed rule. One commenter stated that the proposal would generally require considerable additional resources for implementation and ongoing costs to manage their CRA programs under the proposed rule. The commenter estimated that it could incur implementation costs of $150,000. This commenter also believed that complying with the proposed rule would require substantially more time than the

[1640] Call Report data (Mar. 31, 2023).

estimated yearly burden of 80 hours per year. Another commenter stated that the costs associated with implementing the proposal would be significantly greater than the agencies had estimated and could require significant investments at covered institutions, potentially including hiring several additional full-time employees. This commenter requested that the agencies provide a more detailed explanation of their estimations of the proposed rule's costs. Another commenter believed the estimated burden of 80 hours per year was very low, suggesting that another 500 hours, minimum, would be required for compliance. The commenter stated that the proposed rule is complex and would require significant investment by covered institutions to achieve compliance. An additional commenter stated that the agencies provided insufficient support for their burden estimates. This commenter requested that the agencies provide more details on the breakdown of estimated compliance costs and an analysis of how the potential costs might impact economic output.

As previously discussed, the agencies incorporated a number of changes into the final rule as a result of public comments received regarding compliance burden. The agencies have carefully reviewed their burden associated with recordkeeping, reporting, and disclosure for each section of the rule in light of these changes to the final rule and in consideration of the comments received. The agencies note that, consistent with the PRA, the PRA burden estimates reflect only the burden related to recordkeeping, reporting, and disclosure requirements in the final rule. PRA burdens, like compliance costs, may vary across institutions, and the agencies' PRA burden estimates are meant to be overall averages. The agencies do not have detailed data that would permit the agencies to precisely estimate the quantitative effect of the final rule for every type of institution. Accordingly, the burden estimates are shown based on the agencies' extensive experience with CRA compliance and estimating associated burden. The agencies estimated the associated burden by referencing the number of entities supervised by each agency and estimating the frequency of response and the time per response. The agencies believe the estimates of burden hours are reasonable considering the recordkeeping, reporting, and disclosure requirements of the final rule.

Final Rule

Under the final rule, the agencies retained the information collection provisions of the proposed rule, with certain modifications. The agencies have included a reporting burden for the community development illustrative list and confirmation of eligibility process pursuant to § ____.14. The agencies have included a recordkeeping burden for Home Mortgage Loans pursuant to § ____.42(a)(3). The agencies have also removed reporting requirements for Community development services pursuant to § ____.42(b)(4) and Consumer loans data—automobile loans pursuant to § ____.42(b)(2) Consumer loans data—automobile loans. However, recordkeeping requirements have been maintained for both provisions. More thorough discussion for both topics can be found in the **SUPPLEMENTARY INFORMATION** associated with § ____.42.

The agencies are extending for three years the information collections contained in the final rule, with several revisions. The information collections contained in the final 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 § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB. The Board will submit information collection burden estimates to OMB, and the submission will include burden for only Federal Reserve-supervised institutions.

Title of Information Collection: OCC Community Reinvestment Act Regulation; 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.

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 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 new or revised information collection requirements in the final rule are as follows:

Reporting Requirements

Section ____.14(b)(1) Request for confirmation of eligibility. A bank may request that the Board, FDIC, or OCC, confirm, in the format prescribed by that agency, that a loan, investment, or service is eligible for community development consideration.

Section ____.26 Bank request for designation as a limited purpose bank. Banks requesting a designation as a limited purpose bank must file a request in writing with the appropriate Federal financial supervisory agency at least 90 days prior to the proposed effective date of the designation.

Section ____.27 Strategic plan. Any bank may have its record of helping meet the credit needs of its entire community evaluated under a strategic plan, provided the appropriate Federal financial supervisory agency has approved the plan, the plan is in effect, and the bank has been operating under an approved plan for at least one year. Section ____.27 of the final rule sets forth the requirements for strategic plans, including the term of a plan; the treatment of multiple assessment areas; the treatment of operations subsidiaries or operating subsidiaries, as applicable, and affiliates that are not operations subsidiaries or operating subsidiaries; justification requirements; public participation; submission; content; and required amendments due to a change in material circumstances. Additionally, during the term of a plan, a bank could request that the appropriate Federal financial supervisory agency approve an amendment to the plan in the absence of a change in material circumstances. A bank that requests such an amendment must provide an explanation regarding why it is necessary and appropriate to amend its plan goals.

Section ____.42(b)(1) Small business loan and small farm loan data. A large bank must report annually by April 1 in prescribed electronic form, certain aggregate data for the prior calendar year for small business loans or small farm loans for each census tract in which the bank originated or purchased such loans.

Section ____.42(b)(2) Community development loans and community development investments data. A large bank and a limited purpose bank that would be a large bank based on the asset size described in the definition of a large bank, must report annually by April 1 in prescribed electronic form the following community development loan and community development investment data for the prior calendar year: general information on community development loans and community development investments; specific information on the community development loan or investment; indicators of the impact and responsiveness of the loan or investment; allocation of the dollar volume of the community development loan or community development investment to geographic areas served by the loan or investment; 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).

Section ____.42(b)(3) Deposits data. A large bank with assets greater than $10 billion must report annually by April 1 in prescribed electronic form deposits data for the previous calendar year including for each county, State, and multistate MSA and for the institution overall. The reporting includes 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. Any other bank that opts to collect and maintain deposits data must report these data in the same form and for the same duration as described in this paragraph. A bank that reports deposits data for which a deposit location is not available must report these deposits at the nationwide area.

Section ____.42(c) Data on operations subsidiaries or operating subsidiaries. To the extent that its operations subsidiaries, or operating subsidiaries, as applicable, engage in retail banking services, retail banking products, community development lending, community development investments, or community development services, a bank must collect, maintain, and report data for these activities for purposes of evaluating the bank's performance. For home mortgage loans, a bank must 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 or operating subsidiary that the bank would have collected and maintained under § ____.42(a)(3) had the loans been originated or purchased by the bank.

Section ____.42(d) Data on other affiliates. A bank that elects to have retail banking services, retail banking products, community development lending, community development investments, or community development services engaged in by an affiliate (that is not an operations subsidiary or operating subsidiary) considered for purposes of this part must collect, maintain, and report the loans and investments, services, or products the bank would have collected, maintained, and reported under § ____.42(a) and (b) had the loans, investments, services, or products been engaged in by the bank. For home mortgage loans, the bank must be prepared 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.

Section ____.42(e) Data on community development loans and community development investments 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 must collect, maintain, and report the lending and investments data they would have collected, maintained, and reported under § ____.42(a)(5) and (b)(2) if the loans or investments had been originated, purchased, refinanced, or renewed by the bank.

Section ____.42(f)(1) Facility-based assessment areas. A large bank and a limited purpose bank that would be a large bank based on the asset size criteria described in the definition of a large bank must collect and report by April 1 of each year a list of each facility-based assessment area showing the States, MSAs, and counties that make up each facility-based assessment area, as of December 31 of the prior calendar year, or the last date the facility-based assessment area was in effect, provided the facility-based assessment area was delineated for at least six months of the prior calendar year.

Section ____.42(f)(2) Retail lending assessment areas. A large bank with one or more retail lending assessment area delineated pursuant to § ____.17 must collect and report each year by April 1 a list of retail lending assessment area showing the States, MSAs and counties in the retail lending assessment area for the prior calendar year.

Recordkeeping Requirements

Section ____.42(a)(1) Small business loans and small farm loans data. A large bank must collect and maintain in prescribed electronic form, until the completion of its next CRA examination in which the data are evaluated, data on small business loans and small farm loans originated or purchased by the bank during the evaluation period.

Section ____.42(a)(2) Consumer loans data—automobile loans. A large bank for which automobiles are a product line must collect and maintain in prescribed electronic form, until the completion of the bank's next CRA examination in which the data are evaluated, data on automobile loans originated or purchased by the bank during the evaluation period. A small or intermediate bank for which automobiles are a product line may collect and maintain the same automobile loan data in a format of the bank's choosing, including in an electronic form prescribed by the appropriate Federal financial supervisory agency, until the completion of the bank's next CRA examination in which the data are evaluated.

Section ____.42(a)(3) Home mortgage loans. A large bank subject to 12 CFR part 1003 must collect and maintain in prescribed electronic form, until the completion of the bank's next CRA examination in which the data are evaluated, data on home mortgage loan applications, originations, and purchases outside the MSAs in which the bank has a home or branch office (or outside any MSA) pursuant to the requirements in 12 CFR 1003.4(e). A large bank that is not subject to 12 CFR part 1003 due to the location of its branches, but would otherwise meet the HMDA size and lending activity requirements pursuant to 12 CFR part 1003, must collect and maintain in electronic form, until the completion of the bank's next CRA examination in which the data are evaluated, data on closed-end home mortgage loan, excluding multifamily loans, originated or purchased during the evaluation period.

Section ____.42(a)(4) Retail banking services and retail banking products data. A large bank must collect and maintain in prescribed electronic form until the completion of its next CRA examination in which the data are evaluated, data on their retail banking services and retail banking products. These data include data regarding the bank's main offices, branches, and remote service facilities, and information with respect to retail banking services and retail banking products offered and provided by the bank during the evaluation period. Large banks with assets greater than $10 billion, large banks with assets of less than or equal to $10 billion that do not operate any branches, and large banks that request additional consideration for digital delivery systems and other delivery systems, must collect and maintain data on the range of services and products offered through those systems and digital and other delivery systems activity by individuals, families, or households in low-, moderate-, middle-, and upper-income census tracts. Large banks may also submit any additional information not required that demonstrates that their digital delivery systems and other delivery systems serve the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts. Large banks with assets greater than $10 billion or large banks with assets of less than or equal to $10 billion that request additional consideration for deposit products responsive to the needs of low- and moderate income individuals, families, or households must collect and maintain data including the number of responsive deposit products opened and closed in low-, moderate-, middle-, and upper-income census tracts, as well as the percentage of responsive deposit accounts in comparison to total deposit accounts. Pursuant to § ____.42(a)(4), a bank may opt to collect and maintain additional data not required that demonstrates that digital delivery systems and other delivery systems serve low- and moderate-income individuals, families, or households and low- and moderate-income census tracts and any other information that demonstrates the availability and usage of the bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts in a format of the bank's own choosing.

Section ____.42(a)(5) Community development loans and community development investments data. A large bank, a limited purpose bank that would be a large bank based on the asset size criteria described in the definition of a large bank, and an intermediate bank that opts to be evaluated under the Community Development Financing Test, must collect and maintain until the completion of its next CRA examination in which the data are evaluated, the following data for community development loans and community development investments originated, purchased, refinanced, renewed, or modified by the bank: general information on community development loans and community development investments; specific community development loan or investment information; indicators of the impact and responsiveness of the loan or investment; allocation of the dollar volume of the community development loan or community development investment to geographic areas served by the loan or investment; location information; and other information relevant to determining that an activity meets the standards of a community development loan or community development investment. Large banks must collect and maintain this information in prescribed electronic form while an intermediate bank that opts to be evaluated under the Community Development Financing Test, must collect and maintain this information in the format used by the bank in the normal course of business.

Section ____.42(a)(6) Community development services data. A large bank must collect and maintain in a format of the bank's choosing or in a standardized format provided by the agencies until the completion of its next CRA examination in which the data are evaluated, community development services data including community development services information, indicators of the impact and responsiveness of the activity, and location information.

Section ____.42(a)(7) Deposits data. A large bank with assets greater than $10 billion must collect and maintain annually in prescribed electronic form until the completion of its next CRA examination in which the data are evaluated, the dollar amount of its deposits at the county level based on deposit location. The bank allocates the deposits for which a deposit location is not available to the nationwide area. Annual deposits must be calculated based on average daily balances as provided in statements such as monthly or quarterly statements. Any other bank that opts to collect and maintain deposits data must collect and maintain the data in the same form and for the same duration as described in this paragraph in prescribed electronic form, until the completion of the bank's next CRA examination in which the data are evaluated.

Disclosure Requirements

Sections ____.43 and ____.44. Content and availability of public file and public notice by banks. Banks must maintain a public file, in either paper or digital format, that includes the information prescribed in each part. Banks are required to provide copies on request, either on paper or in another form acceptable to the person making the request, of the information in the bank's public file. A bank is also required to provide in the public area of its main office and branches the public notice set forth in appendix F.

The totality of the information collection requirements under the final rule are summarized below:

BURDEN ESTIMATES

Source and Type of Burden	Description	Estimated Number of Respondents	Average Estimated Hours per Response	Frequency of Response	Total Estimated Annual Burden
Reporting					
§ __.26	*Limited purpose banks.*				
	OCC	1	4	1	4
	Board	1	4	1	4
	FDIC	1	4	1	4
§ __.27	*Strategic plan.*				
	OCC	15	400	1	6,000
	Board	3	400	1	1,200
	FDIC	14	400	1	5,600
§ __.42(b)(1)	*Small business and small farm loan data.*				
	OCC	134	8	1	1,072
	Board	106	8	1	848
	FDIC	251	8	1	2,008
§ __.42(b)(2)	*Community development loan and community*				

	development investment data.				
	OCC	143	8	1	1,144
	Board	112	8	1	896
	FDIC	265	8	1	2,120
§ __.42(b)(3)	*Deposits data.*				
	OCC	46	8	1	368
	Board	35	8	1	280
	FDIC	52	8	1	416
§ __.42(c)	*Data on operations subsidiaries/operating subsidiaries.*				
	OCC	141	38	1	5,358
	Board	139	38	1	5,282
	FDIC	176	38	1	6,688
§ __.42(d)	*Data on other affiliates.*				
	OCC	86	38	1	3,268
	Board	238	38	1	9,044
	FDIC	208	38	1	7,904
§ __.42(e)	*Data on community development financing by a consortium or a third party.*				
	OCC	25	17	1	425
	Board	5	17	1	85
	FDIC	15	17	1	255
§ __.42(f)(1)	*Facility-based assessment areas data.*				

	OCC	171	2	1	342
	Board	112	2	1	224
	FDIC	265	2	1	530
§ __.42(f)(2)	*Retail Lending Assessment Areas.*				
	OCC	28	4	1	112
	Board	8	4	1	32
	FDIC	49	4	1	196
§ __.14(b)(1)	*Request for confirmation of eligibility.*				
	OCC	78	8	1	624
	Board	18	8	1	144
	FDIC	80	8	1	640
Recordkeeping					
§ __.42(a)(1)	*Small business and small farm loan data*				
	OCC	134	219	1	29,346
	Board	106	219	1	23,214
	FDIC	251	219	1	54,969
§ __.42(a)(2)	*Consumer loan data – automobile loans*				
	OCC	4	75	1	300
	Board	2	75	1	150
	FDIC	2	75	1	150
§ __.42(a)(3)	*Home Mortgage Loans*				
	OCC	1	8	1	8

	Board	14	8	1	112
	FDIC	28	8	1	224
§ __.42(a)(4)	*Retail banking services and retail banking products data.*				
	OCC	135	50	1	6,750
	Board	107	50	1	5,350
	FDIC	252	50	1	12,600
§ __.42(a)(5)	*Community development loan and community development investment data.*				
	OCC	144	300	1	43,200
	Board	113	300	1	33,900
	FDIC	266	300	1	79,800
§ __.42(a)(6)	*Community development services data.*				
	OCC	143	50	1	7,150
	Board	112	50	1	5,600
	FDIC	251	50	1	12,550
§ __.42(a)(7)	*Deposits data.*				
	OCC	46	350	1	16,100
	Board	35	350	1	12,250
	FDIC	52	350	1	18,200
Disclosures					
§ __.43	*Content and availability of public file.*				

§ __.44	*Public notice by banks.*				
	OCC	932	10	1	9,320
	Board	684	10	1	6,840
	FDIC	3,012	10	1	30,120
Total Estimated Annual Burden					
	OCC				130,891
	Board				105,455
	FDIC				234,974

Note: The agencies recognize burden for § __.42(a)(3)(i) under their existing information collections regarding the Home Mortgage Disclosure Act; 1557–0345, 7100–0247, and 3064-0046. Section __.42(b)(3) and (a)(2), (5), and (7) have burdens associated with optional or voluntary compliance. The agencies are estimating burden for optional or voluntary compliance with § __.42(b)(3) and (a)(2), (5), and (7) by adding one respondent to the Estimated Number of Respondents.

FDIC

The total estimated annual burden for OMB No. 3064–0092 is 234,974 hours, an increase of 3,392 hours from the most recent PRA renewal.[1641]

OCC

The total estimated annual burden for OMB No. 1557–0160 is 130,891 hours, an increase of 17,540 hours from the most recent PRA renewal.[1642]

Board

The total estimated annual burden for OMB No. 7100–0197 is 105,455 hours, an increase of 30,339 hours from the most recent PRA renewal.[1643]

[1641] *See* FDIC Community Reinvestment Act Information Collection Request, OMB No. 3064–0092, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202204-3064-001*.

[1642] *See* OCC Community Reinvestment Act Information Collection Request, OMB No. 1557–0160, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202202-1557-003*.

[1643] *See* Board Community Reinvestment Act Information Collection Request, OMB No. 7100–0197, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202104-7100-002*.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires an agency to prepare a budgetary impact statement before promulgating a final 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 and currently $182 million) in any one year. If a budgetary impact statement is required, section 205 of the UMRA (2 U.S.C. 1535) also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

For the final rule, the OCC estimates that expenditures to comply with mandates during the first 12-month period of the final rule's implementation will be approximately $91.8 million (approximately $7.9 million associated with increased data collection, recordkeeping or reporting; $82 million for large banks to collect, maintain, and report annually geographic data on deposits; and $1.9 million for banks' strategic plan submissions).[1644] Therefore, the OCC concludes that the final rule will not result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation and currently $182 annually) in any one year. Accordingly, the OCC has not prepared the budgetary impact statement.

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, an agency must consider,

[1644] Several commenters addressed the OCC's UMRA analysis of the proposed rule. Some of these commenters stated that the agency underestimated burden of the proposed rule, and others noted that the OCC provided insufficient information about its actual calculations. In drafting the final rule, the OCC considered these comments and made changes from the proposal where appropriate.

consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the rule will place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the rule.

The final rule will impose additional reporting, disclosure, or other requirements on banks, and the agencies determined the final rule's effective date and administrative compliance requirements in accordance with 12 U.S.C. 4802(a). Specifically, the agencies have considered the changes made by this final rule and believe that the rule's effective and applicability dates, described in the section-by-section analysis, will provide banks with adequate time to comply with the rule's requirements. The agencies also have considered the administrative burden of the final rule's administrative compliance by tailoring the final rule's performance standards based on bank size so that the new performance tests only apply to those banks with the greatest capacity to meet the rule's requirements and lend to their communities. For example, under the final rule, the agencies will continue to evaluate small banks under the small bank performance standards in the current CRA framework and to evaluate the community development performance of intermediate banks as under the current rule. Further, the final rule does not impose any new data requirements on small and intermediate banks. Further discussion of the consideration by the agencies of these administrative compliance requirements, and of the public comment received on these requirements as proposed, is found in the section-by-section discussion of the final rule in this **SUPPLEMENTARY INFORMATION**.

Section 302(b) of RCDRIA (12 U.S.C. 4802(b)) provides that new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions must generally take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form. Consistent with this requirement, this final rule will be effective on April 1, 2024, which is the first date of a calendar quarter.

Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act (APA) (5 U.S.C. 553(d)) requires that publication or service of a substantive rule generally be made not less than 30 days before its effective date. Consistent with this requirement, this final rule will be effective on April 1, 2024, which is more than 30 days after the final rule's publication in the **Federal Register**.

Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act (12 U.S.C. 4809(a)) requires each Federal banking agency to use plain language in its proposed and final rulemakings. In the proposed rule the agencies invited but did not receive comments on their use of plain language. In this final rule, the agencies use plain language.

Congressional Review Act

For purposes of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the OMB makes a determination as to whether a final rule constitutes a ''major rule.'' If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[1645] The agencies have submitted the final rule to the OMB for this major rule determination and the OMB has determined the final rule to be a major rule. As required by the Congressional Review Act, the agencies are submitting the appropriate report to Congress and the Government Accountability Office for review.[1646]

Text of Common Rule (All Agencies)

■ The text of the agencies' common rule text appears below:

PART ____ COMMUNITY REINVESTMENT

Subpart A—General

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*

[1645] *See* 5 U.S.C. 804(2).

[1646] *See* 5 U.S.C. 801(a)(1).

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 MSA (as defined in this section), if an individual, family, household, or census tract is located in an MSA that has not been subdivided into metropolitan divisions, or for the metropolitan division, if an individual, family, household, or census tract is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if an individual, family, household, or census tract is located in a nonmetropolitan area.

Assets means a bank's total assets as reported in Schedule RC of the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161, 324, 1464, or 1817, as applicable (Call Report), or Schedule RAL of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks as filed under 12 U.S.C. 1817(a), 3102(b), or 3105(c)(2), as applicable.

Branch means a staffed banking facility, whether shared or unshared, that the [Agency] approved or authorized as a branch 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.

Closed-end home mortgage loan has the same meaning given to the term ''closed-end mortgage loan'' in 12 CFR 1003.2, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in this section.

Combination of loan dollars and loan count means, when applied to a particular ratio, the average of:

(1) The ratio calculated using loans measured in dollar volume; and

(2) The ratio calculated using loans measured in number of loans.

Community development means activities described in § ____.13(b) through (l).

Community Development Financial Institution (CDFI) means an entity that satisfies the definition in section 103(5)(A) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5)) and is certified by the U.S. Department of the Treasury's Community Development Financial Institutions Fund as meeting the requirements set forth in 12 CFR 1805.201(b).

Community development investment means a lawful investment, including a legally binding commitment to invest, that is reported on Schedule RC–L of the Call Report or on Schedule L of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, as applicable; deposit; membership share; grant; or monetary or in-kind donation that supports community development, as described in § ____.13.

Community development loan means a loan, including a legally binding commitment to extend credit, such as a standby letter of credit, that supports community development, as described in § ____.13. A community development loan does not include any home mortgage loan considered under the Retail Lending Test in § ____.22, with the exception of one-to-four family home mortgage loans for rental housing with affordable rents in nonmetropolitan areas under § ____.13(b)(3).

Community development services means the performance of volunteer services by a bank's or its affiliate's board members or employees, performed on behalf of the bank, where those services:

(1) Support community development, as described in § ____.13; and

(2) Are related to the provision of financial services, which include credit, deposit, and other personal and business financial services, or services that reflect a board member's or an employee's expertise at the bank or affiliate, such as human resources, information technology, and legal services.

Consumer loan means a loan to one or more individuals for household, family, or other personal expenditures and that is one of the following types of loans:

(1) *Automobile loan,* as reported in Schedule RC–C of the Call Report;

(2) *Credit card loan,* as reported as ''credit card'' in Schedule RC–C of the Call Report;

(3) *Other revolving credit plan,* as reported in Schedule RC–C of the Call Report; and

(4) *Other consumer loan,* as reported in Schedule RC–C of the Call Report.

County means any county, county equivalent, or statistically equivalent entity as used by the U.S. Census Bureau pursuant to title 13 of the U.S. Code.

Deposit location means:

(1) For banks that collect, maintain, and report deposits data as provided in § ____.42, the address on file with the bank for purposes of the Customer Identification Program required by 31 CFR 1020.220 or another documented address at which the depositor resides or is located.

(2) For banks that do not collect, maintain, and report deposits data as provided in § ____.42, the county of the bank facility to which the deposits are assigned in the FDIC's Summary of Deposits.

Depository institution means any institution subject to the CRA, as described in 12 CFR 25.11, 228.11, and 345.11.

Deposits 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 United States 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; and

(2) For banks that do not collect, maintain, and report deposits data as provided in § ____.42, *deposits* means a bank's deposits as reported in the FDIC's Summary of Deposits as required under 12 CFR 304.3(c).

Digital delivery system means a channel through which banks offer retail banking services electronically, such as online banking or mobile banking.

Distressed or underserved nonmetropolitan middle-income census tract means a census tract publicly designated as such by 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), 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 population 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.''

Evaluation period means the period, generally in calendar years, during which a bank conducted the activities that the [Agency] evaluates in a CRA examination, in accordance with the [Agency]'s guidelines and procedures.

Facility-based assessment area means a geographic area delineated pursuant to § ____.16.

High Opportunity Area means an area identified by the Federal Housing Finance Agency for purposes of the Duty to Serve Underserved Markets regulation in 12 CFR part 1282, subpart C.

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.

Income level includes:

(1) *Low-income,* which means:

(i) For individuals, families, or households, 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, families, or households, 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, families, or households, 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, families, or households, 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, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of at least $600 million as of December 31 in both of the prior two calendar years and less than $2 billion as of December 31 in either of the prior two calendar years. The [Agency] adjusts and publishes the figures in this definition annually, 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, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of at least $2 billion as of December 31 in both of the prior two calendar years. The [Agency] adjusts and publishes the figure in this definition annually, 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 depository institution means any depository institution, excluding depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) and depository institutions designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a), that meets the asset size threshold of a large bank.

Limited purpose bank means a bank that is not in the business of extending closed-end home mortgage loans, small business loans, small farm loans, or automobile loans evaluated under § ____.22 to retail customers, except on an incidental and accommodation basis, and for which a designation as a limited purpose bank is in effect, pursuant to § ____.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 borrower submits the loan application;

(2) A home mortgage loan or a multifamily 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 borrower will otherwise apply the loan proceeds, as indicated by the borrower.

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), implemented in 34 CFR part 600, 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.

Low-Income Housing Tax Credit (LIHTC) means a Federal tax credit for housing persons of low income pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42).

Major product line means a product line that the [Agency] evaluates in a particular Retail Lending Test Area, pursuant to § ____.22(d)(2) and paragraphs II.b.1 and II.b.2 of appendix A to this part.

Majority automobile lender means a bank for which more than 50 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans were automobile loans, as determined pursuant to paragraph II.b.3 of appendix A to this part.

Metropolitan area means any MSA.

Metropolitan division has the same meaning as that term is defined by the Director of the Office of Management and Budget.

Military bank means a bank whose business predominantly consists of serving the needs of military personnel who serve or have served in the U.S. Armed Forces (including the U.S. Air Force, U.S. Army, U.S. Coast Guard, U.S. Marine Corps, U.S. Navy, and U.S. Space Force) or their dependents. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority depository institution (MDI) means:

(1) For purposes of activities conducted pursuant to 12 U.S.C. 2907(a), ''minority depository institution'' as defined in 12 U.S.C. 2907(b)(1); and

(2) For all other purposes:

(i) ''Minority depository institution'' as defined in 12 U.S.C. 2907(b)(1);

(ii) ''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) A depository institution considered to be a minority depository institution by the appropriate Federal banking agency. For purposes of this paragraph (2)(iii), ''appropriate Federal banking agency'' has the meaning given to it in 12 U.S.C. 1813(q).

Mission-driven nonprofit organization means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) and exempt from taxation under section 501(a) of the Internal Revenue Code that benefits or serves primarily low- or moderate-income individuals or communities, small businesses, or small farms.

MSA means a metropolitan statistical area delineated by the Director of the Office of Management and Budget, pursuant to 44 U.S.C. 3504(e)(3) and (10), 31 U.S.C. 1104(d), and Executive Order 10253 (June 11, 1951).

Multifamily loan means an extension of credit that is secured by a lien on a ''multifamily dwelling'' as defined in 12 CFR 1003.2.

Multistate MSA means an MSA that crosses a State boundary.

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 United States, 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 tribes or Native Americans or tribally-held restricted fee land;

(5) Reservations established by a State government for a tribe or tribes recognized by the State;

(6) Any Native village, as defined in 43 U.S.C. 1602(c), in Alaska;

(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.

New Markets Tax Credit (NMTC) means a Federal tax credit pursuant to section 45D of the Internal Revenue Code of 1986 (26 U.S.C. 45D).

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, excluding loan transactions set forth in 12 CFR 1003.3(c)(1) through (10) and (13) and multifamily loans as defined in this section.

Other delivery system means a channel, other than branches, remote services facilities, or digital delivery systems, through which banks offer retail banking services.

Outside retail lending area means the geographic area delineated pursuant to § ____.18.

Persistent poverty county means a county that has had poverty rates of 20 percent or more for 30 years, as publicly designated by the Board, FDIC, and OCC, compiled in a list, and published annually by the FFIEC.

Product line means a bank's loans in one of the following, separate categories in a particular Retail Lending Test Area:

(1) Closed-end home mortgage loans;

(2) Small business loans;

(3) Small farm loans; and

(4) Automobile loans, if a bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to § ____.22.

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, that is open to the general public and at which deposits are accepted, cash dispersed, or money lent.

Reported loan means:

(1) A home mortgage loan or a multifamily loan reported by a bank pursuant to the Home Mortgage Disclosure Act, as implemented by 12 CFR part 1003; or

(2) A small business loan or a small farm loan reported by a bank pursuant to § ____.42.

Retail banking products means credit and deposit products or programs that facilitate a lending or depository relationship between the bank and consumers, small businesses, or small farms.

Retail banking services means retail financial services provided by a bank to consumers, small businesses, or small farms and include a bank's systems for delivering retail financial services.

Retail lending assessment area means a geographic area delineated pursuant to § ____.17.

Retail Lending Test Area means a facility-based assessment area, a retail lending assessment area, or an outside retail lending area.

Small bank means a bank, excluding a bank designated as a limited purpose bank pursuant to § ____.26, that had assets of less than $600 million as of December 31 in either of the prior two calendar years. The [Agency] adjusts and publishes the dollar figure in this definition annually 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, other than a farm, 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 reported in Schedule RC–C 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 reported in Schedule RC–C 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.

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list most recently published pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Women's depository institution (WDI) means ''women's depository institution'' as defined in 12 U.S.C. 2907(b)(2).

§ ____.13 Consideration of community development loans, community development investments, and community development services.

As provided in paragraph (a) of this section, a bank may receive consideration for a loan, investment, or service that supports community development as described in paragraphs (b) through (l) of this section.

(a) *Full and partial credit for community development loans, community development investments, and community development services*—(1) *Full credit.* A bank will receive credit for its entire loan, investment, or service if it meets the majority standard in paragraph (a)(1)(i) of this section; meets the bona fide intent standard in paragraph (a)(1)(ii) of this section; involves an MDI, WDI, LICU, or CDFI as provided in paragraph (a)(1)(iii) of this section; or involves a LIHTC as provided in paragraph (a)(1)(iv) of this section.

(i) *Majority standard.* A loan, investment, or service meets the majority standard if:

(A) The loan, investment, or service supports community development under one or more of paragraphs (b) through (l) of this section; and

(B)(*1*) For loans, investments, or services supporting community development under paragraphs (b)(1) through (3) of this section, the majority of the housing units are affordable to low- or moderate-income individuals, families, or households;

(*2*) For loans, investments, or services supporting community development under paragraphs (b)(4) and (5) and (d) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, low- or moderate-income individuals, families, or households;

(*3*) For loans, investments, or services supporting community development under paragraph (c) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, small businesses or small farms;

(*4*) For loans, investments, or services supporting community development under paragraphs (e), (f), (g), and (i) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of targeted census tracts;

(*5*) For loans, investments, or services supporting community development under paragraph (h) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of designated disaster areas;

(*6*) For loans, investments, or services supporting community development under paragraph (j) of this section, the majority of the beneficiaries are, or the majority of dollars benefit or serve, residents of Native Land Areas; or

(*7*) For loans, investments, or services supporting community development under paragraph (l) of this section, the loan, investment, or service primarily supports community development under paragraph (l) of this section.

(ii) *Bona fide intent standard.* A loan, investment, or service meets the bona fide intent standard if:

(A) The housing units, beneficiaries, or proportion of dollars necessary to meet the majority standard are not reasonably quantifiable pursuant to paragraph (a)(1)(i) of this section;

(B) The loan, investment, or service has the express, bona fide intent of community development under one or more of paragraphs (b) through (l) of this section; and

(C) The loan, investment, or service is specifically structured to achieve community development under one or more of paragraphs (b) through (l) of this section.

(iii) *MDI, WDI, LICU, or CDFI.* The loan, investment, or service supports community development under paragraph (k) of this section.

(iv) *LIHTC.* The loan, investment, or service supports LIHTC-financed affordable housing under paragraph (b)(1) of this section.

(2) *Partial credit.* If a loan, investment, or service supporting affordable housing under paragraph (b)(1) of this section does not meet the majority standard under paragraph (a)(1)(i) of this section, a bank will receive partial credit for the loan, investment, or service in proportion to the percentage of total housing units in any development that are affordable to low- or moderate-income individuals.

(b) *Affordable housing.* Affordable housing comprises the following:

(1) *Rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy.* Rental housing for low- or moderate-income individuals 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.

(2) *Multifamily rental housing with affordable rents.* Multifamily rental housing purchased, developed, financed, rehabilitated, improved, or preserved if:

(i) For the majority of units, the monthly rent as underwritten by the bank, reflecting post-construction or post-renovation changes as applicable, does not exceed 30 percent of 80 percent of the area median income; and

(ii) One or more of the following additional criteria are met:

(A) The housing is located in a low- or moderate-income census tract;

(B) The housing is located in a census tract in which the median income of renters is low- or moderate-income and the median rent does not exceed 30 percent of 80 percent of the area median income;

(C) The housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; or

(D) The bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals, families, or households.

(3) *One-to-four family rental housing with affordable rents in a nonmetropolitan area.* One-to-four family rental housing purchased, developed, financed, rehabilitated, improved, or preserved in a nonmetropolitan area that meets the criteria in paragraph (b)(2) of this section.

(4) *Affordable owner-occupied housing for low- or moderate-income individuals.* Assistance for low- or moderate-income individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing, excluding loans by a bank directly to one or more owner-occupants of such housing.

(5) *Mortgage-backed securities.* Purchases of mortgage-backed securities where a majority of the underlying loans

are not loans that the bank originated or purchased and:

(i) Are home mortgage loans made to low- or moderate-income individuals; or

(ii) Are loans that finance multifamily affordable housing that meets the requirements of paragraph (b)(1) of this section.

(c) *Economic development.* Economic development comprises:

(1) *Government-related support for small businesses and small farms.* Loans, investments, and services undertaken in conjunction or in syndication with Federal, State, local, or tribal government plans, programs, or initiatives that support small businesses or small farms, as follows:

(i) *Loans, investments, and services other than direct loans to small businesses and small farms.* Loans, investments, and services that support small businesses or small farms in accordance with how small businesses and small farms are defined in the applicable plan, program, or initiative, but excluding loans by a bank directly to small businesses or small farms (either as defined in a government plan, program, or initiative or in § ____.12). If the government plan, program, or initiative does not identify a standard for the size of the small businesses or small farms supported by the plan, program, or initiative, the small businesses or small farms supported must meet the definition of small business or small farm in § ____.12. Loans to, investments in, or services provided to the following are presumed to meet the criteria of this paragraph (c)(1)(i):

(A) Small Business Investment Company (13 CFR part 107);

(B) New Markets Venture Capital Company (13 CFR part 108);

(C) Qualified Community Development Entity (26 U.S.C. 45D(c)); or

(D) U.S. Department of Agriculture Rural Business Investment Company (7 CFR 4290.50).

(ii) *Direct loans to small businesses and small farms.* Loans by a bank directly to businesses or farms, including, but not limited to, loans in conjunction or syndicated with a U.S. Small Business Administration (SBA) Certified Development Company (13 CFR 120.10) or Small Business Investment Company (13 CFR part 107), that meet the following size and purpose criteria:

(A) *Size eligibility standard.* Loans that may be considered under paragraph (c)(1)(ii) of this section must be to businesses and farms that meet the size eligibility standards of the U.S. Small Business Administration Development Company (13 CFR 121.301) or Small Business Investment Company (13 CFR 121.301 and 121.201) programs or that meet the definition of small business or small farm in § ____.12.

(B) *Purpose test.* Loans that may be considered under paragraph (c)(1)(ii) of this section must have the purpose of promoting permanent job creation or retention for low- or moderate-income individuals or in low- or moderate-income census tracts.

(2) *Intermediary support for small businesses and small farms.* Loans, investments, or services provided to intermediaries that lend to, invest in, or provide assistance, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms.

(3) *Other support for small businesses and small farms.* Assistance, such as financial counseling, shared space, technology, or administrative assistance, to small businesses or small farms.

(d) *Community supportive services.* Community supportive services are activities that assist, benefit, or contribute to the health, stability, or well-being of low- or moderate-income individuals, such as childcare, education, workforce development and job training programs, health services programs, and housing services programs. Community supportive services include, but are not limited to, activities that:

(1) Are conducted with a mission-driven nonprofit organization;

(2) Are conducted with a nonprofit organization located in and serving low- or moderate-income census tracts;

(3) Are conducted in a low- or moderate-income census tract and targeted to the residents of the census tract;

(4) Are offered to individuals at a workplace where the majority of employees are low- or moderate-income, based on U.S. Bureau of Labor Statistics data for the average wage for workers in that particular occupation or industry;

(5) Are 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) Primarily benefit or serve individuals who receive or are eligible to receive Medicaid;

(7) Primarily 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) Primarily 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, the U.S. Department of Housing and Urban Development'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 or stabilization*—(1) *In general.* Revitalization or stabilization comprises activities that support revitalization or stabilization of targeted census tracts, including adaptive reuse of vacant or blighted buildings, brownfield redevelopment, support of a plan for a business improvement district or main street program, or any other activity that supports revitalization or stabilization, and that:

(i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on revitalizing or stabilizing targeted census tracts;

(ii) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(2) *Mixed-use revitalization or stabilization project.* Projects to revitalize or stabilize a targeted census tract that include both commercial and residential components qualify as revitalization or stabilization activities under this paragraph (e)(2), if:

(i) The criteria in paragraph (e)(1) of this section are met; and

(ii) More than 50 percent of the project is non-residential as measured by the percentage of total square footage or dollar amount of the project.

(f) *Essential community facilities.* Essential community facilities are 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 that benefit or serve targeted census tracts, and that:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus

on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(g) *Essential community infrastructure.* Essential community infrastructure comprises activities benefitting or serving targeted census tracts, including, but not limited to, broadband, telecommunications, mass transit, water supply and distribution, and sewage treatment and collection systems, and that:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, of targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(h) *Recovery of designated disaster areas*—(1) *In general.* Activities that promote recovery of a designated disaster area are those that revitalize or stabilize geographic areas subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (FEMA), and that:

(i) Are undertaken in conjunction with a disaster plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving the designated disaster area;

(ii) Benefit or serve residents, including low- or moderate-income individuals, of the designated disaster area; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in the designated disaster area.

(2) *Eligibility limitations for loans, investments, or services supporting recovery of a designated disaster area.* (i) Loans, investments, or services that support recovery from a designated disaster in counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures) are not eligible for consideration under this paragraph (h)(2), unless the Board, the FDIC, and the OCC announce a temporary exception.

(ii) The [Agency] will consider loans, investments, and services that support recovery from a designated disaster under this paragraph (h)(2) for 36 months after a Major Disaster Declaration, unless that time period is extended by the Board, the FDIC, and the OCC.

(i) *Disaster preparedness and weather resiliency.* Disaster preparedness and weather resiliency activities assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters. Disaster preparedness and weather resiliency activities benefit or serve targeted census tracts and:

(1) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes a focus on benefitting or serving targeted census tracts;

(2) Benefit or serve residents, including low- or moderate-income individuals, in targeted census tracts; and

(3) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in targeted census tracts.

(j) *Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency in Native Land Areas.* (1) Revitalization or stabilization, essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas are activities specifically targeted to and conducted in Native Land Areas.

(2) Revitalization or stabilization activities in Native Land Areas are defined consistent with paragraph (e) of this section, but specifically:

(i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes an explicit focus on revitalizing or stabilizing Native Land Areas and a particular focus on low- or moderate-income households;

(ii) Benefit or serve residents in Native Land Areas, with substantial benefits for low- or moderate-income individuals in Native Land Areas; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in Native Land Areas.

(3) Essential community facilities, essential community infrastructure, and disaster preparedness and weather resiliency activities in Native Land Areas are defined consistent with paragraphs (f), (g), and (i) of this section, respectively, but specifically:

(i) Are undertaken in conjunction with a plan, program, or initiative of a Federal, State, local, or tribal government or a mission-driven nonprofit organization, where the plan, program, or initiative includes an explicit focus on benefitting or serving Native Land Areas;

(ii) Benefit or serve residents, including low- or moderate-income individuals, in Native Land Areas; and

(iii) Do not directly result in the forced or involuntary relocation of low- or moderate-income individuals in Native Land Areas.

(k) *Activities with MDIs, WDIs, LICUs, or CDFIs.* Activities with MDIs, WDIs, LICUs, or CDFIs are loans, investments, or services undertaken by any bank, including by an MDI, WDI, or CDFI bank evaluated under part 25, 228, or 345 of this title, in cooperation with an MDI, WDI, LICU, or CDFI. Such activities do not include investments by an MDI, WDI, or CDFI bank in itself.

(l) *Financial literacy.* Activities that promote financial literacy are those that assist individuals, families, and households, including low- or moderate-income individuals, families, and households, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership.

§ ____.14 Community development illustrative list; Confirmation of eligibility.

(a) *Illustrative list*—(1) *Issuing and maintaining the illustrative list.* The Board, the FDIC, and the OCC jointly issue and maintain a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration as provided in § ____.13.

(2) *Modifying the illustrative list.* (i) The Board, the FDIC, and the OCC update the illustrative list in paragraph (a)(1) of this section periodically.

(ii) If the Board, the FDIC, and the OCC determine that a loan or investment is no longer eligible for community development consideration, the owner of the loan or investment at the time of the determination will continue to receive community development consideration for the remaining term or period of the loan or investment. However, these loans or investments will not be considered eligible for community development consideration for any new purchasers of that loan or investment after the agencies make a determination that the loan or investment is no longer eligible for community development consideration.

(b) *Confirmation of eligibility*—(1) *Request for confirmation of eligibility.* A bank subject to this part may request that the [Agency] confirm that a loan, investment, or service is eligible for community development consideration by submitting a request to, and in a format prescribed by, the [Agency].

(2) *Determination of eligibility.* (i) To determine the eligibility of a loan, investment, or service for which a request has been submitted under paragraph (b)(1) of this section, the [Agency] considers:

(A) Information that describes and supports the request; and

(B) Any other information that the [Agency] deems relevant.

(ii) The Board, the FDIC, and the OCC expect and are presumed to jointly determine eligibility of a loan, investment, or service under paragraph (b)(2)(i) of this section to promote consistency. Before making a determination under paragraph (b)(2)(i) of this section, the [Agency] consults with the [other Agencies] regarding the eligibility of a loan, investment, or service.

(iii) The [Agency] may impose limitations or requirements on a determination of the eligibility of a loan, investment, or service to ensure consistency with this part.

(3) *Notification of eligibility.* The [Agency] notifies the requestor and the [other Agencies] in writing of any determination under paragraph (b)(2) of this section, as well as the rationale for such determination.

§ ____.15 Impact and responsiveness review of community development loans, community development investments, and community development services.

(a) *Impact and responsiveness 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 Limited Purpose Banks in § ____.26, the [Agency] evaluates the extent to which a bank's community development loans, community development investments, and community development services are impactful and responsive in meeting community development needs in each facility-based assessment area and, as applicable, each State, multistate MSA, and the nationwide area. The [Agency] evaluates the impact and responsiveness of a bank's community development loans, community development investments, or community development services based on paragraph (b) of this section, and may take into account performance context information pursuant to § ____.21(d).

(b) *Impact and responsiveness review factors.* Factors considered in evaluating the impact and responsiveness of a bank's community development loans, community development investments, and community development services include, but are not limited to, whether the community development loan, community development investment, or community development service:

(1) Benefits or serves one or more persistent poverty counties;

(2) Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher;

(3) Benefits or serves one or more geographic areas with low levels of community development financing;

(4) Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with a term of less than one year;

(5) Benefits or serves low-income individuals, families, or households;

(6) Supports small businesses or small farms with gross annual revenues of $250,000 or less;

(7) Directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(8) Benefits or serves residents of Native Land Areas;

(9) Is a grant or donation;

(10) Is an investment in projects financed with LIHTCs or NMTCs;

(11) Reflects bank leadership through multi-faceted or instrumental support; or

(12) Is a new community development financing product or service that addresses community development needs for low- or moderate-income individuals, families, or households.

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 entire community pursuant to the performance tests and strategic plan described in § ____.21.

(b) *Geographic requirements for facility-based assessment areas.* (1) Except as provided in paragraph (b)(3) of this section, a bank's facility-based assessment areas must include each county in which a bank has a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding counties in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans).

(2) Except as provided in paragraph (b)(3) of this section, each of a bank's facility-based assessment areas must consist of a single MSA, one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State.

(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 of contiguous whole census tracts.

(c) *Other limitations on the delineation of a facility-based assessment area.* Each of a bank's facility-based assessment areas:

(1) May not reflect illegal discrimination; and

(2) May not arbitrarily exclude low- or moderate-income census tracts. In determining whether a bank has arbitrarily excluded low- or moderate-income census tracts from a facility-based assessment area, the [Agency] takes into account the bank's capacity and constraints, including its size and financial condition.

(d) *Military banks.* Notwithstanding the requirements of this section, a military bank whose customers are not located within a defined geographic area may delineate the entire United States and its territories as its sole facility-based 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.* (1) Based upon the criteria described in paragraphs (b) and (c) of this section, a large bank must delineate retail lending assessment areas within which the [Agency] evaluates the bank's record of helping to meet the credit needs of its entire community pursuant to § ____.22.

(2) A large bank is not required to delineate retail lending assessment areas for a particular calendar year if, in the prior two calendar years, the large bank originated or purchased within its facility-based assessment areas more than 80 percent of its home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the large bank as described in paragraph II.a.1 of appendix A to this part.

(3) If, in a retail lending assessment area delineated pursuant to paragraph (c) of this section, the large bank did not originate or purchase any reported loans in any of the product lines that formed the basis of the retail lending assessment area delineation pursuant to paragraph (c)(1) or (2) of this section, the [Agency] will not consider the retail lending assessment area to have been delineated for that calendar year.

(b) *Geographic requirements for retail lending assessment areas.* (1) A large bank's 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 any counties inside the large bank's facility-based assessment areas; or

(ii) All of the counties in the nonmetropolitan area of a State (using the MSA boundaries that were in effect as of January 1 of the calendar year in which the delineation applies), excluding:

(A) Any counties included in the large bank's facility-based assessment areas; and

(B) Any counties in which the large bank did not originate any closed-end home mortgage loans or small business loans that are reported loans during that calendar year.

(2) A retail lending assessment area may not extend beyond a State boundary unless the retail lending assessment area consists of counties in a multistate MSA.

(c) *Delineation of retail lending assessment areas.* Subject to the geographic requirements in paragraph (b) of this section, a large bank must delineate, for a particular calendar year, a retail lending assessment area in any MSA or in the nonmetropolitan area of any State in which it originated:

(1) At least 150 closed-end home mortgage loans that are reported loans in each year of the prior two calendar years; or

(2) At least 400 small business loans that are reported loans in each year of the prior two calendar years.

(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 closed-end home mortgage lending and small business lending performance unless the [Agency] determines that the retail lending assessment areas do not comply with the requirements of this section.

§ ____.18 Outside retail lending areas.

(a) *In general*—(1) *Large banks.* The [Agency] evaluates a large bank's record of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § ____.22. However, the [Agency] will not evaluate a large bank in its outside retail lending area if it did not originate or purchase loans in any product lines in the outside retail lending area during the evaluation period.

(2) *Intermediate or small banks.* The [Agency] evaluates the record of an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, of helping to meet the credit needs of its entire community in its outside retail lending area pursuant to § ____.22, for a particular calendar year, if:

(i) The bank opts to have its major product lines evaluated in its outside retail lending area; or

(ii) In the prior two calendar years, the bank originated or purchased outside the bank's facility-based assessment areas more than 50 percent of the bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank, as described in paragraph II.a.2 of appendix A to this part.

(b) *Geographic requirements of outside retail lending areas*—(1) *In general.* A bank's outside retail lending area consists of the nationwide area, excluding:

(i) The bank's facility-based assessment areas and retail lending assessment areas; and

(ii) Any county in a nonmetropolitan area in which the bank did not originate or purchase any closed-end home mortgage loans, small business loans, small farm loans, or automobile loans if automobile loans are a product line for the bank.

(2) *Component geographic area.* The outside retail lending area is comprised of component geographic areas. A component geographic area is any MSA or the nonmetropolitan area of any State, or portion thereof, included within the outside retail lending area.

§ ____.19 Areas for eligible community development loans, community development investments, and community development services.

The [Agency] may consider a bank's community development loans, community development investments, and community development services provided outside of its facility-based assessment areas, as provided in this part.

§ ____.20 [Reserved]

Subpart C—Standards for Assessing Performance

§ ____.21 Evaluation of CRA performance in general.

(a) *Application of performance tests and strategic plans*—(1) *Large banks.* To evaluate the performance of a large bank, the [Agency] applies the Retail Lending Test in § ____.22, the Retail Services and Products Test in § ____.23, the Community Development Financing Test in § ____.24, and the Community Development Services Test in § ____.25.

(2) *Intermediate banks*—(i) *In general.* To evaluate the performance of an intermediate bank, the [Agency] applies the Retail Lending Test in § ____.22 and either the Intermediate Bank Community Development Test in § ____.30(a)(2) or, at the bank's option, the Community Development Financing Test in § ____.24.

(ii) *Intermediate banks evaluated under § ____.24.* If an intermediate bank opts to be evaluated pursuant to the Community Development Financing Test in § ____.24, the [Agency] evaluates the intermediate bank for the evaluation period preceding the bank's next CRA examination pursuant to the Community Development Financing Test in § ____.24 and continues evaluations pursuant to this performance test for subsequent evaluation periods until the bank opts out. If an intermediate bank opts out of the Community Development Financing Test in § ____.24, the [Agency] reverts to evaluating the bank pursuant to the Intermediate Bank Community Development Test in § ____.30(a)(2), starting with the evaluation period preceding the bank's next CRA examination.

(iii) *Additional consideration.* An intermediate bank may request additional consideration pursuant to § ____.30(b).

(3) *Small banks*—(i) *In general.* To evaluate the performance of a small bank, the [Agency] applies the Small Bank Lending Test in § ____.29(a)(2), unless the bank opts to be evaluated pursuant to the Retail Lending Test in § ____.22.

(ii) *Small banks evaluated under the Retail Lending Test.* If a small bank opts to be evaluated pursuant to the Retail Lending Test in § ____.22, the following applies:

(A) The [Agency] evaluates the small bank using the same provisions used to evaluate intermediate banks pursuant to the Retail Lending Test in § ____.22.

(B) The [Agency] evaluates the small bank for the evaluation period preceding the bank's next CRA examination pursuant to the Retail Lending Test in § ____.22 and continues evaluations under this performance test for subsequent evaluation periods until the bank opts out. If a small bank opts out of the Retail Lending Test in § ____.22, the [Agency] reverts to evaluating the bank pursuant to the Small Bank Lending Test in § ____.29(a)(2), starting with the evaluation period preceding the bank's next CRA examination.

(iii) *Additional consideration.* A small bank may request additional consideration pursuant to § ____.29(b).

(4) *Limited purpose banks*—(i) *In general.* The [Agency] evaluates a limited purpose bank pursuant to the Community Development Financing Test for Limited Purpose Banks in § ____.26.

(ii) *Additional consideration.* A limited purpose bank may request additional consideration pursuant to § ____.26(b)(2).

(5) *Military banks*—(i) *In general.* The [Agency] evaluates a military bank pursuant to the applicable performance tests described in paragraph (a) of this section.

(ii) *Evaluation approach for military banks operating under § ____.16(d).* If a military bank delineates the entire United States and its territories as its sole facility-based assessment area pursuant to § ____.16(d), the [Agency] evaluates the bank exclusively at the institution level based on its performance in its sole facility-based assessment area.

(6) *Banks operating under a strategic plan.* The [Agency] evaluates the performance of a bank that has an approved strategic plan pursuant to § ____.27.

(b) *Loans, investments, services, and products of [operations subsidiaries or operating subsidiaries] and other affiliates*—(1) *In general.* In the performance evaluation of a bank, the [Agency] considers the loans, investments, services, and products of a bank's [operations subsidiaries or operating subsidiaries] and other affiliates, as applicable, as provided in paragraphs (b)(2) and (3) of this section, so long as no other depository institution claims the loan, investment, service, or product for purposes of 12 CFR part 25, 228, or 345.

(2) *Loans, investments, services, and products of [operations subsidiaries or operating subsidiaries].* The [Agency] considers the loans, investment, services, and products of a bank's [operations subsidiaries or operating subsidiaries] under this part, unless an [operations subsidiary or operating subsidiary] is independently subject to the CRA. The bank must collect, maintain, and report data on the loans, investments, services, and products of its [operations subsidiaries or operating subsidiaries] as provided in § ____.42(c).

(3) *Loans, investments, services, and products of other affiliates.* The [Agency] considers the loans, investments, services, and products of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries], at the bank's option, subject to the following:

(i) The affiliate is not independently subject to the CRA.

(ii) The bank collects, maintains, and reports data on the loans, investments, services, or products of the affiliate as provided in § ____.42(d).

(iii) Pursuant to the Retail Lending Test in § ____.22, if a bank opts to have the [Agency] consider the closed-end home mortgage loans, small business loans, small farm loans, or automobile loans that are originated or purchased by one or more of the bank's affiliates in a particular Retail Lending Test Area, the [Agency] will consider, subject to paragraphs (b)(3)(i) and (ii) of this section, all of the loans in that product line originated or purchased by all of the bank's affiliates in the particular Retail Lending Test Area.

(iv) Pursuant to the Retail Lending Test in § ____.22, if a large bank opts to have the [Agency] consider the closed-end home mortgage loans or small business loans that are originated or purchased by any of the bank's affiliates in any Retail Lending Test Area, the [Agency] will consider, subject to paragraphs (b)(3)(i) and (ii) of this section, the closed-end home mortgage loans or small business loans originated by all of the bank's affiliates in the nationwide area when delineating retail lending assessment areas pursuant to § ____.17(c).

(v) Pursuant to the Community Development Financing Test in § ____.24, the Community Development Financing Test for Limited Purpose Banks in § ____.26, the Intermediate Bank Community Development Test in § ____.30(a)(2), or pursuant to an approved strategic plan in § ____.27, the [Agency] will consider, at the bank's option, community development loans or community development investments that are originated, purchased, refinanced, or renewed by one or more of the bank's affiliates, subject to paragraphs (b)(3)(i) and (ii) of this section.

(c) *Community development lending and community development investment by a consortium or a third party.* If a bank invests in or participates in a consortium that originates, purchases, refinances, or renews community development loans or community development investments, or if a bank invests in a third party that originates, purchases, refinances, or renews community development loans or community development investments, the [Agency] may consider, at the bank's option, either those loans or investments, subject to the limitations in paragraphs (c)(1) through (3) of this section, or the investment in the consortium or third party.

(1) The bank must collect, maintain, and report the data pertaining to the community development loans and community development investments as provided in § ____.42(e), as applicable;

(2) If the participants or investors choose to allocate community development loans or community development investments among themselves for consideration under this section, no participant or investor may claim a loan origination, loan purchase, or investment for community development consideration if another participant or investor claims the same loan origination, loan purchase, or investment; and

(3) The bank may not claim community development loans or community development investments accounting for more than its percentage share (based on the level of its participation or investment) of the total loans or investments made by the consortium or third party.

(d) *Performance context information considered.* When applying performance tests and strategic plans pursuant to paragraph (a) of this section, and when determining whether to approve a strategic plan pursuant to § ____.27(h), the [Agency] may consider the following performance context information to the extent that it is not considered as part of the performance tests as provided in paragraph (a) of this section:

(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 provide retail

lending, retail banking services and retail banking products, community development loans, community development investments, or community development services;

(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;

(4) Any information about retail banking and community development needs and opportunities 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 provided in § ____.43, including any 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].

(e) *Conclusions and ratings*—(1) *Conclusions.* The [Agency] assigns conclusions to a large bank's or limited purpose bank's performance on the applicable tests described in paragraph (a) of this section pursuant to § ____.28 and appendix C to this part. The [Agency] assigns conclusions to a small bank's or intermediate bank's performance on the applicable tests described in paragraph (a) of this section pursuant to § ____.28 and appendices C and E to this part. The [Agency] assigns conclusions to a bank that has an approved strategic plan pursuant to § ____.28 and paragraph g of appendix C to this part.

(2) *Ratings.* The [Agency] assigns an overall CRA performance rating to a bank in each State or multistate MSA, as applicable, and for the institution pursuant to § ____.28 and appendices D and E to this part.

(f) *Safe and sound operations.* The CRA and this part do not require a bank to originate or purchase 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*—(1) *In general.* Pursuant to § ____.21, the Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of home mortgage loans, multifamily loans, small business loans, and small farm loans.

(2) *Automobile loans.* The Retail Lending Test evaluates a bank's record of helping to meet the credit needs of its entire community through the bank's origination and purchase of automobile loans if the bank is a majority automobile lender. A bank that is not a majority automobile lender may opt to have automobile loans evaluated under this section.

(b) *Methodology overview*—(1) *Retail Lending Volume Screen.* The [Agency] evaluates whether a bank meets or surpasses the Retail Lending Volume Threshold in each facility-based assessment area pursuant to the Retail Lending Volume Screen as provided in paragraph (c) of this section.

(2) *Retail lending distribution analysis.* Except as provided in paragraph (b)(5) of this section, the [Agency] evaluates the geographic and borrower distributions of each of a bank's major product lines in each Retail Lending Test Area, as provided in paragraphs (d) and (e) of this section.

(3) *Retail Lending Test recommended conclusions.* Except as provided in paragraph (b)(5) of this section, the [Agency] develops a Retail Lending Test recommended conclusion pursuant to paragraph (f) of this section for each Retail Lending Test Area.

(4) *Retail Lending Test conclusions.* Except as provided in paragraph (b)(5) of this section, the [Agency]'s determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area is informed by the bank's Retail Lending Test recommended conclusion for the Retail Lending Test Area, performance context factors provided in § ____.21(d), and the additional factors provided in paragraph (g) of this section.

(5) *Exceptions*—(i) *No major product line.* If a bank has no major product line in a facility-based assessment area, the [Agency] assigns the bank a Retail Lending Test conclusion for that facility-based assessment area based upon its performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context factors provided in § ____.21(d), and the additional factors provided in paragraph (g) of this section.

(ii) *Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold.* The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(c) *Retail Lending Volume Screen*—(1) *Retail Lending Volume Threshold.* A bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area if the bank has a Bank Volume Metric of 30 percent or greater of the Market Volume Benchmark for that facility-based assessment area. The [Agency] calculates the Bank Volume Metric and the Market Volume Benchmark pursuant to section I of appendix A to this part.

(2) *Banks that meet or surpass the Retail Lending Volume Threshold in a facility-based assessment area.* If a bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the [Agency] develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section.

(3) *Banks that do not meet the Retail Lending Volume Threshold in a facility-based assessment area*—(i) *Acceptable basis factors.* If a bank does not meet the Retail Lending Volume Threshold in a facility-based assessment area pursuant to paragraph (c)(1) of this section, the [Agency] determines whether the bank has an acceptable basis for not meeting the Retail Lending Volume Threshold in the facility-based assessment area by considering:

(A) The bank's dollar volume of non-automobile consumer loans;

(B) The bank's institutional capacity and constraints, including the financial condition of the bank;

(C) The presence or lack of other lenders in the facility-based assessment area;

(D) Safety and soundness limitations;

(E) The bank's business strategy; and

(F) Any other factors that limit the bank's ability to lend in the facility-based assessment area.

(ii) *Banks that have an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area.* If, after reviewing the factors described in paragraph (c)(3)(i) of this section, the [Agency] determines that a bank has an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] develops a Retail Lending Test recommended conclusion for the facility-based assessment area in the same manner as for a bank that meets or surpasses the Retail Lending Volume Threshold under paragraph (c)(2) of this section.

(iii) *Banks that lack an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area*—(A) *Large banks.* If, after reviewing the factors in paragraph (c)(3)(i) of this section, the [Agency] determines that a large bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] assigns the bank a Retail Lending Test conclusion of ''Needs to Improve'' or ''Substantial Noncompliance'' for that facility-based assessment area. In determining whether ''Needs to Improve'' or ''Substantial Noncompliance'' is the appropriate conclusion, the [Agency] considers:

(*1*) The bank's retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;

(*2*) The bank's distribution analysis pursuant to paragraphs (d) through (f) of this section;

(*3*) Performance context factors provided in § ____.21(d); and

(*4*) Additional factors provided in paragraph (g) of this section.

(B) *Intermediate or small banks.* If, after reviewing the factors in paragraph (c)(3)(i) of this section, the [Agency] determines that an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, lacks an acceptable basis for not meeting the Retail Lending Volume Threshold in a facility-based assessment area, the [Agency] develops a Retail Lending Test recommended conclusion for the facility-based assessment area pursuant to paragraphs (d) through (f) of this section. The [Agency]'s determination of a bank's Retail Lending Test conclusion for the facility-based assessment area is informed by:

(*1*) The bank's Retail Lending Test recommended conclusion for the facility-based assessment area;

(*2*) The bank's retail lending volume and the extent by which it did not meet the Retail Lending Volume Threshold;

(*3*) Performance context factors provided in § ____.21(d); and

(*4*) Additional factors provided in paragraph (g) of this section.

(d) *Scope of Retail Lending Test distribution analysis*—(1) *Product lines evaluated in a Retail Lending Test Area.* In each applicable Retail Lending Test Area, the [Agency] evaluates originated and purchased loans in each of the following product lines that is a major product line, as described in paragraph (d)(2) of this section:

(i) Closed-end home mortgage loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;

(ii) Small business loans in a bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area;

(iii) Small farm loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area; and

(iv) Automobile loans in a bank's facility-based assessment areas and, as applicable, outside retail lending area.

(2) *Major product line standards*—(i) *Major product line standard for facility-based assessment areas and outside retail lending areas.* In a facility-based assessment area or outside retail lending area, a product line is a major product line if the bank's loans in that product line comprise 15 percent or more of the bank's loans across all of the bank's product lines in the facility-based assessment area or outside retail lending area, as determined pursuant to paragraph II.b.1 of appendix A to this part.

(ii) *Major product line standards for retail lending assessment areas.* In a retail lending assessment area:

(A) Closed-end home mortgage loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage loans as determined by the standard in § ____.17(c)(1); and

(B) Small business loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its small business loans as determined by the standard in § ____.17(c)(2).

(e) *Retail Lending Test distribution analysis.* The [Agency] evaluates a bank's Retail Lending Test performance in each of its Retail Lending Test Areas by considering the geographic and borrower distributions of a bank's loans in its major product lines.

(1) *Distribution analysis in general*—(i) *Distribution analysis for closed-end home mortgage loans, small business loans, and small farm loans.* For closed-end home mortgage loans, small business loans, and small farm loans, respectively, the [Agency] compares a bank's geographic and borrower distributions to performance ranges based on the applicable market and community benchmarks, as provided in paragraph (f) of this section and section V of appendix A to this part.

(ii) *Distribution analysis for automobile loans.* For automobile loans, the [Agency] compares a bank's geographic and borrower distributions to the applicable community benchmarks, as provided in paragraph (f) of this section and section VI of appendix A to this part.

(2) *Categories of lending evaluated*—(i) *Geographic distributions.* For each major product line in each Retail Lending Test Area, the [Agency] evaluates the geographic distributions separately for the following categories of census tracts:

(A) Low-income census tracts; and

(B) Moderate-income census tracts.

(ii) *Borrower distributions.* For each major product line in each Retail Lending Test Area, the [Agency] evaluates the borrower distributions separately for, as applicable, the following categories of borrowers:

(A) Low-income borrowers;

(B) Moderate-income borrowers;

(C) Businesses with gross annual revenues of $250,000 or less;

(D) Businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(E) Farms with gross annual revenues of $250,000 or less; and

(F) Farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.

(3) *Geographic distribution measures.* To evaluate the geographic distributions in a Retail Lending Test Area, the [Agency] considers the following measures:

(i) *Geographic Bank Metric.* For each major product line, a Geographic Bank Metric, calculated pursuant to paragraph III.a of appendix A to this part;

(ii) *Geographic Market Benchmark.* For each major product line except automobile loans, a Geographic Market Benchmark, calculated pursuant to paragraph III.b of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph III.d of appendix A to this part for outside retail lending areas; and

(iii) *Geographic Community Benchmark.* For each major product line, a Geographic Community Benchmark, calculated pursuant to paragraph III.c of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph III.e of appendix A to this part for outside retail lending areas.

(4) *Borrower distribution measures.* To evaluate the borrower distributions in a Retail Lending Test Area, the [Agency] considers the following measures:

(i) *Borrower Bank Metric.* For each major product line, a Borrower Bank Metric, calculated pursuant to paragraph IV.a of appendix A to this part;

(ii) *Borrower Market Benchmark.* For each major product line except automobile loans, a Borrower Market Benchmark, calculated pursuant to paragraph IV.b of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.d of appendix A to this part for outside retail lending areas; and

(iii) *Borrower Community Benchmark.* For each major product line, a Borrower Community Benchmark, calculated pursuant to paragraph IV.c of appendix A to this part for facility-based assessment areas and retail lending assessment areas, and paragraph IV.e of appendix A to this part for outside retail lending areas.

(f) *Retail Lending Test recommended conclusions*—(1) *In general.* Except as described in paragraphs (b)(5)(i) and (c)(3)(iii)(A) of this section, the [Agency] develops a Retail Lending Test recommended conclusion for each of a bank's Retail Lending Test Areas based on the distribution analysis described in paragraph (e) of this section and using performance ranges, supporting conclusions, and product line scores as provided in sections V through VII of appendix A to this part. For each major product line, the [Agency] develops a separate supporting conclusion for each category of census tracts and each category of borrowers described in paragraphs V.a and VI.a of appendix A to this part.

(2) *Geographic distribution supporting conclusions*—(i) *Geographic distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans.* To develop supporting conclusions for geographic distributions of closed-end home mortgage loans, small business loans, and small farm loans, the [Agency] evaluates the bank's performance by comparing the Geographic Bank Metric to performance ranges, based on the Geographic Market Benchmark, the Geographic Community Benchmark, and multipliers, as described in paragraphs V.b and V.c of appendix A to this part.

(ii) *Geographic distribution supporting conclusions for automobile loans.* To develop supporting conclusions for geographic distributions for automobile loans, the [Agency] evaluates the bank's performance by comparing the Geographic Bank Metric to the Geographic Community Benchmark, as described in paragraph VI.b of appendix A to this part.

(3) *Borrower distribution supporting conclusions*—(i) *Borrower distribution supporting conclusions for closed-end home mortgage loans, small business loans, and small farm loans.* To develop supporting conclusions for borrower distributions of closed-end home mortgage loans, small business loans, and small farm loans, the [Agency] evaluates the bank's performance by comparing the Borrower Bank Metric to performance ranges, based on the Borrower Market Benchmark, Borrower Community Benchmark, and multipliers, as described in paragraphs V.d and V.e of appendix A to this part.

(ii) *Borrower distribution supporting conclusions for automobile loans.* To develop supporting conclusions for borrower distributions for automobile loans, the [Agency] evaluates the bank's performance by comparing the Borrower Bank Metric to the Borrower Community Benchmark, as described in paragraph VI.c of appendix A to this part.

(4) *Development of Retail Lending Test recommended conclusions*—(i) *Assignment of performance scores.* For each supporting conclusion developed pursuant to paragraphs (f)(2) and (3) of this section, the [Agency] assigns a corresponding performance score as described in sections V and VI of appendix A to this part.

(ii) *Combination of performance scores.* As described in section VII of appendix A to this part, for each Retail Lending Test Area, the [Agency]:

(A) Combines the performance scores for each supporting conclusion for each major product line into a product line score; and

(B) Calculates a weighted average of product line scores across all major product lines.

(iii) *Retail Lending Test recommended conclusions.* For each Retail Lending Test Area, the [Agency] develops the Retail Lending Test recommended conclusion that corresponds to the weighted average of product line scores developed pursuant to paragraph (f)(4)(ii)(B) of this section, as described in section VII of appendix A to this part.

(g) *Additional factors considered when evaluating retail lending performance.* The factors in paragraphs (g)(1) through (7) of this section, as appropriate, inform the [Agency]'s determination of a bank's Retail Lending Test conclusion for a Retail Lending Test Area:

(1) Information indicating that a bank purchased closed-end home mortgage loans, small business loans, small farm loans, or automobile loans for the sole or primary purpose of inappropriately enhancing its retail lending performance, including, but not limited to, information indicating subsequent resale of such loans or any indication that such loans have been considered in multiple depository institutions' CRA evaluations, in which case the [Agency] does not consider such loans in the bank's performance evaluation;

(2) The dispersion of a bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending within a facility-based assessment area to determine whether there are gaps in lending that are not explained by performance context;

(3) The number of lenders whose home mortgage loans, multifamily loans, small business loans, and small farm loans and deposits data are used to establish the applicable Retail Lending Volume Threshold, geographic distribution market benchmarks, and borrower distribution market benchmarks;

(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 Retail Lending Test recommended conclusion. If unable to calculate a Retail Lending Test recommended conclusion, the [Agency] assigns a Retail Lending Test conclusion based on consideration of the relevant available data;

(5) Whether the Retail Lending Test recommended conclusion does not accurately reflect the bank's performance in a Retail Lending Test Area in which one or more of the bank's major product lines consists of fewer than 30 loans;

(6) A bank's closed-end home mortgage lending, small business lending, small farm lending, or automobile lending in distressed or underserved nonmetropolitan middle-income census tracts where a bank's nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area includes very few or no low- and moderate-income census tracts; and

(7) Information indicating that the credit needs of the facility-based assessment area or retail lending assessment area are not being met by lenders in the aggregate, such that the relevant benchmarks do not adequately reflect community credit needs.

(h) *Retail Lending Test performance conclusions and ratings*—(1) *Conclusions*—(i) *In general.* Pursuant to § ____.28, section VIII of appendix A to this part, and appendix C to this part, the [Agency] assigns conclusions for a bank's Retail Lending Test performance in each Retail Lending Test Area, State, and multistate MSA, as applicable, and for the institution.

(ii) *Retail Lending Test Area conclusions.* The [Agency] assigns a Retail Lending Test conclusion for each Retail Lending Test Area based on the Retail Lending Test recommended conclusion, performance context factors provided in § ___.21(d), and the additional factors provided in paragraph (g) of this section, except as provided in paragraphs (h)(1)(ii)(A) and (B) of this section:

(A) *Facility-based assessment areas with no major product line.* The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank has no major product line based on the bank's performance on the Retail Lending Volume Screen pursuant to paragraph (c) of this section, performance context information provided in § ___.21(d), and the additional factors provided in paragraph (g) of this section.

(B) *Facility-based assessment areas in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold.* The [Agency] assigns a Retail Lending Test conclusion for a facility-based assessment area in which a bank lacks an acceptable basis for not meeting the Retail Lending Volume Threshold as provided in paragraph (c)(3)(iii) of this section.

(2) *Ratings.* Pursuant to § ___.28 and appendix D to this part, the [Agency] incorporates a bank's Retail Lending Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ ___.23 Retail services and products test.

(a) *Retail Services and Products Test*—(1) *In general.* Pursuant to § ___.21, the Retail Services and Products Test evaluates the availability of a bank's retail banking services and retail banking products and the responsiveness of those services and products to the credit needs of the bank's entire community, including low- and moderate-income individuals, families, or households, low- and moderate-income census tracts, small businesses, and small farms. The [Agency] evaluates the bank's retail banking services, as described in paragraph (b) of this section, and the bank's retail banking products, as described in paragraph (c) of this section.

(2) *Main offices.* For purposes of this section, references to a branch also include a main office that is open to, and accepts deposits from, the general public.

(3) *Exclusion.* If the [Agency] considers services under the Community Development Services Test in § ___.25, the [Agency] does not consider those services under the Retail Services and Products Test.

(b) *Retail banking services*—(1) *Scope of evaluation.* To evaluate a bank's retail banking services, the [Agency] considers a bank's branch availability and services provided at branches, remote service facility availability, and digital delivery systems and other delivery systems, as follows:

(i) *Branch availability and services.* The [Agency] considers the branch availability and services provided at branches of banks that operate one or more branches pursuant to paragraph (b)(2) of this section.

(ii) *Remote service facility availability.* The [Agency] considers the remote service facility availability of banks that operate one or more remote service facilities pursuant to paragraph (b)(3) of this section.

(iii) *Digital delivery systems and other delivery systems.* The [Agency] considers the digital delivery systems and other delivery systems of banks pursuant to paragraph (b)(4) of this section, as follows:

(A) The [Agency] considers the digital delivery systems and other delivery systems of the following banks:

(*1*) Large banks that had assets greater than $10 billion as of December 31 in both of the prior two calendar years; and

(*2*) Large banks that had assets less than or equal to $10 billion as of December 31 in either of the prior two calendar years and that do not operate branches.

(B) For a large bank that had assets less than or equal $10 billion as of December 31 in either of the prior two calendar years and that operates at least one branch, the [Agency] considers the bank's digital delivery systems and other delivery systems at the bank's option.

(2) *Branch availability and services.* The [Agency] evaluates a bank's branch availability and services in a facility-based assessment area based on the following:

(i) *Branch distribution.* The [Agency] considers a bank's branch distribution using 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 is informed by the following benchmarks:

(*1*) Percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;

(*2*) Percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts;

(*3*) Percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts; and

(*4*) Percentage of all full-service depository institution branches in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.

(C) *Additional geographic considerations.* The [Agency] considers the availability of branches in the following geographic areas:

(*1*) Middle- and upper-income census tracts in which a branch delivers services to low- and moderate-income individuals, families, or households to the extent that these individuals, families, or households use the services offered;

(*2*) Distressed or underserved nonmetropolitan middle-income census tracts; and

(*3*) Native Land Areas.

(ii) *Branch openings and closings.* The [Agency] considers a bank's record of opening and closing branches since the previous CRA examination to inform the degree of accessibility of services to low- and moderate-income individuals, families, or households, small businesses, and small farms, and low- and moderate-income census tracts.

(iii) *Branch hours of operation and services.* The [Agency] considers 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, check cashing services for government-issued and payroll checks;

(*3*) Reasonably priced international remittance services; and

(*4*) Electronic benefit transfers.

(C) The degree to which branch-provided retail banking services are responsive to the needs of low- and moderate-income individuals, families, or households in a bank's facility-based assessment areas.

(3) *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.* The [Agency] considers a bank's remote service facility distribution using the following:

(A) *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.

(B) *Benchmarks.* The [Agency]'s consideration of the remote service facility distribution metrics is informed by the following benchmarks:

(*1*) Percentage of census tracts in the facility-based assessment area that are low-, moderate-, middle-, and upper-income census tracts;

(*2*) Percentage of households in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts; and

(*3*) Percentage of total businesses in the facility-based assessment area that are in low-, moderate-, middle-, and upper-income census tracts.

(C) *Additional geographic considerations.* The [Agency] considers the availability of remote service facilities in the following geographic areas:

(*1*) Middle- and upper-income census tracts in which a remote service facility delivers services to low- and moderate-income individuals, families, or households to the extent that these individuals, families, or households use the services offered;

(*2*) Distressed or underserved nonmetropolitan middle-income census tracts; and

(*3*) Native Land Areas.

(ii) *Access to out-of-network ATMs.* The [Agency] considers whether the bank offers customers fee-free access to out-of-network ATMs in low- and moderate-income census tracts.

(4) *Digital delivery systems and other delivery systems.* The [Agency] evaluates the availability and responsiveness of a bank's digital delivery systems and other delivery systems, including to low- and moderate-income individuals, families, or households at the institution level by considering:

(i) The range of retail banking services and retail banking products offered through digital delivery systems and other delivery systems;

(ii) The bank's strategy and initiatives to serve low- and moderate-income individuals, families, or households with digital delivery systems and other delivery systems as reflected by, for example, the costs, features, and marketing of the delivery systems; and

(iii) Digital delivery systems and other delivery systems activity by individuals, families or households in low-, moderate-, middle-, and upper-income census tracts as evidenced by:

(A) The number of checking and savings accounts opened each calendar year during the evaluation period digitally and through other delivery systems in low-, moderate-, middle-, and upper-income census tracts;

(B) The number of checking and savings accounts opened digitally and through other delivery systems and that are active at the end of each calendar year during the evaluation period in low-, moderate-, middle-, and upper-income census tracts; and

(C) Any other bank data that demonstrates digital delivery systems and other delivery systems are available to individuals and in census tracts of different income levels, including low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(c) *Retail banking products evaluation*—(1) *Scope of evaluation.* The [Agency] evaluates a bank's retail banking products offered in the bank's facility-based assessment areas and nationwide, as applicable, at the institution level as follows:

(i) *Credit products and programs.* The [Agency] evaluates a bank's credit products and programs pursuant to paragraph (c)(2) of this section.

(ii) *Deposit products.* The [Agency] evaluates a bank's deposit products pursuant to paragraph (c)(3) of this section as follows:

(A) For large banks that had assets greater than $10 billion as of December 31 in both of the prior two calendar years; and

(B) For large banks that had assets less than or equal to $10 billion as of December 31 in either of the prior two calendar years, the [Agency] considers a bank's deposit products only at the bank's option.

(2) *Credit products and programs.* The [Agency] evaluates whether a bank's credit products and programs are, consistent with safe and sound operations, responsive to the credit needs of the bank's entire community, including the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, or small farms. 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;

(ii) Meet the needs of small businesses and small farms, including small businesses and small farms with gross annual revenues of $250,000 or less;

(iii) Are conducted in cooperation with MDIs, WDIs, LICUs, or CDFIs;

(iv) Are low-cost education loans; or

(v) Are special purpose credit programs pursuant to 12 CFR 1002.8.

(3) *Deposit products.* The [Agency] evaluates the availability and usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households as follows:

(i) *Availability of deposit products responsive to the needs of low- and moderate-income individuals, families, or households.* The [Agency] considers the availability of deposit products responsive to the needs of low- and moderate-income individuals, families, or households based on the extent to which a bank offers deposit products that, consistent with safe and sound operations, have features and cost characteristics responsive to the needs of low- and moderate-income individuals, families, or households. Deposit products responsive to the needs of low- and moderate-income individuals, families, or households include but are 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 individuals 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] considers the usage of a bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households based on the following information:

(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;

(B) In connection with paragraph (c)(3)(ii)(A) of this section, 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, families, or households; and

(D) Optionally, any other information the bank provides that demonstrates usage of the bank's deposit products that have features and cost characteristics responsive to the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(d) *Retail Services and Products Test performance conclusions and ratings*—(1) *Conclusions.* Pursuant to § ____.28 and appendix C to this part, the [Agency] assigns conclusions for a bank's Retail Services and Products Test performance in each facility-based assessment area, State and multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § ____.21(d). The evaluation of a bank's retail banking products under paragraph (c) of this section may only contribute positively to the bank's Retail Services and Products Test conclusion.

(2) *Ratings.* Pursuant to § ____.28 and appendix D to this part, the [Agency] incorporates a bank's Retail Services and Products Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ ____.24 Community development financing test.

(a) *Community Development Financing Test*—(1) *In general.* Pursuant to § ____.21, the Community Development Financing Test evaluates the bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments (*i.e.,* the bank's community development financing performance).

(2) *Allocation.* The [Agency] considers community development loans and community development investments allocated pursuant to paragraph I.b of appendix B to this part.

(b) *Facility-based assessment area evaluation.* The [Agency] evaluates a bank's community development financing performance in a facility-based assessment area using the metric in paragraph (b)(1) of this section, benchmarks in paragraph (b)(2) of this section, and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (b)(3) of this section, and assigns a conclusion for a facility-based assessment area pursuant to paragraph d.1 of appendix C to this part.

(1) *Bank Assessment Area Community Development Financing Metric.* The Bank Assessment Area Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve a facility-based assessment area compared to deposits in the bank that are located in the facility-based assessment area, calculated pursuant to paragraph II.a of appendix B to this part.

(2) *Benchmarks.* The [Agency] compares the Bank Assessment Area Community Development Financing Metric to the following benchmarks:

(i) *Assessment Area Community Development Financing Benchmark.* For each of a bank's facility-based assessment areas, the Assessment Area Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve the facility-based assessment area for all large depository institutions compared to deposits located in the facility-based assessment area for all large depository institutions, calculated pursuant to paragraph II.b of appendix B to this part.

(ii) *MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* (A) For each of a bank's facility-based assessment areas within an MSA, the MSA Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve MSAs in the nationwide area for all large depository institutions compared to deposits located in the MSAs in the nationwide area for all large depository institutions.

(B) For each of a bank's facility-based assessment areas within a nonmetropolitan area, the Nonmetropolitan Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve nonmetropolitan areas in the nationwide area for all large depository institutions compared to deposits located in nonmetropolitan areas in the nationwide area for all large depository institutions.

(C) The [Agency] calculates the MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks pursuant to paragraph II.c of appendix B to this part.

(3) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of a bank's community development loans and community development investments that benefit or serve a facility-based assessment area, as provided in § ____.15.

(c) *State evaluation.* The [Agency] evaluates a bank's community development financing performance in a State, pursuant to §§ ____.19 and ____.28(c), using the two components in paragraphs (c)(1) and (2) of this section and assigns a conclusion for each State based on a weighted combination of those components pursuant to paragraph II.p of appendix B to this part.

(1) *Component one—weighted average of facility-based assessment area performance conclusions in a State.* The [Agency] considers the weighted average of the performance scores corresponding to the bank's Community Development Financing Test conclusions for its facility-based assessment areas within the State, pursuant to section IV of appendix B to this part.

(2) *Component two—State performance.* The [Agency] considers a bank's community development financing performance in a State using the metric and benchmarks in paragraphs (c)(2)(i) and (ii) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (c)(2)(iii) of this section.

(i) *Bank State Community Development Financing Metric.* The Bank State Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve all or part of a State compared to deposits in the bank that are located in the State, calculated pursuant to paragraph II.d of appendix B to this part.

(ii) *Benchmarks.* The [Agency] compares the Bank State Community Development Financing Metric to the following benchmarks:

(A) *State Community Development Financing Benchmark.* The State Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of a State for all large depository institutions compared to deposits located in the State for all large depository institutions, calculated pursuant to paragraph II.e of appendix B to this part.

(B) *State Weighted Assessment Area Community Development Financing Benchmark.* The State Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the State, calculated pursuant to paragraph II.f of appendix B to this part.

(iii) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve a State, as provided in § ____.15.

(d) *Multistate MSA evaluation.* The [Agency] evaluates a bank's community development financing performance in a multistate MSA, pursuant to §§ ____.19 and ____.28(c), using the two components in paragraphs (d)(1) and (2) of this section and assigns a conclusion in each multistate MSA based on a weighted combination of those components pursuant to paragraph II.p of appendix B to this part.

(1) *Component one—weighted average of facility-based assessment area performance in a multistate MSA.* The [Agency] considers the weighted average of the performance scores corresponding to the bank's Community Development Financing Test conclusions for its facility-based assessment areas within the multistate MSA, calculated pursuant to section IV of appendix B to this part.

(2) *Component two—multistate MSA performance.* The [Agency] considers a bank's community development financing performance in a multistate MSA using the metric and benchmarks in paragraphs (d)(2)(i) and (ii) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (d)(2)(iii) of this section.

(i) *Bank Multistate MSA Community Development Financing Metric.* The Bank Multistate MSA Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve a multistate MSA compared to deposits in the bank located in the multistate MSA, calculated pursuant to paragraph II.g of appendix B to this part.

(ii) *Benchmarks.* The [Agency] compares the Bank Multistate MSA Community Development Financing Metric to the following benchmarks:

(A) *Multistate MSA Community Development Financing Benchmark.* The Multistate MSA Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve a multistate MSA for all large depository institutions compared to deposits located in the multistate MSA for all large depository institutions, calculated pursuant to paragraph II.h of appendix B to this part.

(B) *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* The Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the multistate MSA, calculated pursuant to paragraph II.i of appendix B to this part.

(iii) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve a multistate MSA, as provided in § ____.15.

(e) *Nationwide area evaluation.* The [Agency] evaluates a bank's community development financing performance in the nationwide area, pursuant to § ____.19, using the two components in paragraphs (e)(1) and (2) of this section and assigns a conclusion for the institution based on a weighted combination of those components pursuant to paragraph II.p of appendix B to this part.

(1) *Component one—weighted average of facility-based assessment area performance in the nationwide area.* The [Agency] considers the weighted average of the performance scores corresponding to the bank's conclusions for the Community Development Financing Test for its facility-based assessment areas within the nationwide area, calculated pursuant to section IV of appendix B to this part.

(2) *Component two—nationwide area performance.* The [Agency] considers a bank's community development financing performance in the nationwide area using the metrics and benchmarks in paragraphs (e)(2)(i) through (iv) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (e)(2)(v) of this section.

(i) *Bank Nationwide Community Development Financing Metric.* The Bank Nationwide Community Development Financing Metric measures the dollar volume of the bank's community development loans and community development investments that benefit or serve all or part of the nationwide area compared to deposits in the bank located in the nationwide area, calculated pursuant to paragraph II.j of appendix B to this part.

(ii) *Community Development Financing Benchmarks.* The [Agency] compares the Bank Nationwide Community Development Financing Metric to the following benchmarks:

(A) *Nationwide Community Development Financing Benchmark.* The Nationwide Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area for all large depository institutions compared to the deposits located in the nationwide area for all large depository institutions, calculated pursuant to paragraph II.k of appendix B to this part.

(B) *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* The Nationwide Weighted Assessment Area Community Development Financing Benchmark is the weighted average of the bank's Assessment Area Community Development Financing Benchmarks for each facility-based assessment area within the nationwide area, calculated pursuant to paragraph II.l of appendix B to this part.

(iii) *Bank Nationwide Community Development Investment Metric.* For a large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, the Bank Nationwide Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the deposits in the bank located in the nationwide area, calculated pursuant to paragraph II.m of appendix B to this part.

(iv) *Nationwide Community Development Investment Benchmark.* (A) For a large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, the [Agency] compares the Bank Nationwide Community Development Investment Metric to the Nationwide Community Development Investment Benchmark. This comparison may only contribute positively to the bank's

Community Development Financing Test conclusion for the institution.

(B) The Nationwide Community Development Investment Benchmark measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all large depository institutions that had assets greater than $10 billion as of December 31 in both of the prior two calendar years compared to deposits located in the nationwide area for those depository institutions, calculated pursuant to paragraph II.n of appendix B to this part.

(v) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve the nationwide area, as provided in § ____.15.

(f) *Community Development Financing Test performance conclusions and ratings*—(1) *Conclusions.* Pursuant to § ____.28 and appendix C to this part, the [Agency] assigns conclusions for a bank's Community Development Financing Test performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § ____.21(d).

(2) *Ratings.* Pursuant to § ____.28 and appendix D to this part, the [Agency] incorporates a bank's Community Development Financing Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ ____.25 Community development services test.

(a) *Community Development Services Test*—(1) *In general.* Pursuant to § ____.21, the Community Development Services Test evaluates a bank's record of helping to meet the community development services needs of its entire community.

(2) *Allocation.* The [Agency] considers information provided by the bank and may consider publicly available information and information provided by government or community sources that demonstrates that a community development service benefits or serves a facility-based assessment area, State, or multistate MSA, or the nationwide area.

(b) *Facility-based assessment area evaluation.* The [Agency] evaluates a bank's community development services performance in a facility-based assessment area and assigns a conclusion for a facility-based assessment area, by considering one or more of the following:

(1) The number of community development services attributable to each type of community development described in § ____.13(b) through (l);

(2) The capacities in which a bank's or its affiliate's board members or employees serve (*e.g.,* board member of a nonprofit organization, technical assistance, financial education, general volunteer);

(3) Total hours of community development services performed by the bank;

(4) Any other evidence demonstrating that the bank's community development services are responsive to community development needs, such as the number of low- and moderate-income individuals that are participants, or number of organizations served; and

(5) The impact and responsiveness of the bank's community development services that benefit or serve the facility-based assessment area, as provided in § ____.15.

(c) *State, multistate MSA, or nationwide area evaluation.* The [Agency] evaluates a bank's community development services performance in a State or multistate MSA, as applicable, or nationwide area, and assigns a conclusion for those areas, based on the following 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 performance scores corresponding to the bank's Community Development Services Test conclusions for its facility-based assessment areas within a State, multistate MSA, or the institution pursuant to section IV of appendix B to this part.

(2) *Component two—evaluation of community development services outside of facility-based assessment areas.* The [Agency] may adjust upwards the conclusion based on the weighted average derived under paragraph (c)(1) of this section and an evaluation of the bank's community development services performed outside of its facility-based assessment areas pursuant to § ____.19, which may consider one or more of the factors in paragraphs (b)(1) through (5) of this section.

(d) *Community Development Services Test performance conclusions and ratings*—(1) *Conclusions.* Pursuant to § ____.28 and appendix C to this part, the [Agency] assigns conclusions for a bank's Community Development Services Test performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § ____.21(d).

(2) *Ratings.* Pursuant to § ____.28 and appendix D to this part, the [Agency] incorporates a bank's Community Development Services Test conclusions into its State or multistate MSA ratings, as applicable, and its institution rating.

§ ____.26 Limited purpose banks.

(a) *Bank request for designation as a limited purpose bank.* To receive a designation as a limited purpose bank, a bank must file a written request with the [Agency] at least 90 days 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 limited purpose bank that the [Agency] has revoked the designation on the [Agency]'s own initiative.

(b) *Performance evaluation*—(1) *In general.* To evaluate a limited purpose bank, the [Agency] applies the Community Development Financing Test for Limited Purpose Banks as described in paragraphs (c) through (f) of this section.

(2) *Additional consideration*—(i) *Community development services.* The [Agency] may adjust a limited purpose bank's institution rating from ''Satisfactory'' to ''Outstanding'' where a bank requests and receives additional consideration for services that would qualify under the Community Development Services Test in § ____.25.

(ii) *Additional consideration for low-cost education loans.* A limited purpose bank may request and receive additional consideration at the institution level for providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the limited purpose bank's overall institution rating.

(c) *Community Development Financing Test for Limited Purpose Banks*—(1) *In general.* Pursuant to § ____.21, the Community Development Financing Test for Limited Purpose Banks evaluates a limited purpose bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments (*i.e.,* the bank's community development financing performance).

(2) *Allocation.* The [Agency] considers community development loans and community development investments allocated pursuant to paragraph I.b of appendix B to this part.

(d) *Facility-based assessment area evaluation.* The [Agency] evaluates a limited purpose bank's community development financing performance in a facility-based assessment area and assigns a conclusion in the facility-based assessment area based on the [Agency]'s:

(1) Consideration of the dollar volume of the limited purpose bank's community development loans and community development investments that benefit or serve the facility-based assessment area; and

(2) A review of the impact and responsiveness of the limited purpose bank's community development loans and community development investments that benefit or serve a facility-based assessment area, as provided in § ____.15.

(e) *State or multistate MSA evaluation.* The [Agency] evaluates a limited purpose bank's community development financing performance in each State or multistate MSA, as applicable pursuant to §§ ____.19 and ____.28(c), and assigns a conclusion for the bank's performance in the State or multistate MSA based on the [Agency]'s consideration of the following two components:

(1) *Component one—facility-based assessment area performance conclusions in a State or multistate MSA.* A limited purpose bank's community development financing performance in its facility-based assessment areas in the State or multistate MSA; and

(2) *Component two—State or multistate MSA performance.* The dollar volume of the limited purpose bank's community development loans and community development investments that benefit or serve the State or multistate MSA and a review of the impact and responsiveness of those loans and investments, as provided in § ____.15.

(f) *Nationwide area evaluation.* The [Agency] evaluates a limited purpose bank's community development financing performance in the nationwide area, pursuant to § ____.19, and assigns a conclusion for the institution based on the [Agency]'s consideration of the following two components:

(1) *Component one—facility-based assessment area performance.* The limited purpose bank's community development financing performance in all of its facility-based assessment areas; and

(2) *Component two—nationwide area performance.* The limited purpose bank's community development financing performance in the nationwide area based on the following metrics and benchmarks in paragraphs (f)(2)(i) through (iv) of this section and a review of the impact and responsiveness of the bank's community development loans and community development investments in paragraph (f)(2)(v) of this section.

(i) *Limited Purpose Bank Community Development Financing Metric.* The Limited Purpose Bank Community Development Financing Metric measures the dollar volume of a bank's community development loans and community development investments that benefit or serve all or part of the nationwide area compared to the bank's assets calculated pursuant to paragraph III.a of appendix B to this part.

(ii) *Community Development Financing Benchmarks.* The [Agency] compares the Limited Purpose Bank Community Development Financing Metric to the following benchmarks:

(A) *Nationwide Limited Purpose Bank Community Development Financing Benchmark.* The Nationwide Limited Purpose Bank Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments of depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) or designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a) reported pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) that benefit and serve all or part of the nationwide area compared to assets for those depository institutions, calculated pursuant to paragraph III.b of appendix B to this part; and

(B) *Nationwide Asset-Based Community Development Financing Benchmark.* The Nationwide Asset-Based Community Development Financing Benchmark measures the dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area of all depository institutions that reported pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) compared to assets for those depository institutions, calculated pursuant to paragraph III.c of appendix B to this part.

(iii) *Limited Purpose Bank Community Development Investment Metric.* For a limited purpose bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, the Limited Purpose Bank Community Development Investment Metric measures the dollar volume of the bank's community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, compared to the bank's assets, calculated pursuant to paragraph III.d of appendix B to this part.

(iv) *Nationwide Asset-Based Community Development Investment Benchmark.* (A) For a limited purpose bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, the [Agency] compares the Limited Purpose Bank Community Development Investment Metric to the Nationwide Asset-Based Community Development Investment Benchmark. This comparison may only contribute positively to the bank's Community Development Financing Test for Limited Purpose Banks conclusion for the institution.

(B) The Nationwide Asset-Based Community Development Investment Benchmark measures the dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, of all depository institutions that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, compared to assets for those depository institutions, calculated pursuant to paragraph III.e of appendix B to this part.

(v) *Impact and responsiveness review.* The [Agency] reviews the impact and responsiveness of the bank's community development loans and community development investments that benefit or serve the nationwide area, as provided in § ____.15.

(g) *Community Development Financing Test for Limited Purpose Banks performance conclusions and ratings*—(1) *Conclusions.* Pursuant to § ____.28 and appendix C to this part, the [Agency] assigns conclusions for a limited purpose bank's Community Development Financing Test for Limited Purpose Banks performance in each facility-based assessment area, each State or multistate MSA, as applicable, and for the institution. In assigning conclusions under this performance test, the [Agency] may consider performance context information as provided in § ____.21(d).

(2) *Ratings.* Pursuant to § ____.28 and appendix D to this part, the [Agency] incorporates a limited purpose bank's Community Development Financing Test for Limited Purpose Banks conclusions into its State or multistate

MSA ratings, as applicable, and its institution rating.

§ ____.27 Strategic plan.

(a) *Alternative election.* Pursuant to § ____.21, the [Agency] evaluates a bank's record of helping to meet the credit needs of its entire community under a strategic plan, if:

(1) The [Agency] has approved the plan pursuant to this section;

(2) The plan is in effect; and

(3) The bank has been operating under an approved plan for at least one year.

(b) *Data requirements.* The [Agency]'s approval of a plan does not affect the bank's obligation, if any, to collect, maintain, and report data as required by § ____.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of not more than five years.

(2) *Performance tests in plan.* (i) A bank's plan must include the same performance tests that would apply in the absence of an approved plan, except as provided in paragraph (g)(1) of this section.

(ii) Consistent with paragraph (g) of this section, a bank's plan may include optional evaluation components or eligible modifications and additions to the performance tests that would apply in the absence of an approved plan.

(3) *Assessment areas and other geographic areas*—(i) *Multiple geographic areas.* A bank may prepare a single plan or separate plans for its facility-based assessment areas, retail lending assessment areas, outside retail lending area, or other geographic areas that would be evaluated in the absence of an approved plan.

(ii) *Geographic areas not included in a plan.* Any facility-based assessment area, retail lending assessment area, outside retail lending area, or other geographic area that would be evaluated in the absence of an approved plan, but is not included in an approved plan, will be evaluated pursuant to the performance tests that would apply in the absence of an approved plan.

(4) *[Operations subsidiaries or operating subsidiaries] and affiliates*—(i) *[Operations subsidiaries or operating subsidiaries].* The loans, investments, services, and products of a bank's [operations subsidiary or operating subsidiary] must be included in the bank's plan, unless the [operations subsidiary or operating subsidiary] is independently subject to CRA requirements.

(ii) *Affiliates*—(A) *Optional inclusion of other affiliates' loans, investments, services, and products.* Consistent with § ____.21(b)(3), a bank may include loans, investments, services, and products of affiliates of a bank that are not [operations subsidiaries or operating subsidiaries] in a plan, if those loans, investments, services, and products are not included in the CRA performance evaluation of any other depository institution.

(B) *Joint plans.* Affiliated depository institutions supervised by the same Federal financial supervisory agency may prepare a joint plan, provided that the plan includes, for each bank, the applicable performance tests that would apply in the absence of an approved plan. The joint plan may include optional evaluation components or eligible modifications and additions to the performance tests that would apply in the absence of an approved plan.

(C) *Allocation.* The inclusion of an affiliate's loans, investments, services, and products in a bank's plan, or in a joint plan of affiliated depository institutions, is subject to the following:

(*1*) The loans, investments, services, and products may not be included in the CRA performance evaluation of another depository institution; and

(*2*) The allocation of loans, investments, services, and products to a bank, or among affiliated banks, must reflect a reasonable basis for the allocation and may not be for the sole or primary purpose of inappropriately enhancing any bank's CRA evaluation.

(d) *Justification and appropriateness of plan election*—(1) *Justification requirements.* A bank's plan must provide a justification that demonstrates the need for the following aspects of a plan due to the bank's business model (*e.g.,* its retail banking services and retail banking products):

(i) Optional evaluation components pursuant to paragraph (g)(1) of this section;

(ii) Eligible modifications or additions to the applicable performance tests pursuant to paragraph (g)(2) of this section;

(iii) Additional geographic areas pursuant to paragraph (g)(3) of this section; and

(iv) The conclusions and ratings methodology pursuant to paragraph (g)(6) of this section.

(2) *Justification elements.* Each justification must specify the following:

(i) Why the bank's business model is outside the scope of, or inconsistent with, one or more aspects of the performance tests that would apply in the absence of an approved plan;

(ii) Why an evaluation of the bank pursuant to any aspect of a plan in paragraph (d)(1) of this section would more meaningfully reflect a bank's record of helping to meet the credit needs of its community than if it were evaluated under the performance tests that would apply in the absence of an approved plan; and

(iii) Why the optional performance components and eligible modifications or additions meet the standards of paragraphs (g)(1) and (2) of this section, as applicable.

(e) *Public participation in initial draft plan development*—(1) *In general.* Before submitting a draft plan to the [Agency] for approval pursuant to paragraph (h) of this section, a bank must:

(i) Informally seek suggestions from members of the public while developing the plan;

(ii) Once the bank has developed its initial draft plan, formally solicit public comment on the initial draft plan for at least 60 days by:

(A) Submitting the initial draft plan for publication on the [Agency]'s website and by publishing the initial draft plan on the bank's website, if the bank maintains one; and

(B)(*1*) Except as provided in paragraph (e)(1)(ii)(B)(*2*) of this section, publishing notice in at least one print newspaper of general circulation (if available, otherwise a digital publication) in each facility-based assessment area covered by the plan; and

(*2*) For a military bank, publishing notice in at least one print newspaper of general circulation targeted to members of the military (if available, otherwise a digital publication targeted to members of the military); and

(iii) Include in the notice required under paragraph (e)(1)(ii) of this section a means by which members of the public can electronically submit and mail comments to the bank on its initial draft plan.

(2) *Availability of initial draft plan.* During the period when the bank is formally soliciting public comment on its initial draft plan, the bank must make copies of the initial 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 initial draft plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(f) *Submission of a draft plan.* The bank must submit its draft plan to the [Agency] at least 90 days prior to the proposed effective date of the plan. The bank must also submit with its draft plan:

(1) Proof of notice publication and a description of its efforts to seek input from members of the public, including individuals and organizations the bank

contacted and how the bank gathered information;

(2) Any written comments or other public input received;

(3) If the bank revised the initial draft plan in response to the public input received, the initial draft plan as released for public comment with an explanation of the relevant changes; and

(4) If the bank did not revise the initial draft plan in response to suggestions or concerns from public input received, an explanation for why any suggestion or concern was not addressed in the draft plan.

(g) *Plan content.* In addition to meeting the requirements in paragraphs (c) and (d) of this section, the plan must meet the following requirements:

(1) *Applicable performance tests and optional evaluation components.* A bank must include in its plan a focus on the credit needs of its entire community, including low- and moderate-income individuals, families, or households, low- and moderate-income census tracts, and small businesses and small farms. The bank must describe how its plan is responsive to the characteristics and credit needs of its facility-based assessment areas, retail lending assessment areas, outside retail lending area, or other geographic areas served by the bank, considering public comment and the bank's capacity and constraints, product offerings, and business strategy. As applicable, a bank must specify components in its plan for helping to meet:

(i) The retail lending needs of its facility-based assessment areas, retail lending assessment areas, and outside retail lending area that are covered by the plan. A bank that originates or purchases loans in a product line evaluated pursuant to the Retail Lending Test in § ____.22 or originates or purchases loans evaluated pursuant to the Small Bank Lending Test in § ____.29(a)(2) must include the applicable test in its plan, subject to eligible modifications or additions specified in paragraph (g)(2) of this section.

(ii) The retail banking services and retail banking products needs of its facility-based assessment areas and at the institution level that are covered by the plan.

(A) A large bank that maintains delivery systems evaluated pursuant to the Retail Services and Products Test in § ____.23(b) must include this component of the test in its plan, subject to eligible modifications or additions specified in paragraph (g)(2) of this section.

(B) A large bank that does not maintain delivery systems evaluated pursuant to the Retail Services and Products Test in § ____.23(b) may include retail banking products components in § ____.23(c) and accompanying annual measurable goals in its plan.

(C) A bank other than a large bank may include components of retail banking services or retail banking products and accompanying annual measurable goals in its plan.

(iii) The community development loan and community development investment needs of its facility-based assessment areas, States, or multistate MSAs, as applicable, and the nationwide area that are covered by the plan. Subject to eligible modifications or additions as provided in paragraph (g)(2) of this section:

(A) A large bank must include the Community Development Financing Test in § ____.24 in its plan.

(B) An intermediate bank must include either the Community Development Financing Test in § ____.24 or the Intermediate Bank Community Development Test in § ____.30(a)(2) in its plan.

(C) A limited purpose bank must include the Community Development Financing Test for Limited Purpose Banks in § ____.26 in its plan.

(D) A small bank may include a community development loan or community development investment component and accompanying annual measurable goals in its plan.

(iv) The community development services needs of its facility-based assessment areas served by the bank that are covered by the plan.

(A) A large bank must include the Community Development Services Test in § ____.25 in its plan, subject to eligible modifications or additions as provided in paragraph (g)(2) of this section, for each facility-based assessment area where the bank has employees.

(B) A bank other than a large bank may include a community development services component and accompanying annual measurable goals in its plan.

(2) *Eligible modifications or additions to applicable performance tests*—(i) *Retail lending.* (A) For a bank that the [Agency] would otherwise evaluate pursuant to the Small Bank Lending Test in § ____.29(a)(2):

(*1*) A bank may omit, as applicable, the evaluation of performance criteria related to the loan-to-deposit ratio or the percentage of loans located in the bank's facility-based assessment area(s).

(*2*) A bank may add annual measurable goals for any aspect of the bank's retail lending.

(B) For a bank the [Agency] would otherwise evaluate pursuant to the Retail Lending Test in § ____.22:

(*1*) A bank may add additional loan products, such as non-automobile consumer loans or open-end home mortgage loans, or additional goals for major product lines, such as closed-end home mortgage loans to first-time homebuyers, with accompanying annual measurable goals.

(*2*) Where annual measurable goals for additional loan products or additional goals for major product lines have been added pursuant to paragraph (g)(2)(i)(B)(*1*) of this section, a bank may provide different weights for averaging together the performance across these loan products and may include those loan products in the numerator of the Bank Volume Metric.

(*3*) A bank may use alternative weights for combining the borrower and geographic distribution analyses for major product line(s) or other loan products.

(ii) *Retail banking services and retail banking products.* (A) A large bank may add annual measurable goals for any component of the Retail Services and Products Test in § ____.23.

(B) A large bank may modify the Retail Services and Products Test by removing a component of the test.

(C) A large bank may assign specific weights to applicable components in paragraph (g)(2)(ii)(A) of this section in reaching a Retail Services and Products Test conclusion.

(D) A bank other than a large bank may include retail banking services or retail banking products component(s) and accompanying annual measurable goals in its plan.

(iii) *Community development loans and community development investments.* (A) A bank may specify annual measurable goals for community development loans, community development investments, or both. The bank must base any annual measurable goals as a percentage or ratio of the bank's community development loans and community development investments for all or certain types of community development described in § ____.13(b) through (l), presented either on a combined or separate basis, relative to the bank's capacity and should account for community development needs and opportunities.

(B) A bank may specify using assets as an alternative denominator for a community development financing metric if it better measures a bank's capacity.

(C) A bank may specify additional benchmarks to evaluate a community development financing metric.

(D) A small bank may include community development loans, community development investments, or both, and accompanying annual measurable goals in its plan.

(iv) *Community development services.* (A) A bank may specify annual measurable goals for community development services activity, by number of activity hours, number of hours per full-time equivalent employee, or some other measure.

(B) A bank other than a large bank may include a community development services component and accompanying annual measurable goals in its plan.

(v) *Weights for assessing performance across geographic areas.* A bank may specify alternative weights for averaging test performance across assessment areas or other geographic areas. These alternative weights must be based on the bank's capacity and community needs and opportunities in specific geographic areas.

(vi) *Test weights.* For ratings at the State, multistate MSA, and institution levels pursuant to § ____.28(b) and paragraph g.2 of appendix D to this part, as applicable:

(A) A bank may request an alternate weighting method for combining performance under the applicable performance tests and optional evaluation components. In specifying alternative test weights for each applicable test, a bank must emphasize retail lending, community development financing, or both. Alternative weights must be responsive to the characteristics and credit needs of a bank's assessment areas and public comments and must be based on the bank's capacity and constraints, product offerings, and business strategy.

(B) A bank that requests an alternate weighting method pursuant to paragraph (g)(2)(vi)(A) of this section must compensate for decreasing the weight under one test by committing to enhance its efforts to help meet the credit needs of its community under another performance test.

(3) *Geographic coverage of plan.* (i) A bank may incorporate performance evaluation components and accompanying annual measurable goals for additional geographic areas but may not eliminate the evaluation of its performance in any geographic area that would be included in its performance evaluation in the absence of an approved plan.

(ii) If a large bank is no longer required to delineate a retail lending assessment area previously identified in the plan as a result of not meeting the required retail lending assessment area thresholds pursuant to § ____.17, the [Agency] will not evaluate the bank for its performance in that area for the applicable years of the plan in which the area is no longer a retail lending assessment area.

(iii) A bank that includes additional performance evaluation components with accompanying annual measurable goals in its plan must specify the geographic areas where those components and goals apply.

(4) *Confidential information.* A bank may submit additional information to the [Agency] on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the [Agency] to judge the merits of the plan.

(5) *"Satisfactory" and "Outstanding" performance goals.* A bank that includes modified or additional performance evaluation components with accompanying annual measurable goals in its plan must specify in its plan annual measurable goals that constitute "Satisfactory" performance and may specify annual measurable goals that constitute "Outstanding" performance.

(6) *Conclusions and rating methodology.* A bank must specify in its plan how all elements of a plan covered in paragraphs (g)(1) through (5) of this section, in conjunction with any other applicable performance tests not included in an approved strategic plan, should be considered to assign:

(i) *Conclusions.* Pursuant to § ____.28 and appendix C to this part, the [Agency] assigns conclusions for each facility-based assessment area, retail lending assessment area, outside retail lending area, State, and multistate MSA, as applicable, and the institution. In assigning conclusions under a strategic plan, the [Agency] may consider performance context information as provided in § ____.21(d).

(ii) *Ratings.* Pursuant to § ____.28 and paragraph f of appendix D to this part, the [Agency] incorporates the conclusions of a bank evaluated under an approved plan into its State or multistate MSA ratings, as applicable, and its institution rating, accounting for paragraph g.2 of appendix D to this part, as applicable.

(h) *Draft plan evaluation*—(1) *Timing.* The [Agency] seeks to act upon a draft plan within 90 calendar days after the [Agency] receives the complete draft plan and other materials required pursuant to paragraph (f) of this section. If the [Agency] does not act within this time period, the [Agency] will communicate to the bank the rationale for the delay and an expected timeframe for a decision on the draft plan.

(2) *Public participation.* In evaluating the draft plan, the [Agency] considers:

(i) The public's involvement in formulating the draft plan, including specific information regarding the members of the public and organizations the bank contacted and how the bank collected information relevant to the draft plan;

(ii) Written public comments and other public input on the draft plan;

(iii) Any response by the bank to public input on the draft plan; and

(iv) Whether to solicit additional public input or require the bank to provide any additional response to public input already received.

(3) *Criteria for evaluating plan for approval.* (i) The [Agency] evaluates all plans using the following criteria:

(A) The extent to which the plan meets the standards set forth in this section; and

(B) The extent to which the plan has adequately justified the need for a plan and each aspect of the plan as required in paragraph (d) of this section.

(ii) The [Agency] evaluates a plan under the following criteria, as applicable, considering performance context information pursuant to § ____.21(d):

(A) The extent and breadth of retail lending or retail lending-related activities to address credit needs, including the distribution of loans among census tracts of different income levels, businesses and farms of different sizes, and individuals of different income levels, pursuant to §§ ____.22, and____.29, as applicable;

(B) The effectiveness of the bank's systems for delivering retail banking services and the availability and responsiveness of the bank's retail banking products, pursuant to § ____.23, as applicable;

(C) The extent, breadth, impact, and responsiveness of the bank's community development loans and community development investments, pursuant to §§ ____.24, ____.26, and ____.30, as applicable; and

(D) The number, hours, and types of community development services performed and the extent to which the bank's community development services are impactful and responsive, pursuant to §§ ____.25 and ____.30, as applicable.

(4) *Plan decisions*—(i) *Approval.* The [Agency] may approve a plan after considering the criteria in paragraph (h)(3) of this section and if it determines that the bank has provided adequate justification for the plan and each aspect of the plan as required in paragraph (d) of this section.

(ii) *Denial.* The [Agency] may deny a bank's request to be evaluated under a plan for any of the following reasons:

(A) The Agency determines that the bank has not provided adequate justification for the plan and each aspect of the plan as required pursuant to paragraph (d) of this section;

(B) The [Agency] determines that evaluation under the plan would not provide a more meaningful reflection of the bank's record of helping to meet the credit needs of the bank's community;

(C) The plan is not responsive to public comment received pursuant to paragraph (e) of this section;

(D) The [Agency] determines that the plan otherwise fails to meet the requirements of this section; or

(E) The bank fails to provide information requested by the [Agency] that is necessary for the [Agency] to make an informed decision.

(5) *Publication of approved plan.* The [Agency] will publish an approved plan on the [Agency]'s website.

(i) *Plan amendment*—(1) *Mandatory plan amendment.* During the term of a plan, a bank must submit to the [Agency] for approval an amendment to its plan if a material change in circumstances:

(i) Impedes its ability to perform at a satisfactory level under the plan, such as financial constraints caused by significant events that impact the local or national economy; or

(ii) Significantly increases its financial capacity and ability to engage in retail lending, retail banking services, retail banking products, community development loans, community development investments, or community development services referenced in an approved plan, such as a merger or consolidation.

(2) *Elective plan amendment.* 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.

(3) *Requirements for plan amendments*—(i) *Amendment explanation.* When submitting a plan amendment for approval, a bank must explain:

(A) The material change in circumstances necessitating the amendment; or

(B) Why it is necessary and appropriate to amend its plan in the absence of a material change in circumstances.

(ii) *Compliance requirement.* An amendment to a plan must comply with all relevant requirements of this section, unless the [Agency] waives a requirement as not applicable.

(j) *Performance evaluation under a plan*—(1) *In general.* The [Agency] evaluates a bank's performance under an approved plan based on the performance tests that would apply in the absence of an approved plan and any optional evaluation components or eligible modifications and additions to the applicable performance tests set forth in the bank's approved plan.

(2) *Goal considerations.* If a bank established annual measurable goals and does not meet one or more of its satisfactory goals, the [Agency] will consider the following factors to determine the effect on a bank's CRA performance evaluation:

(i) The degree to which the goal was not met;

(ii) The importance of the unmet goals to the plan as a whole; and

(iii) 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.

(3) *Ratings.* The [Agency] rates the performance of a bank under this section pursuant to appendix D to this part.

§ ____.28 Assigned conclusions and ratings.

(a) *Conclusions*—(1) *State, multistate MSA, and institution test conclusions and performance scores*—(i) *In general.* For each of the applicable performance tests pursuant to §§ ____.22 through ____.26 and ____.30, the [Agency] assigns conclusions and associated test performance scores of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the performance of a bank in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution.

(ii) *Small banks.* The [Agency] assigns conclusions of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the performance of a small bank evaluated under the Small Bank Lending Test in § ____.29(a)(2) in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution pursuant to § ____.29 and appendix E to this part.

(iii) *Banks operating under a strategic plan.* The [Agency] assigns conclusions for the performance of a bank operating under a strategic plan pursuant to § ____.27 in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution in accordance with the methodology of the plan and appendix C to this part.

(2) *Bank performance in metropolitan and nonmetropolitan areas.* Pursuant to 12 U.S.C. 2906, the [Agency] provides conclusions derived under this part separately for metropolitan areas in which a bank maintains one or more domestic branch offices and for the nonmetropolitan area of a State if a bank maintains one or more domestic branch offices in such nonmetropolitan area.

(b) *Ratings*—(1) *In general.* The [Agency] assigns a rating for a bank's overall CRA performance of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' in each State and multistate MSA, as applicable pursuant to paragraph (c) of this section, and for the institution, as provided in this section and appendices D and E to this part. 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.

(2) *State, multistate MSA, and institution ratings and overall performance scores.* (i) For large banks, intermediate banks, small banks that opt into the Retail Lending Test in § ____.22, and limited purpose banks, the [Agency] calculates and discloses the bank's overall performance score for each State and multistate MSA, as applicable, and for the institution. The [Agency] uses a bank's overall performance scores described in this section to assign a rating for the bank's overall performance in each State and multistate MSA, as applicable, and for the institution, subject to paragraphs (d) and (e) of this section.

(ii) Overall performance scores are based on the bank's performance score for each applicable performance test and derived as provided in paragraph (b)(3) of this section, as applicable, and appendix D to this part.

(3) *Weighting of performance scores.* In calculating a large bank's or intermediate bank's overall performance score for each State and multistate MSA, as applicable, and the institution, the [Agency] weights the performance scores for the bank for each applicable performance test as provided in paragraphs (b)(3)(i) and (ii) of this section.

(i) *Large bank performance test weights.* The [Agency] weights the bank's performance score for the performance tests applicable to a large bank as follows:

(A) Retail Lending Test, 40 percent;

(B) Retail Services and Products Test, 10 percent;

(C) Community Development Financing Test, 40 percent; and

(D) Community Development Services Test, 10 percent.

(ii) *Intermediate bank performance test weights.* The [Agency] weights the bank's performance score for the performance tests applicable to an intermediate bank as follows:

(A) Retail Lending Test, 50 percent; and

(B) Intermediate Bank Community Development Test or Community Development Financing Test, as applicable, 50 percent.

(4) *Minimum conclusion requirements*—(i) *Retail Lending Test minimum conclusion.* An intermediate bank or a large bank must receive at least a ''Low Satisfactory'' Retail Lending Test conclusion for the State, multistate MSA, or institution to receive, respectively, a State, multistate MSA, or institution rating of ''Satisfactory'' or ''Outstanding.''

(ii) *Minimum of ''Low Satisfactory'' overall facility-based assessment area and retail lending assessment area conclusion.* (A) For purposes of this paragraph (b)(4)(ii)(A), the [Agency] assigns a large bank an overall conclusion for each facility-based assessment area and, as applicable, each retail lending assessment area, as provided in paragraph g.2.ii of appendix D to this part.

(B) Except as provided in § ____.51(e), a large bank with a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State or multistate MSA, as applicable, or for the institution may not receive a rating of ''Satisfactory'' or ''Outstanding'' in that State or multistate MSA, as applicable, or for the institution, unless the bank receives an overall conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas and retail lending assessment areas in that State or multistate MSA, as applicable, or for the institution.

(c) *Conclusions and ratings for States and multistate MSAs*—(1) *States*—(i) *In general.* Except as provided in paragraph (c)(1)(ii) of this section, the [Agency] evaluates a bank and assigns conclusions and ratings for any State in which the bank maintains a main office, branch, or deposit-taking remote service facility.

(ii) *States with rated multistate MSAs.* The [Agency] evaluates a bank and assigns conclusions and ratings for a State only if the bank maintains a main office, branch, or deposit-taking remote service facility outside the portion of the State comprising any multistate MSA identified in paragraph (c)(2) of this section. In evaluating a bank and assigning conclusions and ratings for a State, the [Agency] does not consider activities to be in the State if those activities take place in the portion of the State comprising any multistate MSA identified in paragraph (c)(2) of this section.

(iii) *States with non-rated multistate MSAs.* If a facility-based assessment area of a bank comprises a geographic area spanning two or more States within a multistate MSA that is not identified in paragraph (c)(2) of this section, the [Agency] considers activities in the entire facility-based assessment area to be in the State in which the bank maintains, within the multistate MSA, a main office, branch, or deposit-taking remote service facility. In evaluating a bank and assigning conclusions and ratings for a State, the [Agency] does not consider activities to be in the State if those activities take place in any facility-based assessment area that is considered to be in another State pursuant to this paragraph (c)(1)(iii).

(iv) *States with multistate retail lending assessment areas.* In assigning Retail Lending Test conclusions for a State pursuant to § ____.22(h), the [Agency] does not consider a bank's activities to be in the State if those activities take place in a retail lending assessment area consisting of counties in more than one State.

(2) *Rated multistate MSAs.* The [Agency] evaluates a bank and assigns conclusions and ratings under this part in any multistate MSA in which the bank maintains a main office, a branch, or a deposit-taking remote service facility in two or more States within that multistate MSA.

(d) *Effect of evidence of discriminatory or other illegal credit practices*—(1) *Scope.* For each State and multistate MSA, as applicable, and the institution, the [Agency]'s evaluation of a bank's performance under this part is adversely affected by evidence of discriminatory or other illegal credit practices, as provided in paragraph (d)(2) of this section. The [Agency] considers evidence of discriminatory or other illegal credit practices described in this section by:

(i) The bank, including by an [operations subsidiary or operating subsidiary] of the bank; or

(ii) Any other affiliate related to any activities considered in the evaluation of the bank.

(2) *Discriminatory or other illegal credit practices.* For purposes of paragraph (d)(1) of this section, discriminatory or other illegal credit practices consist of the following:

(i) Discrimination on a prohibited basis, including in violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) or the Fair Housing Act (42 U.S.C. 3601 *et seq.*);

(ii) Violations of the Home Ownership and Equity Protection Act (15 U.S.C. 1639);

(iii) Violations of section 5 of the Federal Trade Commission Act (15 U.S.C. 45);

(iv) Violations of section 1031 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5531, 5536);

(v) Violations of section 8 of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*);

(vi) Violations of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*);

(vii) Violations of the Military Lending Act (10 U.S.C. 987);

(viii) Violations of the Servicemembers Civil Relief Act (50 U.S.C. 3901 *et seq.*); and

(ix) Any other violation of a law, rule, or regulation consistent with the types of violations in paragraphs (d)(2)(i) through (viii) of this section, as determined by the [Agency].

(3) *Agency considerations.* In determining the effect of evidence of discriminatory or other illegal credit practices described in paragraph (d)(1) of this section on the bank's assigned State, multistate MSA, and institution ratings, the [Agency] will consider:

(i) The root cause or causes of any such violations of law, rule, or regulation;

(ii) The severity of any harm to any communities, individuals, small businesses, and small farms resulting from such violations;

(iii) The duration of time over which the violations occurred;

(iv) The pervasiveness of the violations;

(v) 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 noncompliance and harm to communities, individuals, small businesses, and small farms; and

(vi) Any other relevant information.

(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 Small bank performance evaluation.

(a) *Small bank performance evaluation*—(1) *In general.* The [Agency] evaluates a small bank's record of helping to meet the credit needs of its entire community pursuant to the Small Bank Lending Test as provided in paragraph (a)(2) of this section, unless the small bank opts to be evaluated pursuant to the Retail Lending Test in § ____.22.

(2) *Small Bank Lending Test.* 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 retail and community development 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 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 facility-based assessment areas.

(b) *Additional consideration*—(1) *Small banks evaluated pursuant to the Small Bank Lending Test.* The [Agency] may adjust a small bank rating from ''Satisfactory'' to ''Outstanding'' at the institution level where the bank requests and receives additional consideration for the following activities, without regard to whether the activity is in one or more of the bank's facility-based assessment areas, as applicable:

(i) Making community development investments;

(ii) Providing community development services; and

(iii) Providing branches and other services, digital delivery systems and other delivery systems, and deposit products responsive to the needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms.

(2) *Small banks that opt to be evaluated pursuant to the Retail Lending Test in § ____.22.* The [Agency] may adjust a small bank rating from ''Satisfactory'' to ''Outstanding'' at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in § ____.23, the Community Development Financing Test in § ____.24, or the Community Development Services Test in § ____.25.

(3) *Additional consideration for activities with MDIs, WDIs, and LICUs, and for providing low-cost education loans.* Notwithstanding paragraphs (b)(1) and (2) of this section, a small bank may request and receive additional consideration at the institution level for activities with MDIs, WDIs, and LICUs pursuant to 12 U.S.C. 2903(b) and 2907(a) and for providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the small bank's overall institution rating.

(c) *Small bank performance conclusions and ratings*—(1) *Conclusions.* Except for a small bank that opts to be evaluated pursuant to the Retail Lending Test in § ____.22, the [Agency] assigns conclusions for the performance of a small bank evaluated under this section as provided in appendix E to this part. If a bank opts to be evaluated pursuant to the Retail Lending Test, the [Agency] assigns conclusions for the bank's Retail Lending Test performance as provided in appendix C to this part. In assigning conclusions for a small bank, the [Agency] may consider performance context information as provided in § ____.21(d).

(2) *Ratings.* For a small bank evaluated under the Small Bank Lending Test, the [Agency] rates the bank's performance under this section as provided in appendix E to this part. If a small bank opts to be evaluated under the Retail Lending Test in § ____.22, the [Agency] rates the performance of a small bank as provided in appendix D to this part.

§ ____.30 Intermediate bank performance evaluation.

(a) *Intermediate bank performance evaluation*—(1) *In general.* The [Agency] evaluates an intermediate bank's record of helping to meet the credit needs of its entire community pursuant to the Retail Lending Test in § ____.22 and the Intermediate Bank Community Development Test as provided in paragraph (a)(2) of this section, unless an intermediate bank opts to be evaluated pursuant to the Community Development Financing Test in § ____.24.

(2) *Intermediate Bank Community Development Test.* (i) An intermediate bank's community development performance is evaluated pursuant to the following criteria:

(A) The number and dollar amount of community development loans;

(B) The number and dollar amount of community development investments;

(C) The extent to which the bank provides community development services; and

(D) The bank's responsiveness through such community development loans, community development investments, and community development services to community development needs. The [Agency]'s evaluation of the responsiveness of the bank's activities is informed by information provided by the bank, and may be informed by the impact and responsiveness review factors described in § ____.15(b).

(ii) The [Agency] considers an intermediate bank's community development loans, community development investments, and community development services without regard to whether the activity is made in one or more of the bank's facility-based assessment areas. The extent of the [Agency]'s consideration of community development loans, community development investments, and community development services outside of the bank's facility-based assessment areas will depend on the adequacy of the bank's responsiveness to community development needs and opportunities within the bank's facility-based assessment areas and applicable performance context information.

(b) *Additional consideration*—(1) *Intermediate banks evaluated pursuant to the Intermediate Bank Community Development Test.* The [Agency] may adjust the rating of an intermediate bank evaluated as provided in paragraph (a)(2) of this section from ''Satisfactory'' to ''Outstanding'' at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in § ____.23.

(2) *Intermediate banks evaluated pursuant to the Community Development Financing Test.* The [Agency] may adjust the rating of an intermediate bank that opts to be evaluated pursuant to the Community Development Financing Test in § ____.24 from ''Satisfactory'' to ''Outstanding'' at the institution level where the bank requests and receives additional consideration for activities that would qualify pursuant to the Retail Services and Products Test in

§ ____.23, the Community Development Services Test in § ____.25, or both.

(3) *Additional consideration for low-cost education loans.* Notwithstanding paragraphs (b)(1) and (2) of this section, an intermediate bank may request and receive additional consideration at the institution level for providing low-cost education loans to low-income borrowers pursuant to 12 U.S.C. 2903(d), regardless of the intermediate bank's overall institution rating.

(c) *Intermediate bank performance conclusions and ratings*—(1) *Conclusions.* The [Agency] assigns a conclusion for the performance of an intermediate bank evaluated pursuant to this section as provided in appendices C and E to this part. In assigning conclusions for an intermediate bank, the [Agency] may consider performance context information as provided in § ____.21(d).

(2) *Ratings.* The [Agency] rates the performance of an intermediate bank evaluated under this section as provided in appendix D to 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 loans and small farm loans data.* A large bank must collect and maintain in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the following data for each small business loan 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 or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, as applicable.

(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;

(vii) An indicator for whether the loan was to a business or farm with gross annual revenues of $250,000 or less;

(viii) An indicator for whether the loan was to a business or farm with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(ix) An indicator for whether the loan was to a business or farm with gross annual revenues greater than $1 million; and

(x) An indicator for whether the loan was to a business or farm for which gross annual revenues are not known by the bank.

(2) *Consumer loans data—automobile loans*—(i) *Large banks.* A large bank for which automobile loans are a product line must collect and maintain in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data is evaluated, the data described in paragraphs (a)(2)(iii)(A) through (F) of this section for each automobile loan originated or purchased by the bank during the evaluation period.

(ii) *Intermediate or small banks.* An intermediate bank or a small bank for which automobile loans are a product line may collect and maintain in a format of the bank's choosing, including in an electronic form prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the data described in paragraphs (a)(2)(iii)(A) through (F) of this section for each automobile loan originated or purchased by the bank during the evaluation period.

(iii) *Data collected and maintained.* Data collected and maintained pursuant to paragraph (a)(2)(i) or (ii) of this section include the following:

(A) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(B) The date of the loan origination or purchase;

(C) The loan amount at origination or purchase;

(D) The loan location, including State, county, and census tract;

(E) An indicator for whether the loan was originated or purchased by the bank; and

(F) The gross annual income relied on in making the credit decision.

(3) *Home mortgage loans.* (i) If a large bank is subject to reporting under 12 CFR part 1003, the bank must collect and maintain, in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, 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) pursuant to the requirements in 12 CFR 1003.4(e).

(ii) If a large bank is not subject to reporting under 12 CFR part 1003 due to the location of its branches, but would otherwise meet the Home Mortgage Disclosure Act (HMDA) size and lending activity requirements pursuant to 12 CFR part 1003, the bank must collect and maintain, in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the following data, for each closed-end home mortgage loan, excluding multifamily loans, originated or purchased during the evaluation period:

(A) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(B) The date of the loan origination or purchase;

(C) The loan amount at origination or purchase;

(D) The location of each home mortgage loan origination or purchase, including State, county, and census tract;

(E) The gross annual income relied on in making the credit decision; and

(F) An indicator for whether the loan was originated or purchased by the bank.

(4) *Retail banking services and retail banking products data*—(i) *Branches and remote service facilities.* A large bank must collect and maintain in electronic form, as prescribed by the [Agency], until completion of the bank's next CRA examination in which the data are evaluated, the following data with respect to retail banking services and retail banking products offered and provided by the bank during each calendar year:

(A) Location of branches, main offices described in § ____.23(a)(2), and remote service facilities. Location information must include:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State;

(*5*) Zip code; and

(*6*) Census tract;

(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, main office described in § ____.23(a)(2), and remote service facility openings and closings, as applicable;

(D) Hours of operation of each branch, main office described in § ____.23(a)(2), and remote service facility, as applicable; and

(E) Services offered at each branch or main office described in § ____.23(a)(2) that are responsive to low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(ii) *Digital delivery systems and other delivery systems data*—(A) *In general.* A large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, a large bank that had assets less than or equal to $10 billion as of December 31 in either of the prior two calendar years that does not operate any branches or a main office described in § ____.23(a)(2), and a large bank that had assets less than or equal to $10 billion as of December 31 in either of the prior two calendar years that requests additional consideration for digital delivery systems and other delivery systems pursuant to § ____.23(b)(4), must collect and maintain in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the data described in paragraph (a)(4)(ii)(B) of this section. A bank may opt to collect and maintain additional data pursuant to paragraph (a)(4)(ii)(C) of this section in a format of the bank's own choosing.

(B) *Required data.* Pursuant to paragraph (a)(4)(ii)(A) of this section, a bank must collect and maintain the following data:

(*1*) The range of retail banking services and retail banking products offered through digital delivery systems and other delivery systems; and

(*2*) The digital delivery systems and other delivery systems activity by individuals, families, or households in low-, moderate-, middle-, and upper-income census tracts, as evidenced by:

(*i*) The number of checking and savings accounts opened digitally and through other delivery systems by census tract income level for each calendar year; and

(*ii*) The number of checking and savings accounts opened digitally and through other delivery systems that are active at the end of each calendar year by census tract income level for each calendar year.

(C) *Optional data.* Pursuant to paragraph (a)(4)(ii)(A) of this section, a bank may collect and maintain any additional information not required in paragraph (a)(4)(ii)(B) of this section that demonstrates that digital delivery systems and other delivery systems serve low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(iii) *Data for deposit products responsive to the needs of low- and moderate-income individuals, families, or households*—(A) *In general.* A large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years and a large bank that had assets less than or equal to $10 billion as of December 31 in either of the prior two calendar years that requests additional consideration for deposit products responsive to the needs of low- and moderate-income individuals, families, or households pursuant to § ____.23(c)(3), must collect and maintain in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the data described in paragraph (a)(4)(iii)(B) of this section. A bank may opt to collect and maintain additional data pursuant to paragraph (a)(4)(iii)(C) of this section in a format of the bank's choosing.

(B) *Required data.* Pursuant to paragraph (a)(4)(iii)(A) of this section, a bank must collect and maintain the following data:

(*1*) 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; and

(*2*) In connection with paragraph (a)(4)(iii)(B)(*1*) of this section, the percentage of responsive deposit accounts compared to total deposit accounts for each year of the evaluation period.

(C) *Optional data.* Pursuant to paragraph (a)(4)(iii)(A) of this section, a bank may collect and maintain any other information that demonstrates the availability and usage of the bank's deposit products responsive to the needs of low- and moderate-income individuals, families, or households and low- and moderate-income census tracts.

(5) *Community development loans and community development investments data.* (i)(A) A large bank and a limited purpose bank that would be a large bank based on the asset size described in the definition of a large bank, must collect and maintain in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development investments originated, purchased, refinanced, renewed, or modified by the bank during the evaluation period.

(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 in which the data are evaluated, the data listed in paragraph (a)(5)(ii) of this section for community development loans and community development investments originated, purchased, refinanced, renewed, or modified by the bank during the evaluation period.

(ii) Pursuant to paragraphs (a)(5)(i)(A) and (B) of this section, a bank must collect and maintain, on an annual basis, the following data for community development loans and community development investments:

(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, refinance, or renewal of the loan or investment;

(*3*) Date the loan or investment was sold or paid off; and

(*4*) The dollar amount of:

(*i*) A community development loan originated or purchased, or a community development investment made, including a legally binding commitment to extend credit or a legally binding commitment to invest, in the calendar year, as described in paragraph I.a.1.i of appendix B to this part;

(*ii*) Any increase in the calendar year to an existing community development loan that is refinanced or renewed or to an existing community development investment that is renewed;

(*iii*) The outstanding balance of a community development loan originated, purchased, refinanced, or renewed in previous years or community development investment made or renewed in previous years, as of December 31 for each year that the loan or investment remains on the bank's balance sheet; or

(*iv*) The outstanding balance, less any increase reported in paragraph (a)(5)(ii)(A)(*4*)(*ii*) of this section in the same calendar year, of a community development loan refinanced or renewed in a year subsequent to the year of origination or purchase, as of December 31 of the calendar year for each year that the loan remains on the bank's balance sheet; or an existing community development investment renewed in a year subsequent to the year the investment was made as of December 31 for each year that the investment remains on the bank's balance sheet.

(B) Community development loan or community development investment information:

(*1*) Name of organization or entity;

(*2*) Activity type (loan or investment);

(*3*) The type of community development described in § ____.13(b) through (l); and

(*4*) Community development loan or community development investment detail, such as the specific type of financing and type of entity supported (*e.g.,* LIHTC, NMTC, Small Business Investment Company, multifamily mortgage, private business, or mission-driven nonprofit organization, mortgage-backed security, or other).

(C) Indicators of the impact and responsiveness, including whether the community development loan or community development investment:

(*1*) Benefits or serves one or more persistent poverty counties;

(*2*) Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher;

(*3*) Benefits or serves one or more geographic areas with low levels of community development financing;

(*4*) Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with a term of less than one year;

(*5*) Benefits or serves low-income individuals, families, or households;

(*6*) Supports small businesses or small farms with gross annual revenues of $250,000 or less;

(*7*) Directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(*8*) Benefits or serves residents of Native Land Areas;

(*9*) Is a grant or donation;

(*10*) Is an investment in a project financed with LIHTCs or NMTCs;

(*11*) Reflects bank leadership through multi-faceted or instrumental support; or

(*12*) Is a new community development financing product that addresses community development needs for low- or moderate-income individuals, families, or households.

(D) Specific location information, if applicable:

(*1*) Street address;

(*2*) City;

(*3*) County;

(*4*) State;

(*5*) Zip code; and

(*6*) Census tract.

(E) Allocation of the dollar amount of the community development loan or community development investment to geographic areas served by the loan or investment:

(*1*) A list of the geographic areas served by the community development loan or community development investment, specifying any county, State, multistate MSA, or nationwide area served; and

(*2*) Specific information about the dollar amount of the community development loan or community development investment that was allocated to each county served by the loan or investment, if available.

(F) Other information relevant to determining that the community development loan or community development investment meets the standards pursuant to § ____.13.

(6) *Community development services data.* A large bank must collect and maintain, in a format of the bank's choosing or in a standardized format, as provided by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the following community development services data:

(i) Community development services information as follows:

(A) Date of service;

(B) Number of board member or employee service hours;

(C) Name of organization or entity;

(D) The type of community development described in § ____.13(b) through (l);

(E) Capacity in which a bank's or its affiliate's board member or employee serves (*e.g.,* board member of a nonprofit organization, technical assistance, financial education, general volunteer); and

(F) Indicators of the impact and responsiveness, including whether the community development service:

(*1*) Benefits or serves one or more persistent poverty counties;

(*2*) Benefits or serves one or more census tracts with a poverty rate of 40 percent or higher;

(*3*) Benefits or serves one or more geographic areas with low levels of community development financing;

(*4*) Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with a term of less than one year;

(*5*) Benefits or serves low-income individuals, families, or households;

(*6*) Supports small businesses or small farms with gross annual revenues of $250,000 or less;

(*7*) Directly facilitates the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;

(*8*) Benefits or serves residents of Native Land Areas;

(*9*) Reflects bank leadership through multi-faceted or instrumental support; or

(*10*) Is a new community development service that addresses community development needs for low- or moderate-income individuals, families, or households.

(ii) Location information as follows:

(A) *Location list.* A list of the geographic areas served by the activity, specifying any census tracts, counties, States, or nationwide area served; and

(B) *Geographic-level.* Whether the bank is seeking consideration in a facility-based assessment area, State, multistate MSA, or nationwide area.

(7) *Deposits data.* A large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years must collect and maintain annually, in electronic form, as prescribed by the [Agency], until the completion of the bank's next CRA examination in which the data are evaluated, the dollar amount of its deposits at the county level based on deposit location. The bank allocates the deposits for which a deposit location is not available to the nationwide area. Annual deposits must be calculated based on average daily balances as provided in statements such as monthly or quarterly statements. Any other bank that opts to collect and maintain the data in this paragraph (a)(7) must do so in the same form and for the same duration as described in this paragraph (a)(7).

(b) *Information required to be reported*—(1) *Small business loan and small farm loan data.* A large bank must report annually by April 1 to the [Agency] in electronic form, as prescribed by the [Agency], the small business loan and small farm loan data described in paragraphs (b)(1)(i) through (vii) of this section for the prior calendar year. For each census tract in which the bank originated or purchased a small business loan or small farm loan, the bank must report the aggregate number and dollar amount of small business loans and small farm loans:

(i) With an amount at origination of $100,000 or less;

(ii) With an amount at origination of greater than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of greater than $250,000;

(iv) To businesses and farms with gross annual revenues of $250,000 or less (using the revenues relied on in making the credit decision);

(v) To businesses and farms with gross annual revenues greater than $250,000 but less than or equal to $1 million (using the revenues relied on in making the credit decision);

(vi) To businesses and farms with gross annual revenues greater than $1 million; and

(vii) To businesses and farms for which gross annual revenues are not known by the bank.

(2) *Community development loans and community development investments data.* A large bank and a limited purpose bank that would be a large bank based on the asset size described in the definition of a large bank must report annually by April 1 to the [Agency] in electronic form, as prescribed by the [Agency], the community development loan and community development investment data described in paragraph (a)(5)(ii) of this section for the prior calendar year, except for the data described in paragraph (a)(5)(ii)(B)(*1*) of this section and paragraphs (a)(5)(ii)(D)(*1*) through (*5*) of this section.

(3) *Deposits data.* (i) A large bank that had assets greater than $10 billion as of December 31 in both of the prior two calendar years must report annually by April 1 to the [Agency] in electronic form, as prescribed by the [Agency], the deposits data for the prior calendar year collected and maintained pursuant to 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. Any other bank that opts to collect and maintain the data in paragraph (a)(7) of this section must report these data in the same form and for the same duration as described in this paragraph (b)(3)(i).

(ii) A bank that reports deposits data pursuant to paragraph (b)(3)(i) of this section for which a deposit location is not available must report these deposits at the nationwide area.

(c) *Data on [operations subsidiaries or operating subsidiaries].* To the extent that its [operations subsidiaries or operating subsidiaries] engage in retail banking services, retail banking products, community development lending, community development investments, or community development services, a bank must collect, maintain, and report these loans, investments, services, and products 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 its [operations subsidiary or operating subsidiary] under 12 CFR part 1003, if applicable, or collect and maintain data on home mortgage loans by its [operations subsidiary or operating subsidiary] that the bank would have collected and maintained pursuant to paragraph (a)(3) of this section had the bank originated or purchased the loans.

(d) *Data on other affiliates.* A bank that elects to have the [Agency] consider retail banking services, retail banking products, community development lending, community development investments, or community development services engaged in by affiliates of a bank (other than an [operations subsidiary or operating subsidiary]), for purposes of this part must collect, maintain, and report the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a) and (b) of this section had the loans, investments, services, or products been engaged in by the bank. For home mortgage loans, the bank must identify the home mortgage loans reported by bank affiliates under 12 CFR part 1003, if applicable, or collect and maintain data on home mortgage loans by the affiliate that the bank would have collected and maintained pursuant to paragraphs (a)(3) of this section had the loans been originated or purchased by the bank.

(e) *Data on community development loans and community development investments 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 loans and investments data that the bank would have collected, maintained, and reported pursuant to paragraphs (a)(5) and (b)(2) of this section had the bank originated, purchased, refinanced, or renewed the loans or investments.

(f) *Assessment area data*—(1) *Facility-based assessment areas.* A large bank and a limited purpose bank that would be a large bank based on the asset size described in the definition of a large bank must collect and report to the [Agency] annually by April 1 a list of each facility-based assessment area showing the States, MSAs, and counties in the facility-based assessment area, as of December 31 of the prior calendar year or the last date the facility-based assessment area was in effect, provided the facility-based assessment area was delineated for at least six months of the prior calendar year.

(2) *Retail lending assessment areas.* A large bank must collect and report to the [Agency] annually by April 1 a list of each retail lending assessment area showing the States, MSAs, and counties in the retail lending assessment area for the prior calendar year.

(g) *CRA Disclosure Statement.* The [Agency] or its appointed agent, 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 with a population of 500,000 persons or fewer in which the bank reported a small business loan or a small farm loan:

(i) The number and dollar volume of small business loans and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income census tracts;

(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;

(iv) The number and dollar volume of small business loans and small farm loans to businesses and farms with gross annual revenues of $250,000 or less; and

(v) The number and dollar volume of small business loans and small farm loans to businesses and farms with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(2) For each county 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 dollar volume 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, equal to or greater than 10 percent but less than 20 percent, equal to or greater than 20 percent but less than 30 percent, equal to or greater than 30 percent but less than 40 percent, equal to or greater than 40 percent but less than 50 percent, equal to or greater than 50 percent but less than 60 percent, equal to or greater than 60 percent but less than 70 percent, equal to or greater than 70 percent but less than 80 percent, equal to or greater than 80 percent but less than 90 percent, equal to or greater than 90 percent but less than 100 percent, equal to or greater than 100 percent but less than 110 percent, equal to or greater than 110 percent but less than 120 percent, and equal to or greater than 120 percent;

(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, equal to or greater than 10 percent but less than 20 percent, equal to or greater than 20 percent but less than 30 percent, equal to or greater than 30 percent but less than 40 percent, equal to or greater than 40 percent but less than 50 percent, equal to or greater than 50 percent but less than 60 percent, equal to or greater than 60 percent but less than 70 percent, equal to or greater than 70 percent but less than 80 percent, equal to or greater than 80 percent but less than 90 percent, equal to or greater than 90 percent but less than 100 percent, equal to or greater than 100 percent but less than 110 percent, equal to or greater than 110 percent but less than 120 percent, and equal to or greater than 120 percent; and

(iii) A list showing each census tract in which the bank reported a small business loan or a small farm loan;

(3) The number and dollar volume 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 dollar volume 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; and

(4) The number and dollar volume 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 area outside of these States and multistate MSAs.

(h) *Aggregate disclosure statements.* The [Agency] or its appointed agent, 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 depository institutions subject to reporting under 12 CFR part 25, 228, or 345. These disclosure statements indicate the number and dollar amount of all small business loans and small farm loans originated or purchased for each census tract and the number and dollar amount of all community development loans and community development investments for each county 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) *Availability of disclosure statements.* The [Agency] makes the individual bank CRA Disclosure Statements, described in paragraph (g) of this section, and the aggregate disclosure statements, described in paragraph (h) of this section, available on the FFIEC's website at: *https://www.ffiec.gov.*

(j) *HMDA data disclosure*—(1) *In general.* For a large bank required to report home mortgage loan data pursuant to 12 CFR part 1003, the [Agency] will publish on the [Agency]'s website the data required by paragraph (j)(2) of this section concerning the distribution of a large bank's originations and applications of home mortgage loans by borrower or applicant income level, race, and ethnicity in each of the bank's facility-based assessment areas, and as applicable, its retail lending assessment areas. This information is published annually based on data reported pursuant to 12 CFR part 1003.

(2) *Data to be published on the [Agency]'s website.* For each of the large bank's facility-based assessment areas, and as applicable, its retail lending assessment areas, the [Agency] publishes on the [Agency]'s website:

(i) The number and percentage of originations and applications of the large bank's home mortgage loans by borrower or applicant income level, race, and ethnicity;

(ii) The number and percentage of originations and applications of aggregate mortgage lending of all lenders reporting HMDA data in the facility-based assessment area and as applicable, the retail lending assessment area; and

(iii) Demographic data of the geographic area.

(3) *Announcement of data publication.* Upon publishing the data required pursuant to paragraphs (j)(1) and (2) of this section, the [Agency] will publicly announce that the information is available on the [Agency]'s public website.

(4) *Effect on CRA conclusions and ratings.* The race and ethnicity information published pursuant to paragraphs (j)(1) and (2) of this section does not impact the conclusions or ratings of the large 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 (updated on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December 31) 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 (updated on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December 31) 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, as applicable, each retail lending assessment area showing the boundaries of the area and identifying the census tracts contained in 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 subject to data reporting requirements pursuant to § ____.42.* A bank subject to data reporting requirements pursuant to § ____.42 must include in its public file a written notice that the 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.* 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*—(i) *HMDA Disclosure Statement.* 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: *https://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.

(ii) *Availability of bank HMDA data.* A large 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 home mortgage loan data published by the [Agency] under § ____.42(j) are available at the [Agency]'s website.

(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 evaluated under a strategic plan must include in its public file a copy of that plan while it is in effect. 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" institution 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) For banks that maintain a website, all information required for the bank's public file under this section must be maintained on the bank's website.

(2) For banks that do not maintain a website:

(i) All the information required for the bank's public file must be maintained at the main office and, if an interstate bank, at one branch office in each State; and

(ii) At each branch, the following must be maintained:

(A) 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

(B) 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 to 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 depository institutions.

§ ____.45 Publication of planned examination schedule.

The [Agency] publishes on its public website, at least 30 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 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] 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.

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 (d) of this section, this part is applicable, beginning on April 1, 2024.

(2) *Specific applicability dates.* The following sections are applicable as follows:

(i) On January 1, 2026, §§ ____.12 through ____.15, ____.17 through ____.30, and ____.42(a); the data collection and maintenance requirements in § ____.42(c) through (f); and appendices A through F to this part become applicable.

(ii) On January 1, 2027, § ____.42(b) and (g) through (i) and the reporting requirements in § ____.42(c) through (f) become applicable.

(iii) *Rules during transition period.* Prior to the applicability dates in paragraphs (a)(2)(i) and (ii) of this section, banks must comply with the relevant provisions of this part in effect on March 31, 2024, as set forth in appendix G to this part. The relevant provisions set forth in appendix G to this part are applicable to CRA performance evaluations pursuant to 12 U.S.C. 2903(a)(1) that assess activities that a bank conducted prior to the dates set forth in paragraphs (a)(2)(i) and (ii) of this section, as applicable, except as provided in paragraphs (c) and (d) of this section.

(b) *HMDA data disclosures.* The [Agency] will publish the data pursuant to § ____.42(j) beginning January 1, 2027.

(c) *Consideration of bank activities.* (1) In assessing a bank's CRA performance, the [Agency] will consider any loan, investment, service, or product that was eligible for CRA consideration at the time the bank conducted the activity.

(2) Notwithstanding paragraph (c)(1) of this section, 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.

(d) *Strategic plans*—(1) *New and replaced strategic plans.* The CRA regulatory requirements in effect on March 31, 2024, as set forth in appendix G to this part, apply to any new strategic plan, including a plan that replaces an expired strategic plan, submitted to the [Agency] for approval on or after April 1, 2024, but before November 1, 2025, and that the agency has determined is a complete plan consistent with the requirements under 12 CFR ____.27 in effect on March 31, 2024, as set forth in appendix G to this part. These strategic plans remain in effect until the expiration date of the plan. The [Agency] will not accept any strategic plan submitted on or after November 1, 2025, and before January 1, 2026.

(2) *Existing strategic plans.* A strategic plan in effect as of April 1, 2024, remains in effect until the expiration date of the plan.

(e) *First evaluation under this part on or after February 1, 2024.* In its first performance evaluation under this part on or after February 1, 2024, a large bank that has a total of 10 or more facility-based assessment areas in any State or multistate MSA, or nationwide, as applicable, and that was a bank subject to evaluation under this part or [other Agencies' regulations] prior to February 1, 2024, 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 facility-based assessment area conclusion, calculated as described in paragraph g.2.ii of appendix D to this part, of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas in that State or multistate MSA, or nationwide, as applicable.

Appendix A to Part ____—Calculations for the Retail Lending Test

This appendix, based on requirements described in §§ ____.22 and ____.28, includes the following sections:

I. Retail Lending Volume Screen
II. Retail Lending Test Distribution Metrics—Scope of Evaluation
III. Geographic Distribution Metrics and Benchmarks
IV. Borrower Distribution Metrics and Benchmarks
V. Supporting Conclusions for Major Product Lines Other Than Automobile Lending
VI. Supporting Conclusions for Automobile Lending
VII. Retail Lending Test Conclusions—All Major Product Lines
VIII. Retail Lending Test Weighting and Conclusions for States, Multistate MSAs, and the Institution

I. Retail Lending Volume Screen

The [Agency] calculates the Bank Volume Metric and the Market Volume Benchmark for a facility-based assessment area and determines whether the bank has met or surpassed the Retail Lending Volume Threshold in that facility-based assessment area.

a. *Bank Volume Metric.* The [Agency] calculates the Bank Volume Metric for each facility-based assessment area by:

1. Summing, over the years in the evaluation period, the bank's annual dollar volume of loans included in the Bank Volume Metric (*i.e., volume metric loans*). The bank's annual dollar volume of volume metric loans is the total dollar amount of all home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans originated or purchased by the bank in the facility-based assessment area in that year. Automobile loans are included in the bank's annual dollar amount of volume metric loans only if automobile loans are a product line for the bank.

2. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in the facility-based assessment area. For a bank that reports deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. For a bank that does not report deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

3. Dividing the result of paragraph I.a.1 of this appendix by the result of paragraph I.a.2 of this appendix.

Example A–1: The bank has a three-year evaluation period. The bank's annual dollar amounts of *volume metric loans* are $300,000 (year 1), $300,000 (year 2), and $400,000 (year 3). The sum of the bank's annual dollar amount of *volume metric loans* in a facility-based assessment area, over the years in the evaluation period, is therefore $1 million. The annual dollar volumes of deposits in the bank located in the facility-based assessment area are $1.7 million (year 1), $1.6 million (year 2), and $1.7 million (year 3). The sum of the annual dollar volume of deposits in the facility-based assessment area, over the years in the evaluation period, is therefore $5 million. The Bank Volume Metric for the facility-based assessment area would be $1 million divided by $5 million, or 0.2 (equivalently, 20 percent).

$$\frac{Bank\ Volume\ Metric\ Loans\ (\$1\ million)}{Bank\ Deposits\ (\$5\ million)} = Bank\ Volume\ Metric\ (20\%)$$

b. *Market Volume Benchmark.* The [Agency] calculates the Market Volume Benchmark for the facility-based assessment area. For purposes of calculating the Market Volume Benchmark, a *benchmark depository institution* for a particular year is a depository institution that, in that year, was subject to reporting pursuant to 12 CFR 25.42(b)(1), 228.42(b)(1), or 345.42(b)(1) or 12 CFR part 1003, and operated a facility included in the FDIC's Summary of Deposits data in the facility-based assessment area. The [Agency] calculates the Market Volume Benchmark by:

1. Summing, over the years in the evaluation period, the annual dollar volume of volume benchmark loans. The annual dollar volume of volume benchmark loans is the total dollar volume of all home mortgage loans, multifamily loans, small business loans, and small farm loans in the facility-based assessment area in that year that are reported loans originated by benchmark depository institutions.

2. Summing, over the years in the evaluation period, the annual dollar volume of deposits for benchmark depository institutions in the facility-based assessment area. The annual dollar volume of deposits for benchmark depository institutions in the facility-based assessment area is the sum across benchmark depository institutions of: (i) for a benchmark depository institution that reports data pursuant to 12 CFR 25.42(b)(3), 228.42(b)(3), or 345.42(b)(3), the total of annual average daily balances of

deposits reported by that depository institution in counties in the facility-based assessment area for that year; and (ii) for a benchmark depository institution that does not report data pursuant to 12 CFR 25.42(b)(3), 228.42(b)(3), or 345.42(b)(3), the total of deposits assigned to facilities reported by that depository institution in counties in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

3. Dividing the result of paragraph I.b.1 of this appendix by the result of paragraph I.b.2 of this appendix.

Example A–2: With reference to example A–1 to this appendix, the annual dollar volume of volume benchmark loans is $6 million (year 1), $7 million (year 2), and $7 million (year 3). The sum of the annual dollar volume of volume benchmark loans, over the years in the evaluation period, is therefore $20 million. The annual dollar volume of deposits for benchmark depository institutions is $17 million (year 1), $15 million (year 2), and $18 million (year 3). The sum of the annual dollar volume of deposits for benchmark depository institutions, over the years in the evaluation period, is therefore $50 million. The Market Volume Benchmark for that facility-based assessment area would be $20 million divided by $50 million, or 0.4 (equivalently, 40 percent).

$$\frac{Volume\ Benchmark\ Loans\ (\$20\ million)}{Aggregate\ Market\ Deposits\ (\$50\ million)} = Market\ Volume\ Benchmark\ (40\%)$$

c. *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 0.3 (equivalently, 30 percent). A bank meets or surpasses the Retail Lending Volume Threshold in a facility-based assessment area if the Bank Volume Metric is equal to or greater than the Retail Lending Volume Threshold.

Example A–3: Based on examples A–1 and A–2 to this appendix, the [Agency] calculates the Retail Lending Volume Threshold by multiplying the Market Volume Benchmark of 40 percent by 0.3, equal to 0.12 (equivalently, 12 percent). The Bank Volume Metric, 0.2 (equivalently, 20 percent), is greater than the Retail Lending Volume Threshold. Accordingly, the bank surpasses the Retail Lending Volume Threshold.

Bank Volume Metric (20%) > Retail Lending Volume Threshold [(40%) × 0.3 = 12%]

II. Retail Lending Distribution Metrics—Scope Of Evaluation

a. *Retail Lending Test Areas evaluated.* A bank's major product lines are evaluated in its Retail Lending Test Areas, as provided in § ____.22(d) and as described in paragraphs II.a.1 and 2 of this appendix.

1. *Large banks exempt from evaluation in retail lending assessment areas.* Pursuant to § ____.17(a)(2), a large bank is not required to delineate retail lending assessment areas in a particular calendar year if the following ratio exceeds 80 percent, based on the combination of loan dollars and loan count as defined in § ____.12:

i. The sum, over the prior two calendar years, of the large bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the large bank, originated or purchased in its facility-based assessment areas; divided by

ii. The sum, over the prior two calendar years, of the large bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the large bank, originated or purchased overall.

Example A–4: A large bank (for which automobile loans are not a product line) originated or purchased 20,000 closed-end home mortgage loans, small business loans, and small farm loans in the prior two calendar years, representing $6 billion in loan dollars. Of these loans, 18,000 loans, representing $4.5 billion in loan dollars, were originated or purchased in the large bank's facility-based assessment areas. As such, the large bank originated or purchased 75 percent of closed-end home mortgage loans, small business loans, and small farm loans ($4.5 billion/$6 billion) by loan dollars and 90 percent (18,000/20,000) of these loans by loan count within its facility-based assessment areas. The combination of loan dollars and loan count is 82.5 percent, or (75 + 90)/2. Thus, this large bank is not required to delineate retail lending assessment areas pursuant to § ____.17(a)(2) in the current calendar year because the 82.5 percent exceeds the 80 percent threshold.

2. *Small banks and intermediate banks evaluated in outside retail lending areas.* Pursuant to § ____.18(a)(2), the [Agency] evaluates the geographic and borrower distributions of the major product lines of an intermediate bank, or a small bank that opts to be evaluated under the Retail Lending Test, in the bank's outside retail lending area if either:

i. The bank opts to have its major product lines evaluated in its outside retail lending area; or

ii. The following ratio exceeds 50 percent, based on the combination of loan dollars and loan count as defined in § ____.12:

A. The sum, over the prior two calendar years, of the bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank, originated or purchased outside of its facility-based assessment areas; divided by

B. The sum, over the prior two calendar years, of the bank's home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans if automobile loans are a product line for the bank, originated or purchased overall.

b. *Product lines and major product lines.* In each of a bank's Retail Lending Test Areas, the [Agency] evaluates each of a bank's major product lines, as provided in § ____.22(d)(2) and as described in paragraphs II.b.1 through 3 of this appendix.

1. *Major product line standard for facility-based assessment areas and outside retail lending areas.* Except as provided in paragraph II.b.1.iii of this appendix, a product line is a major product line in a facility-based assessment area or outside retail lending area if the following ratio is 15 percent or more, based on the combination of loan dollars and loan count as defined in § ____.12:

i. The sum, over the years of the evaluation period, of the bank's loans in the product line originated or purchased in the facility-based assessment area or outside retail lending area; divided by

ii. The sum, over the years of the evaluation period, of the bank's loans in all product lines originated or purchased in the facility-based assessment area or outside retail lending area.

iii. If a bank has not collected, maintained, or reported loan data on a product line in a facility-based assessment area or outside retail lending area for one or more years of an evaluation period, the product line is a major product line if the [Agency] determines that the product line is material to the bank's business in the facility-based assessment area or outside retail lending area.

2. *Major product line standard for retail lending assessment areas.* In a retail lending assessment area:

(i) Closed-end home mortgage loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its closed-end home mortgage loans as determined by the standard in § ____.17(c)(1); and

(ii) Small business loans are a major product line in any calendar year in the evaluation period in which the bank delineates a retail lending assessment area based on its small business loans as determined by the standard in § ____.17(c)(2).

3. *Banks for which automobile loans are a product line.*

i. If a bank's automobile loans are a product line (either because the bank is a majority automobile lender or opts to have its automobile loans evaluated pursuant to § ____.22), automobile loans are a product line for the bank for the entire evaluation period.

ii. A bank is a majority automobile lender if the following ratio, calculated at the institution level, exceeds 50 percent, based on the combination of loan dollars and loan count as defined in § ____.12:

A. The sum, over the two calendar years preceding the first year of the evaluation period, of the bank's automobile loans originated or purchased overall; divided by

B. The sum, over the two calendar years preceding the first year of the evaluation period, of the bank's automobile loans, home mortgage loans, multifamily loans, small business loans, and small farm loans originated or purchased overall.

III. Geographic Distribution Metrics and Benchmarks

The [Agency] calculates the Geographic Bank Metric, the Geographic Market Benchmark, and the Geographic Community Benchmark for low-income census tracts and for moderate-income census tracts, respectively, as set forth in this section. For each facility-based assessment area, retail lending assessment area, and component geographic area of the bank's outside retail lending area, the [Agency] includes either low-income census tracts or moderate-income census tracts (*i.e., designated census tracts*) in the numerator of the metrics and benchmarks calculations for a particular year. To evaluate small banks and intermediate banks without data collection, maintenance and reporting requirements, the [Agency] will use data collected by the bank in the ordinary course of business or through sampling of bank loan data.

a. *Calculation of Geographic Bank Metric.* The [Agency] calculates the Geographic Bank Metric for low-income census tracts and for moderate-income census tracts, respectively, for each major product line in each Retail Lending Test Area. The [Agency] calculates the Geographic Bank Metric by:

1. Summing, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line in designated census tracts in the Retail Lending Test Area.

2. Summing, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line in the Retail Lending Test Area.

3. Dividing the result of paragraph III.a.1 of this appendix by the result of paragraph III.a.2 of this appendix.

Example A–5: The bank has a three-year evaluation period, and small farm loans are a major product line for the bank in a facility-based assessment area (FBAA–1). The bank's annual numbers of originated and purchased small farm loans (*i.e.,* the bank's originated and purchased small farm loans) are 100 (year 1), 75 (year 2), and 75 (year 3) in FBAA–1. The sum of the annual numbers of originated and purchased small farm loans is therefore 250 in the evaluation period. In the low-income census tracts within FBAA–1, the bank originated and purchased 25 small farm loans (year 1), 15 small farm loans (year 2), and 10 small farm loans (year 3) (a total of 50 small farm loans). In FBAA–1, the Geographic Bank Metric for small farm loans in low-income census tracts would be 50 divided by 250, or 0.2 (equivalently, 20 percent).

In the moderate-income census tracts within FBAA–1, the bank originated and purchased 30 small farm loans (year 1), 20 small farm loans (year 2), and 10 small farm loans (year 3) (a total of 60 small farm loans). In FBAA–1, the Geographic Bank Metric for small farm loans in moderate-income census tracts would be 60 divided by 250, or 0.24 (equivalently, 24 percent).

$$\frac{Bank\ Loans\ in\ Low-Income\ Census\ Tracts\ (50)}{Bank\ Loans\ (250)} = Geographic\ Bank\ Metric\ (20\%)$$

$$\frac{Bank\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (60)}{Bank\ Loans\ (250)}$$

$$= Geographic\ Bank\ Metric\ (24\%)$$

b. *Calculation of Geographic Market Benchmarks for facility-based assessment areas and retail lending assessment areas.* For each facility-based assessment area and retail lending assessment area, the [Agency] calculates the Geographic Market Benchmark for designated census tracts for each major product line, excluding automobile loans. The [Agency] calculates the Geographic Market Benchmark by:

1. Summing, over the years in the evaluation period, the annual number of reported loans in the major product line in designated census tracts in the facility-based assessment area or retail lending assessment area originated by all lenders.

2. Summing, over the years in the evaluation period, the annual number of reported loans in the major product line in the facility-based assessment area or retail lending assessment area originated by all lenders.

3. Dividing the result of paragraph III.b.1 of this appendix by the result of paragraph III.b.2 of this appendix.

Example A–6: The Geographic Market Benchmarks for small farm loans in FBAA–1 use a three-year evaluation period. Lenders that report small farm loan data originated 500 small farm loans (year 1), 250 small farm loans (year 2), and 250 small farm loans (year 3) within FBAA–1. The sum of the annual numbers of originated small farm loans is therefore 1,000 in the evaluation period. Lenders that report small farm loan data originated 200 small farm loans (year 1), 100 small farm loans (year 2) and 100 small farm loans (year 3) in low-income census tracts within FBAA–1. The sum of the annual numbers of originated small farm loans in low-income census tracts within FBAA–1 is therefore 400. The Geographic Market Benchmark for small farm loans in low-income census tracts within FBAA–1 would be 400 divided by 1,000, or 0.4 (equivalently, 40 percent).

Lenders that report small farm loan data originated 100 small farm loans (year 1), 100 small farm loans (year 2), and 100 small farm loans (year 3) in moderate-income census tracts within FBAA–1. The sum of the annual numbers of originated small farm loans in moderate-income census tracts within FBAA–1 is therefore 300. The Geographic Market Benchmark for small farm loans in moderate-income census tracts within FBAA–1 would be 300 divided by 1,000, or 0.3 (equivalently, 30 percent).

$$\frac{Aggregate\ Market\ Loans\ in\ Low-Income\ Census\ Tracts\ (400)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Geographic\ Market\ Benchmark\ (40\%)$$

$$\frac{Aggregate\ Market\ Loans\ in\ Moderate-Income\ Census\ Tracts\ (300)}{Aggregate\ Market\ Loans\ (1{,}000)}$$

$$= Geographic\ Market\ Benchmark\ (30\%)$$

c. *Calculation of Geographic Community Benchmarks for facility-based assessment areas and retail lending assessment areas.* The [Agency] calculates the Geographic Community Benchmark for designated census tracts for each major product line in each facility-based assessment area or retail lending assessment area.

1. For closed-end home mortgage loans, the [Agency] calculates a Geographic Community Benchmark for low-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of owner-occupied housing units in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of owner-occupied housing units in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph III.c.1.i of this appendix by the result of paragraph III.c.1.ii of this appendix.

2. For closed-end home mortgage loans, the [Agency] calculates a Geographic Community Benchmark for moderate-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of owner-occupied housing units in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of owner-occupied housing units in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph III.c.2.i of this appendix by the result of paragraph III.c.2.ii of this appendix.

3. For small business loans, the [Agency] calculates a Geographic Community Benchmark for low-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of non-farm businesses in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of non-farm businesses in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph III.c.3.i of this appendix by the result of paragraph III.c.3.ii of this appendix.

4. For small business loans, the [Agency] calculates a Geographic Community Benchmark for moderate-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of non-farm businesses in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of non-farm businesses in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph III.c.4.i of this appendix by the result of paragraph III.c.4.ii of this appendix.

5. For small farm loans, the [Agency] calculates a Geographic Community Benchmark for low-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of farms in low-income census tracts in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of farms in the facility-based assessment area.

iii. Dividing the result of paragraph III.c.5.i of this appendix by the result of paragraph III.c.5.ii of this appendix.

6. For small farm loans, the [Agency] calculates a Geographic Community Benchmark for moderate-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of farms in moderate-income census tracts in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of farms in the facility-based assessment area.

iii. Dividing the result of paragraph III.c.6.i of this appendix by the result of paragraph III.c.6.ii of this appendix.

7. For automobile loans, the [Agency] calculates a Geographic Community Benchmark for low-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of households in low-income census tracts in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of households in the facility-based assessment area.

iii. Dividing the result of paragraph III.c.7.i of this appendix by the result of paragraph III.c.7.ii of this appendix.

8. For automobile loans, the [Agency] calculates a Geographic Community Benchmark for moderate-income census tracts by:

i. Summing, over the years in the evaluation period, the annual number of households in moderate-income census tracts in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of households in the facility-based assessment area.

iii. Dividing the result of paragraph III.c.8.i of this appendix by the result of paragraph III.c.8.ii of this appendix.

Example A–7: The Geographic Community Benchmarks for small business loans in FBAA–1 use a three-year evaluation period. There were 1,300 non-farm businesses (year 1), 1,300 non-farm businesses (year 2), and 1,400 non-farm businesses (year 3) in FBAA–1. The sum of the number of non-farm businesses in FBAA–1 is therefore 4,000 in the evaluation period. In low-income census tracts within FBAA–1, there were 200 non-farm businesses (year 1), 150 non-farm businesses (year 2), and 150 non-farm businesses (year 3) (a total of 500 non-farm businesses). The Geographic Community Benchmark for small business loans in low-income census tracts within FBAA–1 would be 500 divided by 4,000, or 0.125 (equivalently, 12.5 percent).

In moderate-income census tracts within FBAA–1, there were 400 non-farm businesses (year 1), 300 non-farm businesses (year 2), and 300 non-farm businesses (year 3) (a total of 1,000 non-farm businesses). The Geographic Community Benchmark for small business loans in moderate-income census tracts within FBAA–1 would be 1,000 divided by 4,000, or 0.25 (equivalently, 25 percent).

$$\frac{Non-Farm\ Businesses\ in\ Low-Income\ Census\ Tracts\ (500)}{Businesses\ (4{,}000)}$$

$$= Geographic\ Community\ Benchmark\ (12.5\%)$$

$$\frac{Non-Farm\ Businesses\ in\ Moderate-Income\ Census\ Tracts\ (1{,}000)}{Businesses\ (4{,}000)}$$

$$= Geographic\ Community\ Benchmark\ (25\%)$$

d. *Calculation of Geographic Market Benchmarks for the outside retail lending area.* For a bank's outside retail lending area, the [Agency] calculates the Geographic Market Benchmark for each major product line, excluding automobile loans, and for each category of designated census tracts by taking a weighted average of benchmarks for each component geographic area as follows:

1. Calculating a benchmark for each category of designated census tracts and each major product line within each component geographic area as described in § ____.18(b) using the formula for the Geographic Market Benchmark described in paragraph III.b of this appendix with the component geographic area in place of the facility-based assessment area or retail lending assessment area, as applicable.

2. Calculating the weighting for each component geographic area and major product line as the percentage of the bank's loans in the major product line originated or purchased in the outside retail lending area that are within the component geographic area, based on loan count.

3. Calculating the weighted average benchmark for the outside retail lending area using the component geographic area benchmarks in paragraph III.d.1 of this appendix and associated weightings in paragraph III.d.2 of this appendix.

e. *Calculation of Geographic Community Benchmarks for the outside retail lending area.* For a bank's outside retail lending area, the [Agency] calculates the Geographic Community Benchmark for each category of designated census tract and for each major product line by taking a weighted average of benchmarks for each component geographic area as follows:

1. Calculating a benchmark for each category of designated census tracts and each major product line within each component geographic area as described in § ____.18(b) using the formula for the Geographic Community Benchmark described in paragraph III.c of this appendix with the component geographic area in place of the facility-based assessment area or retail lending assessment area, as applicable.

2. Calculating the weighting for each component geographic area and major product line as the percentage of the bank's loans in the major product line originated or purchased in the outside retail lending area that are within the component geographic area, based on loan count.

3. Calculating the weighted average benchmark for the outside retail lending area using the component geographic area benchmarks in paragraph III.e.1 of this appendix and associated weightings in paragraph III.e.2 of this appendix.

IV. Borrower Distribution Metrics and Benchmarks

The [Agency] calculates the Borrower Bank Metric, the Borrower Market Benchmark, and the Borrower Community Benchmark for each category of borrowers (*i.e., designated borrowers*), as set forth in this section.

For closed-end home mortgage loans, the [Agency] calculates these metrics and benchmarks for each of the following designated borrowers: (i) low-income borrowers; and (ii) moderate-income borrowers.

For small business loans, the [Agency] calculates these metrics and benchmarks for each of the following designated borrowers: (i) businesses with gross annual revenues of $250,000 or less; and (ii) businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million.

For small farm loans, the [Agency] calculates these metrics and benchmarks for each of the following designated borrowers: (i) farms with gross annual revenues of $250,000 or less; and (ii) farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.

For automobile loans, the [Agency] calculates these metrics and benchmarks for each of the following designated borrowers: (i) low-income borrowers; and (ii) moderate income borrowers.

To evaluate small banks and intermediate banks without data collection, maintenance and reporting requirements, the [Agency] will use data collected by the bank in the ordinary course of business or through sampling of bank loan data.

a. *Calculation of Borrower Bank Metric.* The [Agency] calculates the Borrower Bank Metric for each major product line and category of designated borrowers in each Retail Lending Test Area by:

1. Summing, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line to designated borrowers in the Retail Lending Test Area.

2. Summing, over the years in the evaluation period, the bank's annual number of originated and purchased loans in the major product line in the Retail Lending Test Area.

3. Dividing the result of paragraph IV.a.1 of this appendix by the result of paragraph IV.a.2 of this appendix.

Example A–8: The bank has a three-year evaluation period, and closed-end home mortgage loans are a major product line for the bank in FBAA–1. The bank's annual numbers of originated and purchased closed-end home mortgage loans (*i.e.,* the bank's originated and purchased closed-end home mortgage loans) are 30 (year 1), 40 (year 2), and 30 (year 3) in FBAA–1. The sum of the annual numbers of originated and purchased closed-end home mortgage loans is therefore 100 in the evaluation period. In FBAA–1, the bank originated and purchased 10 closed-end home mortgage loans to low-income borrowers (year 1), 3 closed-end home mortgage loans to low-income borrowers (year 2), and 7 closed-end home mortgage loans to low-income borrowers (year 3) (a total of 20 closed-end home mortgage loans to low-income borrowers). In FBAA–1, the Borrower Bank Metric for closed-end home mortgage loans to low-income borrowers would be 20 divided by 100, or 0.2 (equivalently, 20 percent).

In FBAA–1, the bank also originated and purchased 12 closed-end home mortgage loans to moderate-income borrowers (year 1), 5 closed-end home mortgage loans to moderate-income borrowers (year 2), and 13 closed-end home mortgage loans to moderate-income borrowers (year 3) (a total of 30 closed-end home mortgage loans to moderate-income borrowers). In FBAA–1, the Borrower Bank Metric for closed-end home mortgage loans to moderate-income borrowers would be 30 divided by 100, or 0.3 (equivalently, 30 percent).

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

$$\frac{Bank\ Loans\ to\ Moderate-Income\ Borrowers\ (30)}{Bank\ Loans\ (100)} = Borrower\ Bank\ Metric\ (30\%)$$

b. *Calculation of Borrower Market Benchmarks for facility-based assessment areas and retail lending assessment areas.* For each facility-based assessment area and retail lending assessment area, the [Agency] calculates the Borrower Market Metric for each major product line, excluding automobile loans, and for each category of designated borrowers by:

1. Summing, over the years in the evaluation period, the annual number of reported loans in the major product line to designated borrowers in the facility-based assessment area or retail lending assessment area originated by all lenders.

2. Summing, over the years in the evaluation period, the annual number of reported loans in the major product line in the facility-based assessment area or retail lending assessment area originated by all lenders.

3. Dividing the result of paragraph IV.b.1 of this appendix by the result of paragraph IV.b.2 of this appendix.

Example A–9: The Borrower Market Benchmarks for closed-end home mortgage loans use a three-year evaluation period. Lenders that report closed-end home mortgage loans originated 500 closed-end home mortgage loans (year 1), 275 closed-end home mortgage loans (year 2), and 225 closed-end home mortgage loans (year 3). The sum of the annual numbers of originated closed-end home mortgage loans is therefore 1,000 in the evaluation period. Lenders that report closed-end home mortgage loans originated 50 closed-end home mortgage loans to low-income borrowers (year 1), 20 closed-end home mortgage loans to low-income borrowers (year 2), and 30 closed-end home mortgage loans to low-income borrowers (year 3) in FBAA–1. The sum of the annual numbers of originated closed-end home mortgage loans to low-income borrowers within FBAA–1 is therefore 100. The Borrower Market Benchmark for closed-end home mortgage loans to low-income borrowers would be 100 divided by 1,000, or 0.1 (equivalently, 10 percent).

Lenders that report closed-end home mortgage loans originated 100 loans (year 1), 75 loans (year 2), and 25 loans (year 3) to moderate-income borrowers. The sum of the annual numbers of originated closed-end home mortgage loans to moderate-income borrowers within FBAA–1 is therefore 200. The Borrower Market Benchmark for closed-end home mortgage loans to moderate-income borrowers in FBAA–1 would be 200 divided by 1,000, or 0.2 (equivalently, 20 percent).

$$\frac{Aggregate\ Market\ Loans\ to\ Low-Income\ Borrowers\ (100)}{Aggregate\ Market\ Loans\ (1{,}000)}$$
$$= Borrower\ Market\ Benchmark\ (10\%)$$

$$\frac{Aggregate\ Loans\ to\ Moderate-Income\ Borrowers\ (200)}{Aggregate\ Market\ Loans\ (1{,}000)}$$
$$= Borrower\ Market\ Benchmark\ (20\%)$$

c. *Calculation of Borrower Community Benchmarks for facility-based assessment areas and retail lending assessment areas.* The [Agency] calculates the Borrower Community Benchmark for each category of designated borrowers for each major product line in each facility-based assessment area or retail lending assessment area.

1. For closed-end home mortgage loans, the [Agency] calculates a Borrower Community Benchmark for low-income borrowers by:

i. Summing, over the years in the evaluation period, the annual number of low-income families in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of families in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph IV.c.1.i of this appendix by the result of paragraph IV.c.1.ii of this appendix.

2. For closed-end home mortgage loans, the [Agency] calculates a Borrower Community Benchmark for moderate-income borrowers by:

i. Summing, over the years in the evaluation period, the annual number of moderate-income families in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of families in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph IV.c.2.i of this appendix by the result of paragraph IV.c.2.ii of this appendix.

3. For small business loans, the [Agency] calculates a Borrower Community Benchmark for non-farm businesses with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the annual number of non-farm businesses with gross annual revenues of $250,000 or less in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of non-farm businesses in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph IV.c.3.i of this appendix by the result of paragraph IV.c.3.ii of this appendix.

4. For small business loans, the [Agency] calculates a Borrower Community Benchmark for non-farm businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the annual number of non-farm businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the annual number of non-farm businesses in the facility-based assessment area or retail lending assessment area.

iii. Dividing the result of paragraph IV.c.4.i of this appendix by the result of paragraph IV.c.1.ii of this appendix.

5. For small farm loans, the [Agency] calculates a Borrower Community Benchmark for farms with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the annual number of farms with gross annual revenues of $250,000 or less in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of farms in the facility-based assessment area.

iii. Dividing the result of paragraph IV.c.5.i of this appendix by the result of paragraph IV.c.5.ii of this appendix.

6. For small farm loans, the [Agency] calculates a Borrower Community Benchmark for farms with gross annual revenues greater than $250,000 but less than or equal to $1 million:

i. Summing, over the years in the evaluation period, the annual number of farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of farms in the facility-based assessment area.

iii. Dividing the result of paragraph IV.c.6.i of this appendix by the result of paragraph IV.c.6.ii of this appendix.

7. For automobile loans, the [Agency] calculates a Borrower Community Benchmark for low-income borrowers by:

i. Summing, over the years in the evaluation period, the annual number of low-income households in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of households in the facility-based assessment area.

iii. Dividing the result of paragraph IV.c.7.i of this appendix by the result of paragraph IV.c.7.ii of this appendix.

8. For automobile loans, the [Agency] calculates a Borrower Community Benchmark for moderate-income borrowers by:

i. Summing, over the years in the evaluation period, the annual number of moderate-income households in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the annual number of households in the facility-based assessment area.

iii. Dividing the result of paragraph IV.c.8.i of this appendix by the result of paragraph IV.c.8.ii of this appendix.

Example A–10: The Borrower Community Benchmarks for closed-end home mortgage loans use a three-year evaluation period. There were 1,300 families (year 1), 1,300 families (year 2), and 1,400 families (year 3) in FBAA–1. The sum of the number of families in FBAA–1 is therefore 4,000 in the evaluation period. There were 300 low-income families (year 1), 300 low-income families (year 2), and 400 low-income families (year 3) (a total of 1,000 low-income families). The Borrower Community Benchmark for closed-end home mortgage loans to low-income families within the FBAA–1 would be 1,000 divided by 4,000, or 0.25 (equivalently, 25 percent).

There were 350 moderate-income families (year 1), 400 moderate-income families (year 2), and 450 moderate-income families (year 3) (a total of 1,200 moderate-income families). The Borrower Community Benchmark for closed-end home mortgage loans to moderate-income families in FBAA–1 would be 1,200 divided by 4,000, or 0.3 (equivalently, 30 percent).

$$\frac{Low - Income\ Families\ (1{,}000)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (25\%)$$

$$\frac{Moderate - Income\ Families\ (1{,}200)}{Families\ (4{,}000)} = Borrower\ Community\ Benchmark\ (30\%)$$

d. *Calculation of Borrower Market Benchmark for the outside retail lending area.* For a bank's outside retail lending area, the [Agency] calculates the Borrower Market Benchmark for each major product line, excluding automobile loans, and for each category of designated borrowers by taking a weighted average of benchmarks for each component geographic area as follows:

1. Calculating a benchmark for each category of designated borrowers and each major product line within each component geographic area as described in § ____.18(b) using the formula for the Borrower Market Benchmark described in section IV.b of this appendix with the component geographic area in place of the facility-based assessment area or retail lending assessment area, as applicable.

2. Calculating the weighting for each component geographic area and major product line as the percentage of the bank's loans in the major product line originated or purchased in the outside retail lending area that are within the component geographic area, based on loan count.

3. Calculating the weighted average benchmark for the outside retail lending area using the component geographic area benchmarks in paragraph IV.d.1 of this appendix and associated weightings in paragraph IV.d.2 of this appendix.

e. *Calculation of Borrower Community Benchmarks for the outside retail lending area.* For a bank's outside retail lending area, the [Agency] calculates the Borrower Community Benchmark for each major product line and for each category of designated borrowers in the bank's outside retail lending area by taking a weighted average of benchmarks for each component geographic area as follows:

1. Calculating the benchmark for each category of designated borrowers and each major product line within each component geographic area as described in § ____.18(b) using the formula for the Borrower Community Benchmark described in paragraph IV.c of this appendix with the component geographic area in place of the facility-based assessment area or retail lending assessment area, as applicable.

2. Calculating the weighting for each component geographic area and major product line as the percentage of the bank's loans in the major product line originated or purchased in the outside retail lending area that are within the component geographic area, based on loan count.

3. Calculating the weighted average benchmark for the outside retail lending area using the component geographic area benchmarks in paragraph IV.e.1 of this appendix and associated weightings calculated in paragraph IV.e.2 of this appendix.

V. Supporting Conclusions for Major Product Lines Other Than Automobile Lending

The [Agency] evaluates a bank's Retail Lending Test performance in each Retail Lending Test Area by comparing the bank's distribution metrics to sets of performance ranges determined by, as applicable, the market and community benchmarks, as described in this section.

a. *Supporting conclusions for categories of designated census tracts and designated borrowers.* For each major product line, excluding automobile lending, the [Agency] develops separate supporting conclusions for each of the categories outlined in table 1 to this appendix.

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CATEGORIES OF DESIGNATED CENSUS TRACTS AND DESIGNATED BORROWERS

Major product line	Designated census tracts	Designated borrowers
Closed-End Home Mortgage Loans.	Low-Income Census Tracts	Low-Income Borrowers.
	Moderate-Income Census Tracts	Moderate-Income Borrowers.
Small Business Loans	Low-Income Census Tracts	Non-farm businesses with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Non-farm businesses with Gross Annual Revenues Greater than $250,000 but Less Than or Equal to $1 million.
Small Farm Loans	Low-Income Census Tracts	Farms with Gross Annual Revenues of $250,000 or Less.
	Moderate-Income Census Tracts	Farms with Gross Annual Revenues Greater than $250,000 but Less Than or Equal to $1 million.

b. *Geographic distribution performance ranges.* To evaluate a bank's geographic distributions for each major product line, excluding automobile lending, the [Agency] compares the relevant Geographic Bank Metric for each category of designated census tracts to the applicable set of performance ranges. The performance ranges are determined by the values of the Geographic Market Benchmark and the Geographic Community Benchmark, as well as the multipliers associated with each supporting conclusion category, as follows:

1. The performance threshold for an ''Outstanding'' supporting conclusion is the lesser of either:

i. The product of 1.0 times the Geographic Community Benchmark; or

ii. The product of 1.15 times the Geographic Market Benchmark.

The ''Outstanding'' performance range is all potential values of the Geographic Bank Metric equal to or above the ''Outstanding'' performance threshold.

2. The performance threshold for a ''High Satisfactory'' Retail Lending Test supporting conclusion is the lesser of either:

i. The product of 0.8 times the Geographic Community Benchmark; or

ii. The product of 1.05 times the Geographic Market Benchmark.

The ''High Satisfactory'' performance range is all potential values of the Geographic Bank Metric equal to or above the ''High Satisfactory'' performance threshold but below the Outstanding performance threshold.

3. The performance threshold for a ''Low Satisfactory'' supporting conclusion is the lesser of either:

i. The product of 0.6 times the Geographic Community Benchmark; or

ii. The product of the 0.8 times the Geographic Market Benchmark.

The ''Low Satisfactory'' performance range is all potential values of the Geographic Bank Metric equal to or above the ''Low Satisfactory'' performance threshold but below the High Satisfactory performance threshold.

4. The performance threshold for a ''Needs to Improve'' supporting conclusion is the lesser of either:

i. The product of 0.3 times the Geographic Community Benchmark; or

ii. The product of 0.33 times the Geographic Market Benchmark.

The ''Needs to Improve'' performance range is all potential values of the Geographic Bank Metric equal to or above the ''Needs to Improve'' performance threshold but below the ''Low Satisfactory'' performance threshold.

5. The ''Substantial Noncompliance'' performance range is all potential values of the Geographic Bank Metric below the ''Needs to Improve'' performance threshold.

c. *Geographic distribution supporting conclusions and performance scores.* The [Agency] compares each Geographic Bank Metric to the performance ranges provided in paragraphs V.b.1 through V.b.5 of this appendix. The geographic distribution supporting conclusion for each category of designated census tracts is determined by the performance range within which the Geographic Bank Metric falls. Each supporting conclusion is assigned a numerical performance score using the following corresponding points values:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

d. *Borrower distribution performance ranges.* To evaluate a bank's borrower distributions for each major product line, excluding automobile lending, the [Agency] compares the relevant Borrower Bank Metric for each category of designated borrowers to the applicable set of performance ranges. The performance ranges are determined by the values of the Borrower Market Benchmark and Borrower Community Benchmark, as well as the multipliers associated with each supporting conclusion category, as follows:

1. The performance threshold for an ''Outstanding'' supporting conclusion is the lesser of either:

i. The product of 1.0 times the Borrower Community Benchmark; or

ii. The product of 1.15 times the Borrower Market Benchmark.

The ''Outstanding'' performance range is all potential values of the Borrower Bank Metric equal to or above the ''Outstanding'' performance threshold.

2. The performance threshold for a ''High Satisfactory'' supporting conclusion is the lesser of either:

i. The product of 0.8 times the Borrower Community Benchmark; or

ii. The product of 1.05 times the Borrower Market Benchmark.

The ''High Satisfactory'' performance range is all potential values of the Borrower Bank Metric equal to or above the ''High Satisfactory'' performance threshold but below the Outstanding performance threshold.

3. The performance threshold for a ''Low Satisfactory'' supporting conclusion is the lesser of either:

i. The product of 0.6 times the Borrower Community Benchmark; or

ii. The product of 0.8 times the Borrower Market Benchmark.

The ''Low Satisfactory'' performance range is all potential values of the Borrower Bank Metric equal to or above the ''Low Satisfactory'' performance threshold but below the High Satisfactory performance threshold.

4. The performance threshold for a ''Needs to Improve'' supporting conclusion is the lesser of either:

i. The product of 0.3 times the Borrower Community Benchmark; or

ii. The product of 0.33 times the Borrower Market Benchmark.

The ''Needs to Improve'' performance range is all potential values of the Borrower Bank Metric equal to or above the ''Needs to Improve'' performance threshold but below the ''Low Satisfactory'' performance threshold.

5. The ''Substantial Noncompliance'' performance range is all potential values of the Borrower Bank Metric below the ''Needs to Improve'' performance threshold.

e. *Borrower distribution supporting conclusions and performance scores.* The [Agency] compares each Borrower Bank Metric to the performance ranges provided in paragraphs V.d.1 through V.d.5 of this appendix. The borrower distribution supporting conclusion for each category of designated borrowers is determined by the performance range within which the Borrower Bank Metric falls. Each supporting conclusion is assigned a numerical performance score using the following corresponding point values:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

VI. Supporting Conclusions for Automobile Lending

a. *Supporting conclusions for categories of designated census tracts and designated borrowers.* For any bank for which automobile lending is evaluated under § ____.22, the [Agency] develops separate supporting conclusions for each of the categories outlined in table 2 to this appendix.

TABLE 2 TO APPENDIX A—AUTOMOBILE LOANS: CATEGORIES OF DESIGNATED CENSUS TRACTS AND DESIGNATED BORROWERS

Major product line	Designated census tracts	Designated borrowers
Automobile Lending	Low-Income Census Tracts Moderate-Income Census Tracts	Low-Income Borrowers. Moderate-Income Borrowers.

b. *Geographic distribution.* The [Agency] develops the supporting conclusion for a bank's geographic distribution for automobile lending based on a comparison of the Geographic Bank Metric for automobile lending in each category of designated census tracts to the corresponding Geographic Community Benchmark.

c. *Borrower distribution.* The [Agency] develops the supporting conclusion for a bank's borrower distribution for automobile lending based on a comparison of the Borrower Bank Metric for automobile lending in each category of designated borrowers to the corresponding Borrower Community Benchmark.

d. *Performance scores.* Each supporting conclusion is assigned a numerical performance score using the following corresponding point values:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

VII. Retail Lending Test Conclusions—All Major Product Lines

a. The [Agency] determines a bank's Retail Lending Test performance conclusion for a major product line in a Retail Lending Test Area by calculating a weighted performance score for each major product line:

1. The [Agency] develops a weighted average performance score for each major product line in each Retail Lending Test Area as follows:

i. The [Agency] creates a weighted average performance score across the categories of designated census tracts (*i.e., geographic distribution average*) and a weighted average performance score across the categories of designated borrowers (*i.e., borrower distribution average*).

ii. For the geographic distribution average of each major product line, the weighting assigned to each category of designated census tracts is based on the demographics of the Retail Testing Area as outlined in the following table:

TABLE 3 TO APPENDIX A—RETAIL LENDING, TEST GEOGRAPHIC DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Category of designated census tracts	Weight
Closed-End Home Mortgage Loans	Low-Income Census Tracts	Percentage of total number of owner-occupied housing units in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of owner-occupied housing units in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Small Business Loans	Low-Income Census Tracts	Percentage of total number of non-farm businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of non-farm businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of total number of farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Automobile Loans	Low-Income Census Tracts	Percentage of total number of households in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of households in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.

In the case of a Retail Lending Test Area that contains no low-income census tracts and no moderate-income census tracts, the bank will not receive a geographic distribution average for that assessment area.

Example A–11: A large bank's closed-end home mortgage loans constitute a major product line for the bank in a facility-based assessment area. The bank's geographic distribution supporting conclusions for closed-end home mortgage loans in this facility-based assessment area are ''High Satisfactory'' (performance score of 7 points) for low-income census tracts and ''Needs to Improve'' (performance score of 3 points) for moderate-income census tracts. Owner-occupied housing units in moderate-income census tracts represents 20 percent of all owner-occupied housing units in the facility-based assessment area, and owner-occupied housing units in low-income census tracts represents 5 percent of all owner-occupied housing units in the facility-based assessment area. Accordingly, the weight assigned to the moderate-income geographic distribution performance score is 80 percent [20 percent/(20 percent + 5 percent) = 80 percent] and the weight assigned to the low-income geographic distribution performance score is 20 percent [5 percent/(20 percent + 5 percent) = 20 percent]. The bank's geographic distribution average for closed-end home mortgage loans in this facility-based assessment area is 3.8 [(7 points × 0.2 weight = 1.4) + (3 points × 0.8 weight = 2.4)].

iii. For the borrower distribution average of each major product line, the weighting assigned to each category of designated borrowers is based on the demographics of the Retail Lending Test Area as outlined in the following table:

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST, BORROWER DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Categories of designated borrowers	Weight
Closed-End Home Mortgage Loans	Low-Income Borrowers	Percentage of total number of low-income and moderate-income families in the applicable Retail Lending Test Area that are low-income families.
	Moderate-Income Borrowers	Percentage of total number of low-income and moderate-income families in the applicable Retail Lending Test Area that are moderate-income families.
Small Business Loans	Non-farm businesses with gross annual revenues of $250,000 or less.	Percentage of total number of non-farm businesses with gross annual revenues of $250,000 or less and non-farm businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are non-farm businesses with gross annual revenues of $250,000 or less.
	Non-farm businesses with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of non-farm businesses with gross annual revenues of $250,000 or less and non-farm businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are non-farm businesses with gross annual revenues greater than $250,00 but less than or equal to $1 million.
Small Farm Loans	Farms with gross annual revenues of $250,000 or less.	Percentage of total number of farms with gross annual revenues of $250,000 or less and farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are farms with gross annual revenues of $250,000 or less.
	Farms with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of farms with gross annual revenues of $250,000 or less and farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.
Automobile Loans	Low-Income Borrowers	Percentage of total number of low-income and moderate-income households in the applicable Retail Lending Test Area that are low-income households.
	Moderate-Income Borrowers	Percentage of total number of low-income and moderate-income households in the applicable Retail Lending Test Area that are moderate-income households.

Example A–12: Building on example A–11 to this appendix, the bank's borrower distribution supporting conclusions for closed-end home mortgage loans in this facility-based assessment area are ''Outstanding'' (performance score of 10 points) for low-income borrowers and ''Low Satisfactory'' (performance score of 6 points) for moderate-income borrowers. Low-income families represent 14 percent of all families in the facility-based assessment area and moderate-income families represent 6 percent of all families in the facility-based assessment area. Accordingly, the weight assigned to the low-income borrower distribution performance score is 70 percent [14 percent/(14 percent + 6 percent) = 70 percent] and the weight assigned to the moderate-income borrower distribution performance score is 30 percent [6 percent/(14 percent + 6 percent) = 30 percent]. The bank's borrower distribution average for closed-end home mortgage loans in this facility-based assessment area is 8.8 [(10 points × 0.7 weight = 7.0) + (6 points × 0.3 weight = 1.8)].

2. For each major product line, the [Agency] calculates the average of the geographic distribution average and the borrower distribution average (*i.e., product*

line score). If a bank has no geographic distribution average for a product (due to the absence of both low-income census tracts and moderate-income census tracts in the geographic area), the product line score is the borrower distribution average.

Example A–13: Based on examples A–11 and A–12 to this appendix, the bank's product line score for closed-end home mortgage loans is 6.3 [(3.8 geographic distribution average × 0.5 weight = 1.9) + (8.8 borrower distribution average × 0.5 weight = 4.4)].

b. For each Retail Lending Test Area, the [Agency] calculates a weighted average of product line scores across all major product lines (*i.e., Retail Lending Test Area Score*). For each Retail Lending Test Area, the [Agency] uses a ratio of the bank's loan originations and purchases in each major product line to its loan originations and purchases in all major product lines during the evaluation period, based on the combination of loan dollars and loan count as defined in § ____.12, as weights in the weighted average.

Example A–14: In addition to the product line score of 6.3 for closed-end home mortgage loans in example A–13 to this appendix, the bank has a product line score of 4.2 for small business lending in the same facility-based assessment area. Among major product lines, 60 percent of the bank's loans in the facility-based assessment area are closed-end home mortgages and 40 percent are small business loans based upon the combination of loan dollars and loan count. Accordingly, the weight assigned to the closed-end home mortgage product line score is 60 percent and the weight assigned to the small business product line score is 40 percent. The bank's Retail Lending Test Area Score for this facility-based assessment area is 5.46 [(6.3 closed-end home mortgage loan product line score × 0.6 weight = 3.78) + (4.2 small business loan product line score × 0.4 weight = 1.68)].

c. The [Agency] then develops a Retail Lending Test recommended conclusion corresponding with the conclusion category that is nearest to the Retail Lending Test Area Score, as follows:

Recommended conclusion	Retail lending test area score
Outstanding	8.5 or more.
High Satisfactory	6.5 or more but less than 8.5.
Low Satisfactory	4.5 or more but less than 6.5.
Needs to Improve	1.5 or more but less than 4.5.
Substantial Noncompliance.	less than 1.5.

Example A–15: Based on example A–14 to this appendix, the bank's Retail Lending Test Area Score is associated with a ''Low Satisfactory'' conclusion, so the bank's Retail Lending Test recommended conclusion for this facility-based assessment area is ''Low Satisfactory.''

d. Once a recommended conclusion is determined for a Retail Lending Test Area, the performance context information provided in § ____.21(d) and the additional factors provided in § ____.22(g) inform the [Agency]'s determination of the Retail Lending Test conclusion for the Retail Lending Test Area. The agency assigns a Retail Lending Test conclusion for the Retail Lending Test Area of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

VIII. Retail Lending Test Weighting and Conclusions for States, Multistate MSAs, and the Institution

The [Agency] develops the Retail Lending Test conclusions for States, multistate MSAs, and the institution as described in this section.

a. The [Agency] translates Retail Lending Test conclusions for facility-based assessment areas, retail lending assessment areas, and as applicable, the outside retail lending area into numerical performance scores, as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

b. The [Agency] calculates the weighted average of Retail Lending Test Area performance scores for a State or multistate MSA, as applicable, and for the institution (*i.e., performance score for the Retail Lending Test*). For the weighted average for a State or multistate MSA, the [Agency] considers facility-based assessment areas and retail lending assessment areas in the State or multistate MSA pursuant to § ____.28(c). For the weighted average for the institution, the [Agency] considers all of the bank's facility-based assessment areas and retail lending assessment areas and, as applicable, the bank's outside retail lending area. Each Retail Lending Test Area performance score is weighted by the average of the following two ratios:

1. The ratio measuring the share of the bank's deposits in the Retail Lending Test Area, calculated by:

i. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in the Retail Lending Test Area.

ii. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all Retail Lending Test Areas in the State, in the multistate MSA, or for the institution, as applicable.

iii. Dividing the result of paragraph VIII.b.1.i of this appendix by the result of paragraph VIII.b.1.ii of this appendix.

For a bank that reports deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a Retail Lending Test Area is the total of annual average daily balances of deposits reported by the bank in counties in the Retail Lending Test Area for that year. For a bank that does not report deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a Retail Lending Test Area is the total of deposits assigned to facilities reported by the bank in the Retail Lending Test Area in the FDIC's Summary of Deposits for that year.

2. The ratio measuring the share of the bank's loans in the Retail Lending Test Area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

i. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the Retail Lending Test Area originated or purchased during the evaluation period; by

ii. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all Retail Lending Test Areas in the State, in the multistate MSA, or for the institution, as applicable, originated or purchased during the evaluation period.

c. The [Agency] develops a conclusion corresponding to the conclusion category that is nearest to the performance score for the Retail Lending Test for the State, the multistate MSA, or the institution, as applicable, as follows:

Conclusion	Retail lending test performance score
Outstanding	8.5 or more.
High Satisfactory	6.5 or more but less than 8.5.
Low Satisfactory	4.5 or more but less than 6.5.
Needs to Improve	1.5 or more but less than 4.5.
Substantial Noncompliance.	Less than 1.5.

d. The agency considers relevant performance context information provided in § ____.21(d) to inform the [Agency]'s determination of the bank's Retail Lending Test conclusion for the State, the multistate MSA, or the institution, as applicable.

Example A–16: 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 closed-end home mortgage lending, small business lending, and small farm lending (but not automobile lending, as it is not a product line for the bank) in its outside retail lending area.

Additionally:

i. Facility-based assessment area 1 (FBAA–1) is associated with 75 percent of the deposits in all of the Retail Lending Test Areas of the bank (based on dollar amount) and 10 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans (based on the combination of loan dollars and loan count as defined in § ____.12). The bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion in FBAA–1;

ii. Facility-based assessment area 2 (FBAA–2) is associated with 15 percent of the deposits in all of the Retail Lending Test Areas of the bank and 20 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans (based on the combination of loan dollars and loan count as defined in § ____.12). The bank received a ''Low Satisfactory'' (6 points) Retail Lending Test conclusion in FBAA–2;

iii. The Retail lending assessment area is associated with 8 percent of the deposits in all of the Retail Lending Test Areas of the bank and 68 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans (based on the combination of loan dollars and loan count as defined in § ____.12). The bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion in the retail lending assessment area; and

iv. The bank's outside retail lending area, is associated with 2 percent of the deposits in all of the Retail Lending Test Areas of the bank and 2 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans (based on the combination of loan dollars and loan count as defined in § ____.12). The bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion in the outside retail lending area.

Calculating weights:

i. For facility-based assessment area 1: weight = 42.5 percent [(75 percent of deposits + 10 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2];

ii. For facility-based assessment area 2: weight = 17.5 percent [(15 percent of deposits + 20 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2];

iii. For the retail lending assessment area: weight = 38 percent [(8 percent of deposits + 68 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2]; and

iv. For the outside retail lending area: weight = 2 percent [(2 percent of deposits + 2 percent of closed-end home mortgage loans, small business loans, and small farm loans)/ 2].

Institution Retail Lending Test Performance Score and 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 in this example A–16, the bank's Retail Lending Test performance score for the institution 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 the outside retail lending area)].

A performance score of 6.3 corresponds with the conclusion category ''Low Satisfactory,'' so the bank's Retail Lending Test recommended conclusion at the institution level is ''Low Satisfactory.'' Relevant performance context information provided in § ____.21(d) may inform the [Agency]'s determination of the bank's conclusion at the institution level.

Example A–17: An intermediate bank operates in a single State, has two facility-based assessment areas, and also engages in closed-end home mortgage lending, small business lending, and small farm lending (but not automobile lending, as automobile lending is not a product line for the bank) in its outside retail lending area.

Additionally:

i. Facility-based assessment area 1 (FBAA–1) is associated with 60 percent of the deposits in all of the Retail Lending Test Areas of the bank and 30 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans. The bank received an ''Outstanding'' (10 points) Retail Lending Test conclusion in FBAA–1;

ii. Facility-based assessment area 2 (FBAA–2 is) associated with 40 percent of the deposits in all of the Retail Lending Test Areas of the bank and 10 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans. The bank received a ''High Satisfactory'' (7 points) Retail Lending Test conclusion in FBAA–2; and

iii. The bank's outside retail lending area is associated with 0 percent of the deposits in all of the Retail Lending Test Areas of the bank (the bank did not voluntarily collect and maintain depositor location data, so all deposits in the bank are attributed to its branches within facility-based assessment areas) and 60 percent of the bank's closed-end home mortgage loans, small business loans, and small farm loans. The bank received a ''Needs to Improve'' (3 points) Retail Lending Test conclusion in the outside retail lending area.

Calculating weights:

i. For FBAA–1: weight = 45 percent [(60 percent of deposits + 30 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2];

ii. For FBAA–2: weight = 25 percent [(40 percent of deposits + 10 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2]; and

iii. For the outside retail lending area: weight = 30 percent [(0 percent of deposits + 60 percent of closed-end home mortgage loans, small business loans, and small farm loans)/2].

Institution Retail Lending Test Performance Score and 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 in this example A–17, the bank's recommended Retail Lending Test performance score at the institution level is 7.2 [(0.45 weight × 10 points in FBAA–1) + (0.25 weight × 7 points in FBAA–2) + (0.3 weight × 3 points in the outside retail lending area)].

A performance score of 7.2 corresponds with the conclusion category ''High Satisfactory,'' so the bank's Retail Lending Test recommended conclusion at the institution level is ''High Satisfactory.'' Relevant performance context information provided in § ____.21(d) may inform the [Agency]'s determination of the bank's conclusion at the institution level.

Appendix B to Part ____—Calculations for the Community Development Tests

This appendix, based on requirements described in §§ ____.24 through ____.26 and ____.28, includes the following sections:

I. Community Development Financing Tests—Calculation Components and Allocation of Community Development Loans and Community Development Investments

II. Community Development Financing Test in § ____.24—Calculations for Metrics, Benchmarks, and Combining Performance Scores

III. Community Development Financing Test for Limited Purpose Banks in § ____.26—Calculations for Metrics and Benchmarks

IV. Weighting of Conclusions

I. Community Development Financing Tests—Calculation Components and Allocation of Community Development Loans and Community Development Investments

For purposes of the Community Development Financing Test in § ____.24 and Community Development Financing Test for Limited Purpose Banks in § ____.26, the [Agency] identifies the community development loans and community development investments included in the numerator of the metrics and benchmarks and the deposits or assets included in the denominator of the metrics and benchmarks, as applicable, pursuant to paragraph I.a of this appendix. The [Agency] determines whether to include a community development loan or community development investment in the numerator for a particular metric or benchmark pursuant to the allocation provisions in paragraph I.b of this appendix.

a. *Community development loans and community development investments, deposits, and assets included in the community development financing metrics and benchmarks—in general.* The [Agency] calculates the community development financing metrics and benchmarks in §§ ____.24 and ____.26 using community development loans and community development investments and deposits or assets, as follows:

1. *Numerator*—i. *Community development loans and community development investments considered.* The [Agency] includes community development loans and community development investments originated, purchased, refinanced, or renewed by a depository institution or attributed to a depository institution pursuant to § ____.21(b) and (c) (*e.g.,* an affiliate community development loan) in the numerator of the metrics and benchmarks. The [Agency] calculates the annual dollar volume of community development loans and community development investments by summing the dollar volume of the following community development loans and community development investments for each calendar year in an evaluation period (*i.e., annual dollar volume of community development loans and community development investments*):

A. The dollar volume of all community development loans originated or purchased and community development investments made, including legally binding commitments to extend credit or legally binding commitments to invest,[1] in that calendar year;

B. The dollar volume of any increase in the calendar year to an existing community development loan that is refinanced or renewed and in an existing community development investment that is renewed;

C. The outstanding dollar volume of community development loans originated or purchased in previous calendar years and community development investments made in previous calendar years, as of December 31 for each calendar year that the loan or investment remains on the depository institution's balance sheet; and

D. The outstanding dollar volume, less any increase reported in paragraph I.a.1.B of this appendix in the same calendar year, of a community development loan the depository institution refinanced or renewed in a calendar year subsequent to the calendar year of origination or purchase, as of December 31 for each calendar year that the loan remains on the depository institution's balance sheet, and an existing community development investment renewed in a calendar year subsequent to the calendar year of the investment, as of December 31 for each calendar year that the investment remains on the depository institution's balance sheet.

ii. *Community development loan and community development investment allocation.* To calculate the metrics and benchmarks provided in §§ ____.24 and __.26, the [Agency] includes all community development loans and community development investments that are allocated to the specific facility-based assessment area, State, multistate MSA, or nationwide area, respectively, in the numerator for the metric and benchmarks applicable to that geographic area. *See* paragraph I.b of this appendix for the community development financing allocation provisions.

2. *Denominator.* i. *Annual dollar volume of deposits.* For purposes of metrics and benchmarks in § ____.24, the [Agency] calculates an annual dollar volume of deposits in a depository institution that is specific to each metric or benchmark for each calendar year in the evaluation period (*i.e., annual dollar volume of deposits*). For a depository institution that collects, maintains, and reports deposits data as provided in 12 CFR 25.42, 228.42, or 345.42, the annual dollar volume of deposits is determined using the annual average daily balance of deposits in the depository institution as provided in statements (*e.g.,* monthly or quarterly statements) based on the deposit location. For a depository institution that does not collect, maintain, and report deposits data as provided in 12 CFR 25.42, 228.42, or 345.42, the annual dollar volume of deposits is determined using the deposits assigned to each facility pursuant to the FDIC's Summary of Deposits.

ii. *Annual dollar volume of assets.* For purposes of the metrics and benchmarks in § ______.26, the [Agency] calculates an annual dollar volume of assets for each calendar year in the evaluation period (*i.e., the annual dollar volume of assets*). The annual dollar volume of assets is calculated by averaging the assets for each quarter end in the calendar year.

b. *Allocation of community development loans and community development investments.* 1. *In general.* For the Community Development Financing Test in § ____.24 and the Community Development Financing Test for Limited Purpose Banks in § ____.26, the [Agency] considers community development loans and community development investments in the evaluation of a bank's performance in a facility-based assessment area, State and multistate MSA, as applicable, and the nationwide area, based on the data provided by the bank pursuant to § ____.42(a)(5)(ii)(E) and the specific location, if available, pursuant to § ____.42(a)(5)(ii)(D). As appropriate, the [Agency] may also consider publicly available information and information provided by government or community sources that demonstrates that a community development loan or community development investment benefits or serves a facility-based assessment area, State, or multistate MSA, or the nationwide area.

2. A bank may allocate a community development loan or community development investment as follows:

i. A community development loan or community development investment that benefits or serves only one county, and not any areas beyond that one county, would have the full dollar amount of the activity allocated to that county.

ii. A community development loan or community development investment that benefits or serves multiple counties, a State, a multistate MSA, multiple States, multiple multistate MSAs, or the nationwide area is allocated according to either specific documentation that the bank can provide regarding the dollar amount allocated to each county or based on the geographic scope of the activity, as follows:

A. *Allocation approach if specific documentation is available.* A bank may allocate a community development loan or community development investment or portion of a loan or investment based on documentation that specifies the appropriate dollar volume to assign to each county, such as specific addresses and dollar volumes associated with each address, or other information that indicates the specific dollar volume of the loan or investment that benefits or serves each county.

B. *Allocation approach based on geographic scope of a community development loan or community development investment.*[2] In the absence of specific documentation, the [Agency] will allocate a community development loan or community development investment based on the geographic scope of the loan or investment as follows:

1. Allocate at the county level for a loan or investment with a geographic scope of one county;

2. Allocate at the county level based on the proportion of low- and moderate-income families in each county for a loan or investment with a geographic scope of less than an entire State or multistate MSA;

3. Allocate at the State or multistate MSA level for a loan or investment with a geographic scope of the entire State or multistate MSA, as applicable;

4. Allocate at the State or multistate MSA level, as applicable, based on the proportion of low- and moderate-income families in each State or multistate MSA for a loan or investment with a geographic scope of one or more State(s) or multistate MSA(s), but not the entire nation; and

5. Allocate at the nationwide area level for a loan or investment with a geographic scope of the entire Nation.

TABLE 1 TO APPENDIX B—COMMUNITY DEVELOPMENT LOAN OR COMMUNITY DEVELOPMENT INVESTMENT ALLOCATION

Community development loan or community development investment benefits or serves	Allocation approach if specific documentation is available	Allocation approach based on geographic scope of activity
One county	Allocate to county	NA.
Multiple counties that are part of one State or multistate MSA.	Allocate to counties	Allocate to counties in proportions equivalent to the distribution of low- and moderate-income families.
One State or multistate MSA	Allocate to counties	Allocate to the State or multistate MSA.
Multiple States or multistate MSAs, less than the entire nation.	Allocate to counties	Allocate to the States or multistate MSAs, as applicable, based on the proportion of low- and moderate-income families in each State or multistate MSA.

[1] The dollar volume of a legally binding commitment to extend credit or legally binding commitment to invest in any given year is: (1) the full dollar volume committed; or (2) if drawn upon, the combined dollar volume of the outstanding commitment and any drawn portion of the commitment.

[2] For the purposes of allocating community development loans and community development investments, the [Agency] considers low- or moderate-income families to be located in a State or multistate MSA, as applicable, consistent with § ____.28(c).

TABLE 1 TO APPENDIX B—COMMUNITY DEVELOPMENT LOAN OR COMMUNITY DEVELOPMENT INVESTMENT ALLOCATION—Continued

Community development loan or community development investment benefits or serves	Allocation approach if specific documentation is available	Allocation approach based on geographic scope of activity
Nationwide area	Allocate to counties	Allocate to nationwide area.

II. Community Development Financing Test in § ____.24—Calculations for Metrics, Benchmarks, and Combining Performance Scores

The calculations for metrics, benchmarks, and combination of performance scores for Community Development Financing Test in § ____.24 are provided in this section. Additional information regarding relevant calculation components is set forth in paragraph I.a of this appendix.

a. *Bank Assessment Area Community Development Financing Metric.* The [Agency] calculates the Bank Assessment Area Community Development Financing Metric in § ____.24(b)(1) by:

1. Summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve the facility-based assessment area for each year in the evaluation period.

2. Summing the bank's annual dollar volume of deposits located in the facility-based assessment area for each year in the evaluation period.

3. Dividing the result of paragraph II.a.1 of this appendix by the result of paragraph II.a.2 of this appendix.

Example B–1: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development loans and community development investments that benefit or serve a facility-based assessment area are $35,000 (year 1), $25,000 (year 2), and $40,000 (year 3). The sum of the bank's annual dollar volumes of community development loans and community development investments that benefit or serve a facility-based assessment area is therefore $100,000. The bank's annual dollar volumes of deposits located in the facility-based assessment area are $3.1 million (year 1), $3.3 million (year 2), and $3.6 million (year 3). The sum of the bank's annual dollar volumes of deposits located in the facility-based assessment is therefore $10 million. For the evaluation period, the Bank Assessment Area Community Development Financing Metric would be $100,000 divided by $10 million, or 0.01 (equivalently, 1 percent).

$$\frac{\textit{Bank's community development loans and investments in the assessment area } (\$100{,}000)}{\textit{Deposits in the bank in the assessment area } (\$10 \textit{ million})}$$

$$= \textit{Bank Assessment Area Community Development Financing Metric } (1\%)$$

b. *Assessment Area Community Development Financing Benchmark.* The [Agency] calculates the Assessment Area Community Development Financing Benchmark in § ____.24(b)(2)(i) for each facility-based assessment area by:

1. Summing all large depository institutions' annual dollar volume of community development loans and community development investments that benefit or serve the facility-based assessment area for each year in the evaluation period.

2. Summing all large depository institutions' annual dollar volume of deposits located in the facility-based assessment area for each year in the evaluation period.

3. Dividing the result of paragraph II.b.1 of this appendix by the result of paragraph II.b.2 of this appendix.

Example B–2: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve a facility-based assessment area for all large depository institutions are $3.25 million (year 1), $3 million (year 2), and $3.75 million (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve the facility-based assessment area conducted by all large depository institutions is therefore $10 million. The annual dollar volumes of deposits located in the facility-based assessment area in all large depository institutions are $330 million (year 1), $330 million (year 2), and $340 million (year 3). The sum of the annual dollar volumes of deposits located in the facility-based assessment area in all large depository institutions is therefore $1 billion. For the evaluation period, 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).

$$\frac{\begin{array}{c}\textit{Community development loans and investments} \\ \textit{in the assessment area by all large depository institutions } (\$10 \textit{ million})\end{array}}{\textit{Deposits in the assessment area in all large depository institutions } (\$1 \textit{ billion})}$$

$$= \textit{Assessment Area Community Development Financing Benchmark } (1\%)$$

c. *MSA and Nonmetropolitan Nationwide Community Development Financing Benchmarks.* The [Agency] calculates an MSA Nationwide Community Development Financing Benchmark to be used for each MSA in which the bank has a facility-based assessment area in the MSA. The [Agency] calculates a Nonmetropolitan Nationwide Community Development Financing Benchmark to be used for each nonmetropolitan area in which the bank has a facility-based assessment area in the nonmetropolitan area.

1. *MSA Nationwide Community Development Financing Benchmark.* The [Agency] calculates the MSA Nationwide Community Development Financing Benchmark in § ____.24(b)(2)(ii)(A) by:

i. Summing all large depository institutions' annual dollar volume of community development loans and community development investments that benefit or serve metropolitan areas in the nationwide area for each year in the evaluation period.

ii. Summing all large depository institutions' annual dollar volume of deposits located in metropolitan areas in the nationwide area for each year in the evaluation period.

iii. Dividing the result of paragraph II.c.1.i of this appendix by the result of paragraph II.c.1.ii of this appendix.

Example B–3: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve metropolitan areas in the nationwide area conducted by all large depository institutions are $98 billion (year 1), $100 billion (year 2), and $102 billion (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve metropolitan areas in the nationwide area conducted by all large depository institutions is therefore $300 billion. The annual dollar volumes of deposits located in metropolitan areas in the nationwide area in all large depository institutions are $14.9 trillion (year 1), $15 trillion (year 2), and $15.1 trillion (year 3). The sum of the annual dollar volumes of deposits located in metropolitan areas in the nationwide area in all large depository institutions is therefore $45 trillion. For the evaluation period, the Metropolitan Nationwide Community Development Financing Benchmark would be $300 billion divided by $45 trillion, or 0.007 (equivalently, 0.7 percent).

$$\frac{\begin{array}{c}\textit{Community development loans and investments}\\ \textit{nationwide in metropolitan areas by all large depository institutions } (\$300\ \textit{billion})\end{array}}{\textit{Deposits nationwide in metropolitan areas in all large depository institutions } (\$45\ \textit{trillion})}$$

$$= \textit{Metropolitan Nationwide Community Development Financing Benchmark } (0.7\%)$$

2. *Nonmetropolitan Nationwide Community Development Financing Benchmark.* The [Agency] calculates the Nonmetropolitan Nationwide Community Development Financing Benchmark in § ____.24(b)(2)(ii)(B) by:

i. Summing all large depository institutions' annual dollar volume of community development loans and community development investments that benefit or serve nonmetropolitan areas in the nationwide area for each year in the evaluation period.

ii. Summing all large depository institutions' annual dollar volume of deposits located in nonmetropolitan areas in the nationwide area for each year in the evaluation period.

iii. Dividing the result of paragraph II.c.2.i of this appendix by the result of paragraph II.c.2.ii of this appendix.

Example B–4: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve nonmetropolitan areas in the nationwide area conducted by all large depository institutions are $3 billion (year 1), $3.2 billion (year 2), and $3.8 billion (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve nonmetropolitan areas in the nationwide area conducted by all large depository institutions is therefore $10 billion. The annual dollar volumes of deposits located in nonmetropolitan areas in all large depository institutions are $330 billion (year 1), $334 billion (year 2), and $336 billion (year 3). The sum of the annual dollar volumes of deposits located in nonmetropolitan areas in the nationwide area in all large depository institutions is therefore $1 trillion. For the evaluation period, the Nonmetropolitan Nationwide Community Development Financing Benchmark would be $10 billion divided by $1 trillion, or 0.01 (equivalently, 1 percent).

$$\frac{\begin{array}{c}\textit{Community development loans and investments}\\ \textit{nationwide in nonmetropolitan areas by all large depository institutions } (\$10\ \textit{billion})\end{array}}{\textit{Deposits nationwide in nonmetropolitan areas in all large depository institutions } (\$1\ \textit{trillion})}$$

$$= \textit{Nonmetropolitan Nationwide Community Development Financing Benchmark } (1\%)$$

d. *Bank State Community Development Financing Metric.* The [Agency] calculates the Bank State Community Development Financing Metric in § ____.24(c)(2)(i) for each State in which the bank has a facility-based assessment area by:

1. Summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve a State (which includes all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the State) for each year in the evaluation period.

2. Summing the bank's annual dollar volume of deposits located in a State for each year in the evaluation period.

3. Dividing the result of paragraphs II.d.1 of this appendix by the result of paragraph II.d.2 of this appendix.

Example B–5: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development loans and community development investments that benefit or serve the State are $15 million (year 1), $17 million (year 2), and $18 million (year 3). The sum of the bank's annual dollar volumes of community development loans and community development investments that benefit or serve the State conducted by a bank is therefore $50 million. The bank's annual dollar volumes of deposits located in the State are $1.5 billion (year 1), $1.6 billion (year 2), and $1.9 billion (year 3). The sum of the bank's annual dollar volumes of deposits located in the State is therefore $5 billion. For the evaluation period, the Bank State Community Development Financing Metric would be $50 million divided by $5 billion, or 0.01 (equivalently, 1 percent).

$$\frac{\textit{Bank's community development loans and investments in the State } (\$50\ \textit{million})}{\textit{Deposits in the bank in the State } (\$5\ \textit{billion})}$$

$$= \textit{State Community Development Financing Metric } (1\%)$$

e. *State Community Development Financing Benchmark.* The [Agency] calculates the State Community Development Financing Benchmark in § ____.24(c)(2)(ii)(A) by:

1. Summing all large depository institutions' annual dollar volume of community development loans and

community development investments that benefit or serve all or part of a State for each year in the evaluation period.

2. Summing all large depository institutions' annual dollar volume of deposits located in the State for each year in the evaluation period.

3. Dividing the result of paragraph II.e.1 of this appendix by the result of paragraph II.e.2 of this appendix.

Example B–6: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve the State conducted by all large depository institutions are $2.3 billion (year 1), $2.5 billion (year 2), and $2.7 billion (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve the State conducted by all large depository institutions is therefore $7.5 billion. The annual dollar volumes of deposits located in the State in all large depository institutions are $160 billion (year 1), $170 billion (year 2), and $170 billion (year 3). The sum of the annual dollar volumes of deposits located in the State in all large depository institutions is therefore $500 billion. For the evaluation period, the State Community Development Financing Benchmark would be $7.5 billion divided by $500 billion, or 0.015 (equivalently, 1.5 percent).

$$\frac{\substack{\textit{Community development loans and investments} \\ \textit{in the State by all large depository institutions } (\$7.5 \textit{ billion})}}{\textit{Deposits in the State in all large depository institutions } (\$500 \textit{ billion})}$$

$$= \textit{State Community Development Financing Benchmark } (1.5\%)$$

f. *State Weighted Assessment Area Community Development Financing Benchmark.* The [Agency] calculates the State Weighted Assessment Area Community Development Financing Benchmark in § ____.24(c)(2)(ii)(B) by averaging all of the applicable Assessment Area Community Development Financing Benchmarks (see paragraph II.b of this appendix) in a State for the evaluation period, after weighting each pursuant to paragraph II.o of this appendix.

Example B–7: The bank has two facility-based assessment areas (FBAAs) in a State (FBAA–1 and FBAA–2). The [Agency] does not evaluate the bank's automobile lending.

- In FBAA–1, the Assessment Area Community Development Financing Benchmark is 3.0 percent. FBAA–1 represents 70 percent of the combined dollar volume of the deposits in the bank in FBAA–1 and FBAA–2. FBAA–1 represents 65 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2. FBAA–1 represents 55 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2;
- In FBAA–2, the Assessment Area Community Development Financing Benchmark is 5.0 percent. FBAA–2 represents 30 percent of the combined dollar volume of the deposits in the bank in FBAA–1 and FBAA–2. FBAA–2 represents 35 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2. FBAA–2 represents 45 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2.

	FBAA–1	FBAA–2
Benchmark	3.0	5.0
% of deposits	70%	30%
% of lending dollar volume	65%	35%
% of number of loans	55%	45%

- *Calculating weights for FBAA–1:*
  - The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–1 is 60 percent.

$$\frac{\textit{Percent of lending dollar volume } (55\%) + \textit{Percent of loans } (65\%)}{2}$$

$$= \textit{Percent of lending } FBAA - 1\ (60\%)$$

  - The weight for FBAA–1 is 65 percent.

$$\frac{\textit{Percent of deposits } (70\%) + \textit{Percent of lending } (60\%)}{2}$$

$$= \textit{Weight for } FBAA - 1\ (65\%)$$

- Calculating weights for FBAA–2:
  - The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, for FBAA–2 is 40 percent.

$$\frac{Percent\ of\ lending\ dollar\ volume\ (35\%) + Percent\ of loans\ (45\%)}{2}$$

$$= Percent\ of\ lending\ FBAA - 2\ (40\%)$$

○ The weight for FBAA–2 is 35 percent.

$$\frac{Percent\ of deposits\ (30\%) + Percent\ of lending\ (40\%)}{2} = Weight\ for\ FBAA - 2\ (35\%)$$

• Applying the calculated weights for FBAA–1 and FBAA–2:

o The bank's State Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent.

(Weight for FBAA–1 (0.65) × Benchmark in FBAA–1 (3%)) + (Weight for FBAA–2 (0.35) × Benchmark in FBAA–2 (5%)) = State Weighted Assessment Area Community Development Financing Benchmark (3.7%)

g. *Bank Multistate MSA Community Development Financing Metric.* The [Agency] calculates the Bank Multistate MSA Community Development Financing Metric in § ____.24(d)(2)(i) for each multistate MSA in which the bank has a facility-based assessment area by:

1. Summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve a multistate MSA (which includes all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas but within the multistate MSA) for each year in the evaluation period.

2. Summing the bank's annual dollar volume of deposits located in the multistate MSA for each year in the evaluation period.

3. Dividing the result of paragraph II.g.1 of this appendix by the result of paragraph II.g.2 of this appendix.

Example B–8: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development loans and community development investments that benefit or serve a multistate MSA are $47 million (year 1), $51 million (year 2), and $52 million (year 3). The sum of the bank's annual dollar volumes of community development loans and community development investments that benefit or serve a multistate MSA conducted by the bank is therefore $150 million. The bank's annual dollar volumes of deposits located in the multistate MSA are $3.1 billion (year 1), $3.3 billion (year 2), and $3.6 billion (year 3). The sum of the bank's annual dollar volumes of deposits located in the multistate MSA is therefore $10 billion. For the evaluation period, the Bank Multistate MSA Community Development Financing Metric would be $150 million divided by $10 billion, or 0.015 (equivalently, 1.5 percent).

$$\frac{Bank's\ community\ development\ loans\ and\ investments\ in\ multistate\ MSA\ (\$150\ million)}{Deposits\ in\ the\ bank\ in\ multistate\ MSA\ \ (\$10\ billion)}$$

$$= Bank's\ Multistate\ MSA\ Community\ Development\ Financing\ Metric\ (1.5\%)$$

h. *Multistate MSA Community Development Financing Benchmark.* The [Agency] calculates the Multistate MSA Community Development Financing Benchmark in § ____.24(d)(2)(ii)(A) by:

1. Summing all large depository institutions' annual dollar volume of community development loans and community development investments that benefit or serve all or part of a multistate MSA for each year in the evaluation period.

2. Summing all large depository institutions' annual dollar volume of deposits located in the multistate MSA for each year in the evaluation period.

3. Dividing the result of paragraph II.h.1 of this appendix by the result of paragraph II.h.2 of this appendix.

Example B–9: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve a multistate MSA for all large depository institutions are $135 million (year 1), $140 million (year 2), and $145 million (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve a multistate MSA conducted by all large depository institutions is therefore $420 million. The annual dollar volumes of deposits located in the multistate MSA in all large depository institutions are $4 billion (year 1), $5 billion (year 2), and $6 billion (year 3). The sum of the annual dollar volume of deposits located in the multistate MSA in all large depository institutions is therefore $15 billion. For the evaluation period, the Multistate MSA Community Development Financing Benchmark would be $420 million divided by $15 billion, or 0.028 (equivalently, 2.8 percent).

$$\frac{\begin{gathered}All\ large\ depository\ institutions'\ community\ development\ loans\ and\ investments\\ in\ multistate\ MSA\ (\$420\ million)\end{gathered}}{Deposits\ in\ multistate\ MSA\ in\ all\ large\ depository\ institutions\ (\$15\ billion)}$$

$$= Multistate\ MSA\ Community\ Development\ Financing\ Benchmark\ (2.8\%)$$

i. *Multistate MSA Weighted Assessment Area Community Development Financing Benchmark.* The [Agency] calculates the Multistate MSA Weighted Assessment Area Community Development Financing Benchmark in § ____.24(c)(3)(ii)(B)(*2*) by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see paragraph II.b of this appendix) in a multistate MSA for the evaluation period, after weighting each pursuant to paragraph II.o of this appendix.

Example B–10: The bank has two facility-based assessment areas in a multistate MSA (FBAA–1 and FBAA–2). The [Agency] does not evaluate the bank's automobile lending.

• In FBAA–1, the bank's Assessment Area Community Development Financing

Benchmark is 3.0 percent. FBAA–1 represents 70 percent of the total dollar volume of the deposits in the bank in FBAA–1 and FBAA–2. FBAA–1 represents 65 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2. FBAA–1 represents 55 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2;

• In FBAA–2, the bank's Assessment Area Community Development Financing Benchmark is 5.0 percent. FBAA–2 represents 30 percent of the total dollar volume of the deposits in the bank in FBAA–1 and FBAA–2. FBAA–2 represents 35 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2. FBAA–2 represents 45 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1 and FBAA–2.

	FBAA–1	FBAA–2
Benchmark	3.0	5.0
% of deposits	70%	30%
% of lending dollar volume	65%	35%
% of loans	55%	45%

• *Calculating weights for FBAA–1:*

○ The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–1 is 60 percent.

$$\frac{Percent\ of\ lending\ dollar\ volume\ (55\%) + Percent\ of loans\ (65\%)}{2}$$

$$= Percent\ of\ lending\ FBAA - 1\ (60\%)$$

○ The weight for FBAA–1 is 65 percent.

$$\frac{Percent\ of deposits\ (70\%) + Percent\ of lending\ (60\%)}{2} = Weight\ for\ FBAA -\ 1\ (65\%)$$

• *Calculating weights for FBAA–2:*

○ The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–2 is 40 percent.

$$\frac{Percent\ of\ lending\ dollar\ volume\ (35\%) + Percent\ of loans\ (45\%)}{2}$$

$$= Percent\ of\ lending\ FBAA -\ 2\ (40\%)$$

○ The weight for FBAA–2 is 35 percent.

$$\frac{Percent\ of deposits\ (30\%) + Percent\ of lending\ (40\%)}{2} = Weight\ for\ assessment\ area\ 2\ (35\%)$$

• Applying the calculated weights from FBAA–1 and FBAA–2:

○ The bank's Multistate MSA Weighted Assessment Area Community Development Financing Benchmark is 3.7 percent.

(Weight of FBAA–1 (0.65) × Benchmark in FBAA–1 (3%)) + (weight of FBAA–2 (0.35) × benchmark in FBAA–2 (5%)) = Multistate MSA Weighted Assessment Area Community Development Financing Benchmark (3.7%)

j. *Bank Nationwide Community Development Financing Metric.* The [Agency] calculates the Bank Nationwide Community Development Financing Metric in § ____.24(e)(2)(i) for the nationwide area by:

1. Summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve the nationwide area (which includes all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas within the nationwide area) for each year in the evaluation period.

2. Summing the bank's annual dollar volume of deposits located in the nationwide area for each year in the evaluation period.

3. Dividing the results of paragraph II.j.1 of this appendix by the results of paragraph II.j.2 of this appendix.

Example B–11: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development loans and community development investments that benefit or serve the nationwide area are $60 million (year 1), $65 million (year 2), and $75 million (year 3). The sum of the bank's annual dollar volumes of community development loans and community development investments that benefit or serve the nationwide area conducted by the bank is therefore $200 million. The bank's annual dollar volumes of deposits located in the nationwide area are $2.5 billion (year 1), $2.7 billion (year 2), and $2.8 billion (year 3). The sum of the bank's annual dollar volumes of deposits located in the nationwide area is therefore $8 billion. For the evaluation period, the Bank Nationwide Community Development Financing Metric would be $200 million divided by $8 billion, or 0.025 (equivalently, 2.5 percent).

$$\frac{Bank's\ community\ development\ loans\ and\ investments\ nationwide\ (\$200\ million\ )}{Deposits\ nationwide\ in\ the\ bank\ (\$8\ billion)}$$

$$= Nationwide\ Community\ Development\ Financing\ Metric\ (2.5\%)$$

k. *Nationwide Community Development Financing Benchmark.* The [Agency] calculates the Nationwide Community Development Financing Benchmark in § ____.24(e)(2)(ii)(A) by:

1. Summing all large depository institutions' annual dollar volume of community development loans and community development investments that benefit or serve all or part of the nationwide area for each year in the evaluation period.

2. Summing all depository institutions' annual dollar volume of deposits located in the nationwide area for each year in the evaluation period.

3. Dividing the result of paragraph II.k.1 of this appendix by the result of paragraph II.k.2 of this appendix.

Example B–12: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development loans and community development investments that benefit or serve the nationwide area for all large depository institutions are $100 billion (year 1), $103 billion (year 2), and $107 billion (year 3). The sum of the annual dollar volumes of community development loans and community development investments that benefit or serve the nationwide area conducted by all large depository institutions is therefore $310 billion. The annual dollar volumes of deposits located in the nationwide area in all large depository institutions are $15.2 trillion (year 1), $15.3 trillion (year 2), and $15.5 trillion (year 3). The sum of the annual dollar volumes of deposits located in the nationwide area in all large depository institutions is $46 trillion. For the evaluation period, the Nationwide Community Development Financing Benchmark would be $310 billion divided by $46 trillion, or 0.0067 (equivalently, 0.67 percent).

$$\frac{\begin{array}{c}Community\ development\ loans\ and\ investments\\ nationwide\ by\ all\ large\ depository\ institutions\ (\$310\ billion\ )\end{array}}{Deposits\ nationwide\ in\ all\ large\ depository\ institutions\ (\$46\ trillion)}$$

$$= Nationwide\ Community\ Development\ Financing\ Benchmark\ (0.67\%)$$

l. *Nationwide Weighted Assessment Area Community Development Financing Benchmark.* The [Agency] calculates the Nationwide Weighted Assessment Area Community Development Financing Benchmark in § ____.24(e)(2)(ii)(B) by averaging all of the bank's Assessment Area Community Development Financing Benchmarks (see paragraph II.b of this appendix) in the nationwide area, after weighting each pursuant to paragraph II.o of this appendix.

Example B–13: The bank has three facility-based assessment areas in the nationwide area (FBAA–1, FBAA–2, and FBAA–3).

- In FBAA–1, the bank's Assessment Area Community Development Financing Benchmark is 2.0 percent. FBAA–1 represents 60 percent of the combined dollar volume of the deposits in the bank in FBAA–1, FBAA–2, and FBAA–3. FBAA–1 represents 40 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3. FBAA–1 represents 60 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3.
- In FBAA–2, the bank's Assessment Area Community Development Financing Benchmark is 3.0 percent. FBAA–2 represents 30 percent of the combined dollar volume of the deposits in the bank in FBAA–1, FBAA–2, and FBAA–3. FBAA–2 represents 45 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3. FBAA–2 represents 35 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3.
- In FBAA–3, the bank's Assessment Area Community Development Financing Benchmark is 4.0 percent. FBAA–3 represents 10 percent of the combined dollar volume of the deposits in the bank in FBAA–1, FBAA–2, and FBAA–3. FBAA–3 represents 15 percent of the bank's combined dollar volume of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3. FBAA–3 represents 5 percent of the bank's number of originated and purchased closed-end home mortgage loans, small business loans, and small farm loans in FBAA–1, FBAA–2, and FBAA–3.

	FBAA–1	FBAA–2	FBAA–3
Benchmark	2.0	3.0	4.0
% of deposits	60%	30%	10%
% of lending dollar volume	40%	45%	15%
% of loans	60%	35%	5%

- *Calculating weights for FBAA–1:*
  - The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–1 is 50 percent.

$$\frac{\textit{Percent of lending dollar volume}\ (40\%) + \textit{Percent of loans}\ (60\%)}{2} = \textit{Percent of lending FBAA} - 1\ (50\%)$$

○ The weight for FBAA–1 is 55 percent.

$$\frac{\textit{Percent of deposits}\ (60\%) + \textit{Percent of lending}\ (50\%)}{2} = \textit{Weight for FBAA} - 1\ (55\%)$$

• *Calculating weights for FBAA–2:*

○ The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–2 is 40 percent.

$$\frac{\textit{Percent of lending dollar volume}\ (45\%) + \textit{Percent of loans}\ (35\%)}{2} = \textit{Percent of lending FBAA} - 2\ (40\%)$$

○ The weight for FBAA–2 is 35 percent.

$$\frac{\textit{Percent of deposits}\ (30\%) + \textit{Percent of lending}\ (40\%)}{2} = \textit{Weight for FBAA} - 2\ (35\%)$$

• *Calculating weights for FBAA–3:*

○ The percent of originated and purchased closed-end home mortgage lending, small business lending, and small farm lending, based on the combination of loan dollars and loan count, as defined in § ____.12, for FBAA–3 is 10 percent.

$$\frac{\textit{Percent of lending dollar volume}\ (15\%) + \textit{Percent of loans}\ (5\%)}{2} = \textit{Percent of lending FBAA} - 3\ (10\%)$$

○ The weight for FBAA–3 is 10 percent.

$$\frac{\textit{Percent of deposits}\ (10\%) + \textit{Percent of lending}\ (10\%)}{2} = \textit{Weight for FBAA} - 3\ (10\%)$$

• Applying the calculated weights from FBAA–1, FBAA–2, and FBAA–3:

○ The bank's Nationwide Weighted Assessment Area Community Development Financing Benchmark is 2.55 percent.

(Weight of FBAA–1(0.55) × Benchmark in FBAA–1 (2%)) + (Weight of FBAA–2 (0.35) × Benchmark FBAA–2 (3%)) + (Weight of FBAA–3 (0.10) × Benchmark in FBAA–3 (4%)) = Nationwide Weighted Assessment Area Community Development Financing Benchmark (2.55%)

m. *Bank Nationwide Community Development Investment Metric.* The [Agency] calculates the Bank Nationwide Community Development Investment Metric in § ____.24(e)(2)(iii) for the nationwide area by:

1. Summing the bank's annual dollar volume of community development investments, excluding mortgage-backed securities, that benefit or serve the nationwide area (which includes all activities within the bank's facility-based assessment areas and outside of its facility-based assessment areas within the nationwide area) for each year in the evaluation period.

2. Summing the bank's annual dollar volume of deposits located in the nationwide area for each year in the evaluation period.

3. Dividing the results of paragraph II.m.1 of this appendix by the results of paragraph II.m.2 of this appendix.

Example B–14: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area are $600 million (year 1), $680 million (year 2), and $720 million (year 3). The sum of the bank's annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area conducted by the bank is therefore $2 billion. The bank's annual dollar volumes of deposits located in the nationwide area are $24 billion (year 1), $27 billion (year 2), and $29 billion (year 3). The sum of the bank's annual dollar volumes of deposits located in the nationwide area is therefore $80 billion. For the evaluation period, the Bank Nationwide Community Development Investment Metric would be $2 billion divided by $80 billion, or 0.025 (equivalently, 2.5 percent).

$$\frac{\textit{Bank's community development investments nationwide}\ (\$2\ \textit{billion})}{\textit{Deposits at the bank nationwide}\ (\$80\ \textit{billion})} = \textit{Nationwide Community Development Investment Metric}\ (2.5\%)$$

n. *Nationwide Community Development Investment Benchmark.* The [Agency] calculates the Nationwide Community Development Investment Benchmark in § ____.24(e)(2)(iv) by:

1. Summing the annual dollar volume of community development investments that benefit or serve all or part of the nationwide area, excluding mortgage-backed securities, for each year in the evaluation period for all large depository institutions that had assets greater than $10 billion as of December 31 in both of the prior two calendar years.

2. Summing the annual dollar volume of deposits in the nationwide area for each year in the evaluation period for all large depository institutions that had assets greater than $10 billion as of December 31 in both of the prior two calendar years.

3. Dividing the result of paragraph II.n.1 of this appendix by the result of paragraph II.n.2 of this appendix.

Example B–15: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area for all large depository institutions are $350 billion (year 1), $360 billion (year 2), and $390 billion (year 3). The sum of the annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area conducted by all large depository institutions is therefore $1.1 trillion. The annual dollar volumes of deposits located in the nationwide area in all large depository institutions are $21.9 trillion (year 1), $22 trillion (year 2), and $22.1 trillion (year 3). The sum of the annual dollar volumes of deposits located in the nationwide area in all large depository institutions is therefore $66 trillion. For the evaluation period, the Nationwide Community Development Investment Benchmark would be $1.1 trillion divided by $66 trillion, or 0.0167 (equivalently, 1.67 percent).

$$\frac{\textit{Community development investments nationwide by all large depository institutions}\ (\$1.1\ \textit{trillion})}{\textit{Deposits nationwide at all large depository institutions}\ (\$66\ \textit{trillion})} = \textit{Nationwide Community Development Investment Benchmark}\ (1.67\%)$$

o. *Weighting of benchmarks.* The [Agency] calculates a weighted average of the Assessment Area Community Development Financing Benchmarks for a bank's facility-based assessment areas in each State or multistate MSA, as applicable, or the nationwide area. For the weighted average for a State or multistate MSA, the [Agency] considers Assessment Area Community Development Financing Benchmarks for facility-based assessment areas in the State or multistate MSA pursuant to § ____.28(c). For the weighted average for the nationwide area, the [Agency] considers Assessment Area Community Development Financing Benchmarks for all of the bank's facility-based assessment areas. Each Assessment Area Community Development Financing Benchmark is weighted by the average of the following two ratios:

1. The ratio measuring the share of the deposits in the bank in the facility-based assessment area, calculated by:

i. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all facility-based assessment areas in the State, multistate MSA, or nationwide area, as applicable.

iii. Dividing the result of paragraph II.o.1.i of this appendix by the result of paragraph II.o.1.ii of this appendix.

For a bank that reports deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. For a bank that does not report deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

2. The ratio measuring the share of the bank's loans in the facility-based assessment area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

i. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the facility-based assessment area originated or purchased during the evaluation period; by

ii. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all facility-based assessment areas in the State, multistate MSA, or nationwide area, as applicable, originated or purchased during the evaluation period.

p. *Combined score for facility-based assessment area conclusions and the metrics and benchmarks analyses and the impact and responsiveness reviews.* 1. As described in § ____.24(c) through (e), the [Agency] assigns a conclusion corresponding to the conclusion category that is nearest to the performance score calculated in paragraph p.2.iii of this appendix for a bank's performance under the Community Development Financing Test in each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution as follows:

Performance score	Conclusion
8.5 or more	Outstanding.
6.5 or more but less than 8.5.	High Satisfactory.
4.5 or more but less than 6.5.	Low Satisfactory.

Performance score	Conclusion
1.5 or more but less than 4.5.	Needs to Improve.
Less than 1.5	Substantial Non-compliance.

2. The [Agency] bases a Community Development Financing Test combined performance score on the following:

i. *Component one—Weighted average of the bank's performance scores corresponding to facility-based assessment area conclusions.* The [Agency] derives a performance score based on a weighted average of the performance scores corresponding to conclusions for facility-based assessment areas in each State or multistate MSA, as applicable, and the nationwide area, calculated pursuant to section IV of this appendix.

ii. *Component two—Bank score for metric and benchmarks analyses and the impact and responsiveness reviews.* For each State or multistate MSA, as applicable, and the nationwide area, the [Agency] determines a performance score (as shown in paragraph IV.a of this appendix) corresponding to a conclusion category by considering the relevant metric and benchmarks and a review of the impact and responsiveness of the bank's community development loans and community development investments. In the nationwide area, for large banks that had assets greater than $10 billion as of December 31 in both of the prior two calendar years, the [Agency] also considers whether the bank's performance under the Nationwide Community Development Investment Metric, compared to the Community Development Investment Benchmark, contributes positively to the bank's Community Development Financing Test conclusion.

iii. *Combined score.* The [Agency] associates the performance score calculated pursuant to this paragraph II.p.2.iii with a conclusion category. The [Agency] derives the combined performance score corresponding to a conclusion category as follows:

A. The [Agency] calculates the average of two components to determine weighting:

1. The percentage, calculated using the combination of loan dollars and loan count, as defined in § ____.12, of the bank's total originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, as applicable, in its facility-based assessment areas out of all of the bank's originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, as applicable, in the State or multistate MSA, as applicable, or the nationwide area during the evaluation period; and

2. The percentage of the total dollar volume of deposits in its facility-based assessment areas out of all of the deposits in the bank in the State or multistate MSA, as applicable, or the nationwide area during the evaluation period. For purposes of this paragraph II.p.2.iii.A.*2,* ''deposits'' excludes deposits reported under § ____.42(b)(3)(ii).

B. If the average is:

1. At least 80 percent, then component one receives a 50 percent weight and component two receives a 50 percent weight.

2. At least 60 percent but less than 80 percent, then component one receives a 40 percent weight and component two receives a 60 percent weight.

3. At least 40 percent but less than 60 percent, then component one receives a 30 percent weight and component two receives a 70 percent weight.

4. At least 20 percent but less than 40 percent, then component one receives a 20 percent weight and component two receives an 80 percent weight.

5. Below 20 percent, then component one receives a 10 percent weight and component two receives a 90 percent weight.

TABLE 2 TO APPENDIX B—COMPONENT WEIGHTS FOR COMBINED PERFORMANCE SCORE

Average of the percentage of deposits and percentage of loans	Weight on component 1 (percent)	Weight on component 2 (percent)
Greater than or equal to 80%	50	50
Greater than or equal to 60% but less than 80%	40	60
Greater than or equal to 40% but less than 60%	30	70
Greater than or equal to 20% but less than 40%	20	80
Below 20%	10	90

Example B–16:

• Assume that the weighted average of the bank's performance scores corresponding to its facility-based assessment area conclusions nationwide is 7.5. Assume further that the bank score for the metrics and benchmarks analysis and the review of the impact and responsiveness of the bank's community development loans and community development investments nationwide is 6.

• Assume further that 95 percent of the deposits in the bank and 75 percent of the bank's originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile loans (calculated using the combination of loan dollars and loan count, as defined in § ____.12) during the evaluation period are associated with its facility-based assessment areas.

• The [Agency] assigns weights for component one and component two based on the share of deposits in the bank and the share of the bank's originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, calculated using the combination of loan dollars and loan count, as defined in § ____.12, associated with its facility-based assessment areas: (95 percent of deposits + 75 percent of originated and purchased closed-end home mortgage lending, small business lending, small farm lending, and automobile lending, based on the combination of loan dollars and loan count)/2 = 85 percent, which is between 80 percent and 100 percent.

• Thus, the weighted average of the bank's facility-based assessment area conclusions in the nationwide area (component one—paragraph II.p.2.i of this appendix) receives a weight of 50 percent, and the metrics and benchmarks analysis and the review of the impact and responsiveness of the bank's community development loans and community development investments in the nationwide area (component two—paragraph II.p.2.ii of this appendix) receives a weight of 50 percent.

• Using the point values—''Outstanding'' (10 points); ''High Satisfactory'' (7 points); ''Low Satisfactory'' (6 points); ''Needs to Improve'' (3 points); ''Substantial Noncompliance'' (0 points)—the bank's Community Development Financing Test conclusion at the institution level is a ''High Satisfactory'': (0.50 weight × 7.5 points for the weighted average of the performance scores corresponding to the bank's facility-based assessment area conclusions nationwide) + (0.50 weight × 6 points for the bank score for metrics and benchmarks analysis and review of the impact and responsiveness of the bank's community development loans and community development investments nationwide) results in a performance score of 6.75, which is closest to the point value (7) associated with ''High Satisfactory.''

III. Community Development Financing Test for Limited Purpose Banks in § ____.26—Calculations for Metrics and Benchmarks

The calculations for metrics and benchmarks for Community Development Financing Test for Limited Purpose Banks in § ____.26 are provided in this section. Additional information regarding relevant calculation components is set forth in paragraph I.a of this appendix.

a. *Limited Purpose Bank Community Development Financing Metric.* The [Agency] calculates the Limited Purpose Bank Community Development Financing Metric provided in § ____.26 by:

1. Summing the bank's annual dollar volume of community development loans and community development investments that benefit or serve the nationwide area for each year in the evaluation period.

2. Summing the bank's annual dollar volume of the assets for each year in the evaluation period.

3. Dividing the result of paragraph III.a.1 of this appendix by the result of paragraph III.a.2 of this appendix.

b. *Nationwide Limited Purpose Bank Community Development Financing Benchmark.* The [Agency] calculates the Nationwide Limited Purpose Bank Community Development Financing Benchmark by:

1. Summing the annual dollar volume of community development loans and community development investments of depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) or designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a) reported pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) that benefit or serve all or part of the nationwide area for each year in the evaluation period.

2. Summing the annual dollar volume of assets of depository institutions designated as limited purpose banks or savings associations pursuant to 12 CFR 25.26(a) or designated as limited purpose banks pursuant to 12 CFR 228.26(a) or 345.26(a) that reported community development loans and community development investments pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) for each year in the evaluation period.

3. Dividing the result of paragraph III.b.1 of this appendix by the result of paragraph III.b.2 of this appendix.

c. *Nationwide Asset-Based Community Development Financing Benchmark.* The [Agency] calculates the Nationwide Asset-Based Community Development Financing Benchmark by:

1. Summing the annual dollar volume of community development loans and community development investments of all depository institutions that reported pursuant to 12 CFR 25.42(b), 228.42(b), or 345.42(b) that benefit or serve all or part of the nationwide area for each year in the evaluation period.

2. Summing the annual dollar volume of assets of all depository institutions that reported community development loans and community development investments pursuant to 12 CFR 25.42(b), 228. 42(b), or 345.42(b) for each year in the evaluation period.

3. Dividing the result of paragraph III.c.1 of this appendix by the result of paragraph III.c.2 of this appendix.

d. *Limited Purpose Bank Community Development Investment Metric.* The [Agency] calculates the Limited Purpose Bank Nationwide Community Development Investment Metric, provided in § ____.26(f)(2)(iii), for the nationwide area by:

1. Summing the bank's annual dollar volume of community development investments, excluding mortgage-backed securities, that benefit or serve the nationwide area for each year in the evaluation period.

2. Summing the bank's annual dollar volume of assets for each year in the evaluation period.

3. Dividing the results of paragraph III.d.1 of this appendix by the results of paragraph III.d.2 of this appendix.

Example B–17: The bank has a three-year evaluation period. The bank's annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area are $62 million (year 1), $65 million (year 2), and $73 million (year 3). The sum of the bank's annual dollar volumes of community development investments that benefit or serve the nationwide area conducted by the bank is therefore $200 million. The bank's annual dollar volumes of assets in the bank are $2.4 billion (year 1), $2.7 billion (year 2), and $2.9 billion (year 3). The sum of the bank's annual dollar volumes of assets in the bank over the evaluation period is therefore $8 billion. For the evaluation period, the Bank Nationwide Community Development Investment Metric would be $200 million divided by $8 billion, or 0.025 (equivalently, 2.5 percent).

$$\frac{\textit{Bank's community development investments nationwide } (\$200 \textit{ million})}{\textit{Assets in the bank } (\$8 \textit{ billion})}$$

$$= \textit{Nationwide Community Development Investment Metric } (2.5\%)$$

e. *Nationwide Asset-Based Community Development Investment Benchmark.* The [Agency] calculates the Nationwide Asset-Based Community Development Investment Benchmark, provided in § ____.26(f)(2)(iv), by:

1. Summing the annual dollar volume of community development investments, excluding mortgage-backed securities, of all depository institutions that had assets greater than $10 billion, as of December 31 in both of the prior two calendar years, that benefit or serve all or part of the nationwide area for each year in the evaluation period.

2. Summing the annual dollar volume of assets of all depository institutions that had assets greater than $10 billion, as of December 31 in both of the prior two calendar years, for each year in the evaluation period.

3. Dividing the result of paragraph III.e.1 of this appendix by the result of paragraph III.e.2 of this appendix.

Example B–18: The applicable benchmark uses a three-year evaluation period. The annual dollar volumes of community development investments (excluding mortgage-backed securities) that benefit or serve the nationwide area for all depository institutions that had assets greater than $10 billion are $35 billion (year 1), $37 million (year 2), and $38 billion (year 3). The sum of the annual dollar volumes of community development investments that benefit or serve the nationwide area conducted by all depository institutions that had assets greater than $10 billion is therefore $110 billion. The annual dollar volumes of assets in all depository institutions that had assets greater than $10 billion are $1.8 trillion (year 1), $2.1 trillion (year 2), and $2.1 trillion (year 3). The sum of the annual dollar volumes of assets in all depository institutions that had assets greater than $10 billion is therefore $6 trillion. For the evaluation period, the Nationwide Asset-Based Community Development Investment Benchmark would be $110 billion divided by $6 trillion, or 0.0183 (equivalently, 1.83 percent).

$$\frac{\begin{array}{c}\textit{Community development investments} \\ \textit{nationwide by depository institutions with assets greater than } \$10 \textit{ billion } (\$110 \textit{ billion})\end{array}}{\textit{Assets of depository institutions with assets greater than } \$10 \textit{ billion } (\$6 \textit{ trillion})}$$

$$= \textit{Nationwide Asset}$$

$$- \textit{Based Community Development Investment Benchmark } (1.83\%)$$

IV. Weighting of Conclusions

The [Agency] calculates component one of the combined performance score, as set forth in paragraph II.p.2.i of this appendix, for the Community Development Financing Test in § ____.24 and a performance score for the Community Development Services Test in § ____.25 in each State, multistate MSA, and the nationwide area, as applicable, as described in this section.

a. The [Agency] translates the Community Development Financing Test and the Community Development Services Test conclusions for facility-based assessment areas into numerical performance scores, as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

b. The [Agency] calculates the weighted average of facility-based assessment area performance scores for a State or multistate MSA, as applicable, and for the institution. For the weighted average for a State or multistate MSA, the [Agency] considers facility-based assessment areas in the State or multistate MSA pursuant to § ____.28(c). For the weighted average for the institution, the [Agency] considers all of the bank's facility-based assessment areas. Each facility-based assessment area performance score is weighted by the average the following two ratios:

1. The ratio measuring the share of the deposits in the bank in the facility-based assessment area, calculated by:

i. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in the facility-based assessment area.

ii. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all facility-based assessment areas in the State, in the multistate MSA, or for the nationwide area, as applicable.

iii. Dividing the result of paragraph IV.b.1.i of this appendix by the result of paragraph IV.b.1.ii of this appendix.

For a bank that reports deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. For a bank that does not report deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

2. The ratio measuring the share of the bank's loans in the facility-based assessment area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

i. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the facility-based assessment area originated or purchased during the evaluation period; by

ii. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all facility-based assessment areas in the State, in the multistate MSA, or for the nationwide area, as applicable, originated or purchased during the evaluation period.

Appendix C to Part ____—Performance Test Conclusions

a. *Performance test conclusions, in general.* For a bank evaluated under, as applicable, the Retail Lending Test in § ____.22, the Retail Services and Products Test in § ____.23, the Community Development Financing Test in § ____.24, the Community Development Services Test in § ____.25, and the Community Development Financing Test for Limited Purpose Banks in § ____.26, the [Agency] assigns conclusions for the bank's CRA performance pursuant to these tests and this appendix. In assigning conclusions, the [Agency] may consider performance context information as provided in § ____.21(d).

b. *Retail Lending Test conclusions.* The [Agency] assigns Retail Lending Test conclusions for each applicable Retail Lending Test Area, each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

1. *Retail Lending Test Area.* For each applicable Retail Lending Test Area, the [Agency] assigns a Retail Lending Test conclusion and corresponding performance score pursuant to § ____.22(h)(1), as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

2. *State, multistate MSA, and institution.* The [Agency] assigns the Retail Lending Test conclusions for a bank's performance in each State or multistate MSA, as applicable, and for the institution, as set forth in section VIII of appendix A to this part.

c. *Retail Services and Products Test conclusions.* The [Agency] assigns Retail Services and Products Test conclusions for each facility-based assessment area, for each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution. For a bank that does not operate any branches, a main office described in § ____.23(a)(2), or remote service facilities, the [Agency] assigns the bank's digital delivery systems and other delivery systems conclusion as the Retail Services and Product Test conclusion for the State or multistate MSA, as applicable.

1. *Facility-based assessment area.* The [Agency] assigns a Retail Services and Products Test conclusion for a bank's performance in a facility-based assessment area based on an evaluation of the bank's branch availability and services and remote services facilities availability, if applicable, pursuant to § ____.23(b)(2) and (3), respectively.

2. *State, multistate MSA, and institution.* The [Agency] develops the Retail Services and Products Test conclusions for States, multistate MSAs, and the institution as described in this paragraph c.2.

i. The [Agency] translates Retail Services and Products Test conclusions for facility-based assessment areas into numerical performance scores as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

ii. The [Agency] calculates the weighted average of facility-based assessment area performance scores for a State or multistate MSA, as applicable, and for the institution. For the weighted average for a State or multistate MSA, the [Agency] considers facility-based assessment areas in the State or multistate MSA pursuant to § ____.28(c). For the weighted average for the institution, the [Agency] considers all of the bank's facility-based assessment areas. Each facility-based assessment area performance score is weighted by the average the following two ratios:

A. The ratio measuring the share of the bank's deposits in the facility-based assessment area, calculated by:

1. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in the facility-based assessment area.

2. Summing, over the years in the evaluation period, the bank's annual dollar volume of deposits in all facility-based assessment areas in the State, in the multistate MSA, or for the institution, as applicable.

3. Dividing the result of paragraph c.2.ii.A.*1* of this appendix by the result of paragraph c.2.ii.A.*2* of this appendix.

For a bank that reports deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of annual average daily balances of deposits reported by the bank in counties in the facility-based assessment area for that year. For a bank that does not report deposits data pursuant to § ____.42(b)(3), the bank's annual dollar volume of deposits in a facility-based assessment area is the total of deposits assigned to facilities reported by the bank in the facility-based assessment area in the FDIC's Summary of Deposits for that year.

B. The ratio measuring the share of the bank's loans in the facility-based assessment area, based on the combination of loan dollars and loan count, as defined in § ____.12, calculated by dividing:

1. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in the facility-based assessment area originated or purchased during the evaluation period; by

2. The bank's closed-end home mortgage loans, small business loans, small farm loans, and, if a product line for the bank, automobile loans in all facility-based assessment areas in the State, in the multistate MSA, or for the institution, as applicable, originated or purchased during the evaluation period.

iii. For a State or multistate MSA, as applicable, the [Agency] assigns a Retail Services and Products Test conclusion corresponding to the conclusion category that is nearest to the weighted average for the State or multistate MSA calculated pursuant to paragraph c.2.ii of this appendix (*i.e.,* the performance score for the Retail Services and Products Test for the State or multistate MSA).

Performance score for the retail services and products test	Conclusion
8.5 or more	Outstanding.
6.5 or more but less than 8.5.	High Satisfactory.
4.5 or more but less than 6.5.	Low Satisfactory.
1.5 or more but less than 4.5.	Needs to Improve.
less than 1.5	Substantial Noncompliance.

iv. For the institution, the [Agency] assigns a Retail Services and Products Test conclusion based on the bank's combined retail banking services conclusion, developed pursuant to paragraph c.2.iv.A of this appendix, and an evaluation of the bank's retail banking products, pursuant to paragraph c.2.iv.B of this appendix. The [Agency] translates the Retail Services and Products Test conclusion for the institution into a numerical performance score, as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

A. *Combined retail banking services conclusion. 1. In general.* The [Agency] evaluates the bank's retail banking services, as applicable, and assigns a combined retail banking services conclusion based the weighted average for the institution calculated pursuant to paragraph c.2.ii of this appendix and a digital and other delivery systems conclusion, assigned pursuant to paragraph c.2.iv.A.*1* of this appendix. For a large bank without branches, a main office described in § ____.23(a)(2), or remote service facilities, the [Agency] assigns a combined retail banking services conclusion based only on a digital delivery systems and other delivery systems conclusion, assigned pursuant to paragraph c.2.iv.A.*1* of this appendix.

2. Digital delivery systems and other delivery systems conclusion. The [Agency] assigns a digital delivery systems and other delivery systems conclusion based on an evaluation of a bank's digital delivery systems and other delivery systems pursuant to § ____.23(b)(4).

B. *Retail banking products evaluation.* The [Agency] evaluates the bank's retail banking products offered in the bank's facility-based assessment areas and nationwide, as applicable, as follows:

1. Credit products and programs. The [Agency] evaluates the bank's performance regarding its credit products and programs pursuant to § ____.23(c)(2) and determines whether the bank's performance contributes positively to the bank's Retail Services and Products Test conclusion that would have resulted based solely on the retail banking services conclusion pursuant to paragraph c.2.iv.A of this appendix.

2. Deposit products. The [Agency] evaluates the bank's performance regarding its deposit products pursuant to § ____.23(c)(3), as applicable, and determines whether the bank's performance contributes positively to the bank's Retail Services and Products Test conclusion that would have resulted based solely on the combined retail banking services conclusion pursuant to paragraph c.2.iv.A of this appendix.

3. Impact of retail banking products on Retail Services and Products Test conclusion. The bank's retail banking products evaluated pursuant to § ____.23(c) may positively impact the bank's Retail Services and Products Test conclusion. The bank's lack of responsive retail banking products does not adversely affect the bank's Retail Services and Products Test performance conclusion.

d. *Community Development Financing Test conclusions.* The [Agency] assigns Community Development Financing Test conclusions for each facility-based assessment area, each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] assigns a Community Development Financing Test conclusion and corresponding performance score based on the metric and benchmarks as provided in § ____.24 and a review of the impact and responsiveness of a bank's activities as provided in § ____.15 as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

2. *State, multistate MSA, and institution.* The [Agency] assigns Community Development Financing Test conclusions for a bank's performance in each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution as set forth in paragraph II.p of appendix B to this part.

e. *Community Development Services Test conclusions.* The [Agency] assigns Community Development Services Test conclusions for each facility-based assessment area, each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] develops a Community Development Services Test conclusion based on the extent to which a bank provided community development services, considering the factors in § ____.25(b). The [Agency] translates the conclusion for each facility-based assessment area into a numerical performance score as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

2. *State, multistate MSA, or nationwide area.* For each State or multistate MSA, as applicable pursuant to § ____.28(c), and the nationwide area, the [Agency] develops a Community Development Services Test conclusion as follows:

i. The [Agency] calculates a weighted average of the performance scores corresponding to the performance test conclusions pursuant to section IV of appendix B to this part. The resulting number is the Community Development Services Test performance score for a State, multistate MSA, or the institution. Subject to paragraph e.2.ii of this appendix, the [Agency] assigns a Community Development Services Test conclusion corresponding to the conclusion category that is nearest to the performance score for the Community Development Services Test as follows:

Performance score for the community development services test	Conclusion
8.5 or more	Outstanding.
6.5 or more but less than 8.5.	High Satisfactory.
4.5 or more but less than 6.5.	Low Satisfactory.
1.5 or more but less than 4.5.	Needs to Improve.
Less than 1.5	Substantial Noncompliance.

ii. The [Agency] may adjust upwards the Community Development Services Test conclusion assigned under paragraph e.2.i of this appendix, based on Community Development Services Test activities performed outside of facility-based assessment areas as provided in § ____.19. If there is no upward adjustment, the performance score used for the ratings calculations described in paragraph b.1 of appendix D to this part is the Community Development Services Test performance score discussed in paragraph e.2.i of this appendix. If there is an upward adjustment, the [Agency] translates the Community Development Services Test conclusion into a numerical performance score, which will be used for the ratings calculations described in paragraph b.1 of appendix D to this part, as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

f. *Community Development Financing Test for Limited Purpose Banks conclusions.* The [Agency] assigns conclusions for each facility-based assessment area, each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

1. *Facility-based assessment area.* For each facility-based assessment area, the [Agency] assigns one of the following Community Development Financing Test for Limited Purpose Banks conclusions based on consideration of the dollar volume of a bank's community development loans and community development investments that benefit or serve the facility-based assessment area over the evaluation period, and a review of the impact and responsiveness of the bank's activities in the facility-based assessment area as provided in § ____.15: ''Outstanding''; ''High Satisfactory''; ''Low Satisfactory''; ''Needs to Improve''; or ''Substantial Noncompliance.''

2. *State or multistate MSA.* For each State or multistate MSA, as applicable pursuant to § ____.28(c), the [Agency] assigns a Community Development Financing Test for Limited Purpose Banks 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, as applicable;

ii. The dollar volume of a bank's community development loans and community development investments that benefit or serve the State or multistate MSAs, as applicable, over the evaluation period; and

iii. A review of the impact and responsiveness of the bank's activities in the State or multistate MSAs, as provided in § ____.15.

3. *Institution.* For the institution, the [Agency] assigns a Community Development Financing Test for Limited Purpose Banks 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;

ii. The [Agency]'s comparison of the bank's Limited Purpose Bank Community Development Financing Metric to both the Nationwide Limited Purpose Bank Community Development Financing Benchmark and the Nationwide Asset-Based Community Development Financing Benchmark;

iii. The [Agency]'s comparison of the bank's Limited Purpose Bank Community Development Investment Metric to the Nationwide Asset-Based Community Development Investment Benchmark; and

iv. A review of the impact and responsiveness of the bank's activities in a nationwide area as provided in § ____.15.

g. *Strategic Plan conclusions.* The [Agency] assigns conclusions for a bank that operates under an approved plan in facility-based assessment areas, retail lending assessment areas, outside retail lending areas, State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution. The [Agency] assigns conclusions consistent with the methodology set forth by the bank in its plan. For elements of the plan that correspond to performance tests that would apply to the bank in the absence of an approved plan, the plan should include a conclusion methodology that is generally consistent with paragraphs b through f of this appendix.

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, pursuant to §§ ____.21 and ____.28. The agency calculates an overall performance score for each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution. The [Agency] assigns a rating of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance'' for the bank's performance in each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution that is nearest to the overall performance score, as follows:

Performance score	Rating
8.5 or more	Outstanding.
4.5 or more but less than 8.5.	Satisfactory.
1.5 or more but less than 4.5.	Needs to Improve.
Less than 1.5	Substantial Noncompliance.

The [Agency] also considers any evidence of discriminatory or other illegal credit practices pursuant to § ____.28(d) and the bank's past performance pursuant to § ____.28(e).

b. *Large bank ratings at the State, multistate MSA, and institution levels.* Subject to paragraph g of this appendix, the [Agency] combines a large bank's performance scores for its State, multistate MSA, or institution-level performance under the Retail Lending Test in § ____.22, Retail Services and Products Test in § ____.23, Community Development Financing Test in § ____.24, and Community Development Services Test in § ____.25 to determine the bank's rating in each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

1. The [Agency] weights the performance scores as follows: Retail Lending Test (40 percent); Retail Services and Products Test (10 percent); Community Development Financing Test (40 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, multistate MSA, or institution-level performance score.

2. The [Agency] assigns a rating corresponding with the rating category that is nearest to the State, multistate MSA, or institution performance score using the table in paragraph a of this appendix.

Example D–1: A large bank received the following performance scores and conclusions in a State:

- On the Retail Lending Test, the bank received a 7.3 performance score and a corresponding conclusion of ''High Satisfactory;''
- On the Retail Services and Products Test, the bank received a 6.0 performance score and a corresponding conclusion of ''Low Satisfactory;''
- On the Community Development Financing Test, the bank received a 5.7 performance score and a corresponding conclusion of ''Low Satisfactory;'' and
- On the Community Development Services Test, the bank received a 3.0 performance score and a corresponding conclusion of ''Needs to Improve.''

Calculating weights:

- For the Retail Lending Test, the weight is 40 percent (or 0.4);
- For the Retail Services and Products Test, the weight is 10 percent (or 0.1);
- For the Community Development Financing Test, the weight is 40 percent (or 0.4); and
- For the Community Development Services Test, the weight is 10 percent (or 0.1).

State Performance Score: Based on the illustration in this example D–1, the bank's State performance score is 6.1.

(0.4 weight × 7.3 performance score on the Retail Lending Test = 2.92) + (0.1 weight × 6.0 performance score on the Retail Services and Products Test = 0.6) + (0.4 weight × 5.7 performance score on the Community Development Financing Test = 2.28) + (0.1 weight × 3.0 performance score on the Community Development Services Test = 0.3).

State Rating: A State performance score of 6.1 is greater than 4.5 but less than 8.5, resulting in a rating of ''Satisfactory.''

c. *Intermediate bank ratings.* 1. *Intermediate banks evaluated pursuant to the Retail Lending Test and the Community Development Financing Test.* Subject to paragraph g of this appendix, the [Agency] combines an intermediate bank's performance scores for its State, multistate MSA, or institution performance under the Retail Lending Test and the Community Development Financing Test to determine the bank's rating in each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

i. 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, multistate MSA, or institution performance score.

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the State, multistate MSA, or institution performance score, using the table in paragraph a of this appendix.

iii. The [Agency] may adjust an intermediate bank's institution rating where the bank has requested and received sufficient additional consideration pursuant to § ____.30(b)(2) and (3).

2. *Intermediate banks evaluated pursuant to the Retail Lending Test and the Intermediate Bank Community Development Test in § ____.30(a)(2).* The [Agency] combines an intermediate bank's performance scores for its State, multistate MSA, or institution conclusions under the Retail Lending Test and the Intermediate Bank Community Development Test in § ____.30(a)(2) to determine the bank's rating in each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution.

i. The [Agency] weights the performance scores as follows: Retail Lending Test (50 percent) and Intermediate Bank Community Development 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, multistate MSA, or institution performance score. For purposes of this paragraph c.2.i, the performance score for the Intermediate Bank Community Development Test corresponds to the conclusion assigned, as follows:

Conclusion	Performance score
Outstanding	10
High Satisfactory	7
Low Satisfactory	6
Needs to Improve	3
Substantial Noncompliance	0

ii. The [Agency] assigns a rating corresponding with the rating category that is nearest to the State, multistate MSA, or institution performance score using the table in paragraph a of this appendix.

iii. The [Agency] may adjust an intermediate bank's institution rating where the bank has requested and received sufficient additional consideration pursuant to § ____.30(b)(1) and (3).

d. *Small bank ratings.* 1. *Ratings for small banks that opt to be evaluated pursuant to the Retail Lending Test in § ____.22.* The [Agency] determines a small bank's rating for each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution based on the performance score for its Retail Lending Test conclusions for the State, multistate MSA or institution, respectively.

i. The [Agency] assigns a rating corresponding with the rating category that is nearest to the State, multistate MSA, or institution performance score using the table in paragraph a of this appendix.

ii. The [Agency] may adjust a small bank's institution rating where the bank has requested and received sufficient additional consideration pursuant to § ____.29(b)(2) and (3).

2. *Ratings for small banks evaluated under the Small Bank Lending Test pursuant to § ____.29(a)(2).* The [Agency] assigns a rating for small banks evaluated under the Small Bank Lending Test pursuant to § ____.29(a)(2) as provided in appendix E to this part.

e. *Limited purpose banks.* The [Agency] determines a limited purpose bank's rating for each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution based on the performance score for its Community Development Financing Test for Limited Purpose Banks conclusion for the State, multistate MSA, or the institution, respectively.

1. The [Agency] assigns a rating corresponding with the rating category that is nearest to the State, multistate MSA, or institution performance score, respectively, using the table in paragraph a of this appendix.

2. The [Agency] may adjust a limited purpose bank's institution rating where the bank has requested and received sufficient additional consideration pursuant to § ____.26(b)(2).

f. *Ratings for banks operating under an approved strategic plan.* The [Agency] evaluates the performance of a bank operating under an approved plan consistent with the rating methodology that is specified in the plan pursuant to § ____.27(g)(6). The [Agency] assigns a rating according to the category assigned under the rating methodology specified in the plan: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

g. *Minimum performance test conclusion requirements.* 1. *Retail Lending Test minimum conclusion.* An intermediate bank or a 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 conclusion for 60 percent of facility-based assessment areas and retail lending assessment areas.* i. Except as provided in § ____.51(e), a large bank with a combined total of 10 or more facility-based assessment areas and retail lending assessment areas in any State, multistate MSA, or for the institution, as applicable, may not receive a rating of ''Satisfactory'' or ''Outstanding'' in that State, multistate MSA, or for the institution unless the bank received an overall conclusion of at least ''Low Satisfactory'' in 60 percent or more of the total number of its facility-based assessment areas and retail lending assessment areas in that State or multistate MSA or for the institution, as applicable.

ii. *Overall conclusion in facility-based assessment areas and retail lending assessment areas.* For purposes of the requirement in paragraph g.2 of this appendix:

A. The [Agency] calculates an overall conclusion in a facility-based assessment area by combining a large bank's performance scores for its conclusions in the facility-based assessment area pursuant to the Retail Lending Test in § ____.22, Retail Services and Products Test in § ____.23, Community Development Financing Test in § ____.24, and Community Development Services Test in § ____.25.

The [Agency] weights the performance scores as follows: Retail Lending Test (40 percent); Retail Services and Products Test (10 percent); Community Development Financing Test (40 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.

The [Agency] assigns a conclusion corresponding with the conclusion category that is nearest to the performance score, as follows:

Performance score	Conclusion
8.5 or more	Outstanding.
6.5 or more but less than 8.5.	High Satisfactory.
4.5 or more but less than 6.5.	Low Satisfactory.
1.5 or more but less than 4.5.	Needs to Improve.
Less than 1.5	Substantial Noncompliance.

B. An overall conclusion in a retail lending assessment area is the retail lending assessment area conclusion assigned pursuant to the Retail Lending Test in § ____.22 as provided in appendix C to this part.

Appendix E to Part ____—Small Bank and Intermediate Bank Performance Evaluation Conclusions and Ratings

a. *Small banks evaluated under the small bank performance evaluation.* 1. *Small Bank Lending Test conclusions.* Unless a small bank opts to be evaluated pursuant to the Retail Lending Test in § ____.22, the [Agency] assigns conclusions for a small bank's performance pursuant to the Small Bank Lending Test in § ____.29(a)(2) for each facility-based assessment area, in each State or multistate MSA, as applicable pursuant to § ____.28(c), and for the institution of ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

i. *Eligibility for a ''Satisfactory'' Small Bank Lending Test conclusion.* The [Agency] assigns a small bank's performance pursuant to the Small Bank Lending Test 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, 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 reasonable geographic distribution of loans among census tracts of different income levels in the bank's facility-based assessment areas; and

E. 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.

ii. *Eligibility for an ''Outstanding'' Small Bank Lending Test conclusion.* A small bank that meets each of the standards for a ''Satisfactory'' conclusion under this paragraph a.1.ii. 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'' Small Bank Lending Test 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 opts to be evaluated pursuant to the Retail Lending Test in § ____.22, the [Agency] determines a small bank's rating for each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution based on its Small Bank Lending Test conclusions at the State, multistate MSA, and institution level, respectively.

i. The [Agency] assigns a rating based on the lending evaluation conclusion according to the category of the conclusion assigned: ''Outstanding,'' ''Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

ii. The [Agency] may adjust a small bank's institution rating where the bank has requested and received sufficient additional consideration pursuant to § ____.29(b)(1) and (3).

iii. The [Agency] also considers any evidence of discriminatory or other illegal credit practices pursuant to § ____.28(d) and the bank's past performance pursuant to § ____.28(e).

3. The [Agency] assigns a rating for small banks evaluated pursuant to the Retail Lending Test in § ____.22 as provided in appendix D to this part.

b. *Intermediate banks evaluated pursuant to the Intermediate Bank Community Development Test in § ____.30.* Unless an intermediate bank opts to be evaluated pursuant to the Community Development Financing Test in § ____.24, the [Agency] assigns conclusions for an intermediate bank's performance pursuant to the Intermediate Bank Community Development Test in § ____.30 for each State and multistate MSA, as applicable pursuant to § ____.28(c), and for the institution of ''Outstanding,'' ''High Satisfactory,'' ''Low Satisfactory,'' ''Needs to Improve,'' or ''Substantial Noncompliance.''

1. *Intermediate Bank Community Development Test conclusions.* i. *Eligibility for a ''Satisfactory'' Intermediate Bank Community Development Test 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 and, as applicable, nationwide area 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, the need for such community development activities, and the availability of community development opportunities.

ii. *Eligibility for an ''Outstanding'' Intermediate Bank Community Development Test 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 and, as applicable, nationwide area 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, the need for such community development activities, and the availability of community development opportunities.

iii. *''Needs to Improve'' or ''Substantial Noncompliance'' Intermediate Bank Community Development Test 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 provided in appendix D to this part.

Appendix F to Part ____ [Reserved]

END OF COMMON 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.

Adoption of Common Rule

The adoption of the common rule by the agencies, as modified by the agency-specific text, is set forth below:

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 amends 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 continues to read as follows:

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

Subpart E—[Redesignated as Subpart F]

■ 2. Redesignate subpart E as subpart F.

■ 3. Revise subparts A though D, add a new subpart E, revise appendices A and B, and add appendices C through F as set forth at the end of the common preamble.

■ 4. Further amend part 25 by:

■ a. Removing ''[Agency]'' and ''[Agency]'s'' wherever they appear and adding ''appropriate Federal banking agency'' and ''appropriate Federal banking agency's'' in their places, respectively;

■ b. Except in examples A–1, A–3 through A–5, A–8, and A–11 through A–17 in appendix A, examples B–1, B–5, B–7, B–8, B–10, B–11, B–13, B–14, B–16, and B–17 in appendix B, and example D–1 in appendix D:

■ i. Removing ''bank'' and ''*bank*'' wherever they appear and adding ''bank or savings association'' and ''*bank or savings association*'' in their places, respectively;

■ ii. Except in the definition of ''large depository institution'' in § 25.12, removing ''banks'' and ''*banks*'' wherever they appear and adding ''banks or savings associations'' and ''*banks or savings associations*'' in their places, respectively; and

■ iii. Removing ''bank's'' and ''*bank's*'' wherever they appear and adding ''bank's or savings association's'' and ''*bank's or savings association's*'' in their places, respectively;

■ c. Except in examples A–1, A–3, A–5, and A–8 in appendix A and example B–1 in appendix B, removing ''*Bank*'' and ''*Banks*'' wherever they appear and adding ''*Bank and savings association*'' and ''*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]'' and ''*[operations subsidiaries or operating subsidiaries]*'' wherever they appear and adding ''operating subsidiaries'' and ''*operating subsidiaries*'' in their places, respectively;

■ f. Removing ''*Bank and savings association Volume Metric*'', ''*Geographic Bank and savings association Metric*'', and ''*Borrower Bank and savings association Metric*'' wherever they appear and adding ''*Bank Volume Metric,*'' ''*Geographic Bank Metric,*'' and ''*Borrower Bank Metric*'' in their places, respectively;

■ g. Removing ''Community Development Financing Test for Limited Purpose Banks'' wherever it appears and adding ''Community Development Financing Test for Limited Purpose Banks and Savings Associations'' in its place;

■ h. Removing ''*Community Development Financing Test for Limited Purpose Banks and savings associations*'' wherever it appears and adding ''*Community Development Financing Test for Limited Purpose Banks and Savings Associations*'' in its place;

■ i. Removing ''Intermediate Bank Community Development Test'' wherever it appears and adding ''Intermediate Bank and Savings Association Community Development Test'' in its place;

■ j. Removing ''*Intermediate Bank and savings association Community Development Test*'' wherever it appears and adding ''*Intermediate Bank and Savings Association Community Development Test*'' in its place;

■ k. Removing ''Small Bank Lending Test'' wherever it appears and adding ''Small Bank and Savings Association Lending Test'' in its place;

■ l. Removing ''*Small Bank and savings association Lending Test*'' wherever it appears and adding ''*Small Bank and Savings Association Lending Test*'' in its place;

■ m. Removing ''*Limited Purpose Bank and savings association Community Development Financing Metric*'' wherever it appears and adding ''*Limited Purpose Bank Community Development Financing Metric*'' in its place; and

■ n. Removing ''*Nationwide Limited Purpose Bank and savings association Community Development Financing Benchmark*'' wherever it appears and adding ''*Nationwide Limited Purpose Bank Community Development Financing Benchmark*'' in each place.

■ 5. Amend § 25.11 by adding 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) This subpart, subparts B through E of this part, and appendices A through G to this part apply to all banks and savings associations except as provided in paragraphs (c)(2) and (3) of this section. Subpart F of this part only applies to banks.

(ii) With respect to this subpart, subparts B through E of this part, and appendices A through F to this part:

(A) The Office of the Comptroller of the Currency (OCC) has the authority to prescribe the regulations in this part for national banks, Federal savings associations, Federal branches of foreign banks, and State savings associations and has the authority to enforce the regulations in this part for national banks, Federal branches of foreign banks, and Federal savings associations; and

(B) The Federal Deposit Insurance Corporation (FDIC) has the authority to enforce the regulations in this part for State savings associations.

(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 uninsured Federal branches, limited Federal branches, or Federal agencies, as those terms are defined or used 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. Amend § 25.12 by:

■ a. Adding the definitions of ''Appropriate Federal banking agency'' and ''Bank'' in alphabetical order;

■ b. In the definition of ''Depository institution'', removing ''12 CFR 25.11, 228.11, and 345.11'' and adding ''§ 25.11 and 12 CFR 228.11 and 345.11'' in its place;

■ c. In the definition of ''Deposits'', in paragraph (1):

■ i. Removing ''commercial banks or savings associations'' and adding ''commercial banks'' in its place; and

■ ii. Removing ''foreign banks or savings associations'' and adding ''foreign banks'' in its place;

■ d. In the definition of ''Distressed or underserved nonmetropolitan middle-income census tract'', removing ''the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC)'' and adding ''the FDIC, and the OCC'' in its place;

■ e. In the definitions of ''Intermediate bank or savings association'' and ''Large bank or savings association'', removing ''appropriate Federal banking agency'' and adding ''OCC'' in its place;

■ f. In the definition of ''Large Depository Institution'', removing ''12 CFR 25.26(a)'' and adding ''§ 25.26(a)'' in its place;

■ g. Adding the definitions of ''Operating subsidiary'' and ''Savings association'' in alphabetical order; and

■ h. In the definition of ''Small bank and savings association'', removing ''appropriate Federal banking agency'' and adding ''OCC''.

The additions read as follows:

§ 25.12 Definitions.

* * * * *

Appropriate Federal banking agency means, with respect to this subpart (except in the definition of *minority depository institution* in this section), subparts B through E of this part, and appendices A through E to this part:

(1) The OCC when the institution is a bank or Federal savings association; and

(2) The FDIC when the institution is a State savings association.

* * * * *

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. Delayed indefinitely, further amend § 25.12 by:

■ a. In the definition of ''Loan location'', revising paragraph (3);

■ b. In the definition of ''Reported loan'', revising paragraph (2); and

■ c. Revising the definitions of ''Small business'', ''Small business loan'', ''Small farm'', and ''Small farm loan''.

The revisions read as follows:

§ 25.12 Definitions.

* * * * *

Loan location * * *

(3) A small business loan or small farm loan is located in the census tract reported pursuant to subpart B of 12 CFR part 1002.

* * * * *

Reported loan * * *

(2) A small business loan or small farm loan reported by a bank pursuant to subpart B of 12 CFR part 1002.

* * * * *

Small business means a small business, other than a small farm, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106.

Small business loan means a loan to a small business as defined in this section.

Small farm means a small business, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106, and that is identified with one of the 3-digit North American Industry Classification System (NAICS) codes 111–115.

Small farm loan means a loan to a small farm as defined in this section.

* * * * *

§ 25.13 [Amended]

■ 8. Amend § 25.13 in paragraph (k) by:

■ a. Removing ''CDFI bank or savings associations'' wherever it appears and adding ''CDFI bank'' in its place; and

■ b. Removing ''part 25, 228, or 345 of this title'' and adding ''this part or 12 CFR part 228 or 345'' in its place.

§ 25.14 [Amended]

■ 9. Amend § 25.14 in paragraphs (b)(2)(ii) and (b)(3) by removing ''[other Agencies]'' and adding ''Board and the FDIC or the Board and the OCC, as appropriate,'' in its place.

§ 25.21 [Amended]

■ 10. Amend § 25.21 by:

■ a. In paragraph (b)(1), removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 228 or 345'' in its place; and

■ b. In paragraph (f), removing ''Banks'' and adding ''Banks and savings associations'' in its place.

§ 25.22 [Amended]

■ 11. Delayed indefinitely, amend § 25.22 by:

■ a. Removing the term ''Businesses'' in paragraphs (e)(2)(ii)(C) and (D) and adding ''Small businesses'' in its place; and

■ b. Removing the term ''Farms'' in paragraphs (e)(2)(ii)(E) and (F) and adding ''Small farms'' in its place.

§ 25.24 [Amended]

■ 12. Amend § 25.24 by:

■ a. In paragraph (b)(1), removing ''*Bank and savings association Assessment Area Community Development Financing Metric*'' and adding ''*Bank Assessment Area Community Development Financing Metric*'' in its place;

■ b. In paragraph (c)(2)(i), removing ''*Bank and savings association State Community Development Financing Metric*'' and adding ''*Bank State Community Development Financing Metric*'' in its place;

■ c. In paragraph (d)(2)(i), removing ''*Bank and savings association Multistate MSA Community Development Financing Metric*'' and adding ''*Bank Multistate MSA Community Development Financing Metric*'' in its place;

■ d. In paragraph (e)(2)(i), removing ''*Bank and savings association Nationwide Community Development Financing Metric*'' and adding ''*Bank Nationwide Community Development Financing Metric*'' in its place; and

■ e. In paragraph (e)(2)(iii), removing ''*Bank and savings association Nationwide Community Development Investment Metric*'' and adding ''*Bank Nationwide Community Development Investment Metric*'' in its place.

§ 25.26 [Amended]

■ 13. Amend § 25.26 by:

■ a. In the section heading, removing ''banks or savings associations'' and adding ''banks and savings associations'' in its place;

■ b. In paragraph (f)(2)(ii)(A), removing ''12 CFR 25.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''paragraph (a) of this section'' and ''§ 25.42(b) or 12 CFR 228.42(b) or 345.42(b)'' in their places, respectively; and

■ c. In paragraph (f)(2)(ii)(B), removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 25.42(b) or 12 CFR 228.42(b) or 345.42(b)'' in its place.

§ 25.29 [Amended]

■ 14. Amend § 25.29 in the section heading by removing ''bank or savings association'' and adding ''bank and savings association'' in its place.

§ 25.30 [Amended]

■ 15. Amend § 25.30 in the section heading by removing ''bank or savings association'' and adding ''bank and savings association'' in its place.

■ 16. 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 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 must 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 must 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]

■ 17. Amend § 25.42 by:

■ a. In paragraph (h), removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 228 or 345'' in its place; and

■ b. In paragraph (j)(2), removing ''*[Agency]'s*'' and adding ''*appropriate Federal banking agency's*'' in its place.

■ 18. Delayed indefinitely, further amend § 25.42 by:

■ a. Revising paragraph (a)(1);

■ b. Removing and reserving paragraph (b)(1); and

■ c. Removing the phrase ''small business loans and small farm loans reported as originated or purchased'' in paragraphs (g)(1)(i) and (g)(2)(i) and adding ''small business loans and small farm loans reported as originated'' in its place.

The revision reads as follows:

§ 25.42 Data collection, reporting, and disclosure.

(a) * * *

(1) *Purchases of small business loans and small farm loans data.* A bank that opts to have the OCC consider its purchases of small business loans and small farm loans must collect and maintain in electronic form, as prescribed by the OCC, until the completion of the bank's next CRA examination in which the data are evaluated, the following data for each small business loan or small farm loan 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 or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, as applicable;

(iii) The date of the loan purchase;

(iv) The loan amount at purchase;

(v) The loan location, including State, county, and census tract;

(vi) An indicator for whether the purchased loan was to a business or farm with gross annual revenues of $250,000 or less;

(vii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(viii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $1 million; and

(ix) An indicator for whether the purchased loan was to a business or farm for which gross annual revenues are not known by the bank.

* * * * *

§ 25.43 [Amended]

■ 19. Amend § 25.43 in paragraph (b)(2)(i) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries''' in its place.

■ 20. Delayed indefinitely, further amend § 25.43 by:

■ a. Revising the heading of paragraph (b)(2); and

■ b. Adding paragraph (b)(2)(iii).

The revision and addition read as follows:

§ 25.43 Content and availability of public file.

* * * * *

(b) * * *

(2) *Banks required to report HMDA data and small business lending data.* * * *

(iii) *Small business lending data notice.* A bank required to report small business loan or small farm loan data pursuant to 12 CFR part 1002 must include in its public file a written notice that the bank's small business loan and small farm loan data may be obtained on the CFPB's website at: *https://www.consumerfinance.gov/data-research/small-business-lending/*.

* * * * *

§ 25.44 [Amended]

■ 21. Amend § 25.44 in the section heading by removing ''banks or savings associations'' and adding ''banks and savings associations'' in its place.

§ 25.46 [Amended]

■ 22. Amend § 25.46 in paragraph (b) by removing ''[Agency contact information]'' and adding ''*CRAComments@occ.treas.gov*, or by mailing comments to: Compliance Risk Policy Division, Bank Supervision Policy, OCC, Washington, DC 20219, for banks and Federal savings associations; or *CRACommentCollector@fdic.gov*, or by mailing comments to the address of the appropriate FDIC regional office found at *https://www.fdic.gov/resources/bankers/community-reinvestment-act/cra-regional-contacts-list.html*, for State savings associations'' in its place.

■ 23. Amend § 25.51 by:

■ a. In paragraph (a)(2)(iii), in the first sentence, removing ''banks or savings associations'' and adding ''banks and savings associations'' in its place;

■ b. Revising paragraph (d)(2); and

■ c. In paragraph (e), removing ''[other Agencies' CRA regulations]'' and adding ''12 CFR part 228 or 345'' in its place.

The revision reads as follows:

§ 25.51 Applicability dates and transition provisions.

* * * * *

(d) * * *

(2) *Existing strategic plans.* A strategic plan in effect as of February 1, 2024, 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.

* * * * *

Appendix A to Part 25 [Amended]

■ 24. Amend appendix A by:

■ a. In paragraph I.b introductory text, removing ''12 CFR 25.42(b)(1), 228.42(b)(1), or 345.42(b)(1) or 12 CFR part 1003'' and adding ''§ 25.42(b)(1), 12 CFR 228.42(b)(1) or 345.42(b)(1), or 12 CFR part 1003'' in its place; and

■ b. In paragraph I.b.2, removing ''12 CFR 25.42(b)(3), 228.42(b)(3), or 345.42(b)(3)'' and adding ''§ 25.42(b)(3) or 12 CFR 228.42(b)(3) or 345.42(b)(3)'' in its place.

■ 25. Delayed indefinitely, further amend appendix A by:

■ a. Adding a sentence at the end of paragraph I.a.1;

■ b. Removing the text ''subject to reporting pursuant to § 25.42(b)(1), 12 CFR 228.42(b)(1) or 345.42(b)(1),'' in paragraph I.b introductory text and adding in its place the text ''subject to reporting pursuant to subpart B of 12 CFR part 1002'';

■ c. Adding a sentence at the end of paragraph III.a.1;

■ d. Revising paragraphs III.c.3.i and ii, III.c.4.i and ii, III.c.5.i and ii, and III.c.6.i and ii;

■ e. In paragraph III.c.8.iii, revising Example A–7;

■ f. Revising the third and fourth introductory paragraphs to section IV;

■ g. Adding a sentence at the end of paragraph IV.a.1;

■ h. Revising the introductory paragraph to IV.c.3 and paragraphs IV.c.3.i and ii;

■ i. Revising the introductory paragraph to IV.c.4 and paragraphs IV.c.4.i and ii;

■ j. Revising the introductory paragraph to IV.c.5 and paragraphs IV.c.5.i and ii;

■ k. Revising the introductory paragraph to IV.c.6 and paragraphs IV.c.6.i and ii;

■ l. In section V, in paragraph a, in table 1, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''; and

■ m. In section VII:

■ i. In paragraph a.1.ii, in table 3, revising the entries for ''Small Business Loans'' and ''Small Farm Loans'';

■ ii. In paragraph a.1.iii, in table 4, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''.

The additions and revisions read as follows:

Appendix A to Part 25—Calculations for the Retail Lending Test

* * * * *

I. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as those terms are defined in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Bank Volume Metric at the bank's option.

* * * * *

III. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Geographic Bank Metric at the bank's option.

* * * * *

c. * * *

3. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

* * * * *

4. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

* * * * *

5. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

6. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

8. * * *

iii. * * *

Example A–7: The applicable benchmark uses a three-year evaluation period. There were 4,000 small business establishments, based upon the sum of the numbers of small business establishments over the years in the evaluation period (1,300 small business establishments in year 1, 1,300 small business establishments in year 2, and 1,400 small business establishments in year 3), in a bank's facility-based assessment area. Of these small business establishments, 500 small business establishments were in low-income census tracts, based upon the sum of the numbers of small business establishments in low-income census tracts over the years in the evaluation period (200 small business establishments in year 1,150 small business in year 2, and 150 small business establishments in year 3). The Geographic Community Benchmark for small business loans in low-income census tracts would be 500 divided by 4,000, or 0.125 (equivalently, 12.5 percent). In addition, 1,000 small business establishments in that facility-based assessment area were in moderate-income census tracts, over the years in the evaluation period (400 small business establishments in year 1,300 small business establishments in year 2, and 300 small business establishments in year 3). The Geographic Community Benchmark for small business loans in moderate-income census tracts would be 1,000 divided by 4,000, or 0.25 (equivalently, 25 percent).

$$\frac{Small\ Businesses\ in\ Low-Income\ Census\ Tracts\ (500)}{Small\ Businesses\ (4{,}000)} = Geographic\ Community\ Benchmark\ (12.5\%)$$

$$\frac{Small\ Businesses\ in\ Moderate-Income\ Census\ Tracts\ (1{,}000)}{Small\ Businesses\ (4{,}000)} = Geographic\ Community\ Benchmark\ (25\%)$$

* * * * *

IV. * * *

For small business loans, the appropriate Federal banking agency calculates these metrics and benchmarks for each of the following *designated borrowers:* (i) small businesses with gross annual revenues of $250,000 or less; and (ii) small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million.

For small farm loans, the appropriate Federal banking agency calculates these metrics and benchmarks for each of the following designated borrowers: (i) small farms with gross annual revenues of $250,000 or less; and (ii) small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.

* * * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and

1002.106(b), may be included in the numerator of the Borrower Bank Metric at the bank's option.

* * * * *

c. * * *

3. For small business loans, the appropriate Federal banking agency calculates a Borrower Community Benchmark for small businesses with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

4. For small business loans, the appropriate Federal banking agency calculates a Borrower Community Benchmark for small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

5. For small farm loans, the appropriate Federal banking agency calculates a Borrower Community Benchmark for small farms with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

6. For small farm loans, the appropriate Federal banking agency calculates a Borrower Community Benchmark for small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

V. * * *

a. * * *

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CATEGORIES OF DESIGNATED CENSUS TRACTS AND DESIGNATED BORROWERS

Major product line	Designated census tracts	Designated 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 Greater 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 Greater than $250,000 but Less Than or Equal to $1 million.

* * * * *

VII. * * *

a. * * *

1. * * *

ii. * * *

TABLE 3 TO APPENDIX A—RETAIL LENDING TEST, GEOGRAPHIC DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Category of designated census tracts	Weight
* *	* *	* * *
Small Business Loans	Low-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
* *	* *	* * *

* * * * *

iii. * * *

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST, BORROWER DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Categories of designated borrowers	Weight
* *	* *	* * *
Small Business Loans	Small businesses with gross annual revenues of $250,000 or less.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues of $250,000 or less.
	Small businesses with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues greater than $250,00 but less than or equal to $1 million.
Small Farm Loans	Small farms with gross annual revenues of $250,000 or less.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues of $250,000 or less.
	Small farms with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.
* *	* *	* * *

* * * * *

Appendix B to Part 25 [Amended]

■ 26. Amend appendix B by:

■ a. In paragraph I.a.2.i, removing ''12 CFR 25.42, 228.42, or 345.42'' and adding ''§ 25.42 or 12 CFR 228.42 or 345.42'' in its place;

■ b. In section II:

■ i. In paragraph a heading, removing ''*Bank and savings association Assessment Area Community Development Financing Metric*'' and adding ''*Bank Assessment Area Community Development Financing Metric*'' in its place;

■ ii. In paragraph d heading, removing ''*Bank and savings association State Community Development Financing Metric*'' and adding ''*Bank State Community Development Financing Metric*'' in its place;

■ iii. In paragraph g heading, removing ''*Bank and savings association Multistate MSA Community Development Financing Metric*'' and adding ''*Bank Multistate MSA Community Development Financing Metric*'' in its place;

■ iv. In paragraph j heading, removing ''*Bank and savings association Nationwide Community Development Financing Metric*'' and adding ''*Bank Nationwide Community Development Financing Metric*'' in its place; and

■ v. In paragraph m heading, removing ''*Bank and savings association Nationwide Community Development Investment Metric*'' and adding ''*Bank Nationwide Community Development Investment Metric*'' in its place; and

■ c. In section III:

■ i. In the heading, removing ''BANKS'' and adding ''BANKS AND SAVINGS ASSOCIATIONS'' in its place;

■ ii. In paragraphs b.1 and 2, removing ''12 CFR 25.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 25.26(a)'' and ''§ 25.42(b) or 12 CFR 228.42(b) or 345.42(b)'' in their places, respectively; and

■ iii. In paragraphs c.1 and 2, removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 25.42(b) or 12 CFR 228.42(b) or 345.42(b)'' in its place.

■ 27. Amend appendix E by revising the heading to read as follows:

Appendix E to Part 25—Small Bank and Savings Association and Intermediate Bank and Savings Association Performance Evaluation Conclusions and Ratings

■ 28. 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 30 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 30 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.]

■ 29. Effective April 1, 2024, through January 1, 2031, add appendix G to read as follows:

Appendix G to Part 25—Community Reinvestment Act and Interstate Deposit Production Regulations

Note: The content of this appendix reproduces part 25 implementing the Community Reinvestment Act as of March 31, 2024. Cross-references to CFR parts (as well as to included sections, subparts, and appendices) in this appendix are to those provisions as contained within this appendix and the CFR as of March 31, 2024.

Subpart A—General

§ 25.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for subparts A, B, C, D, and E 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).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) or the Federal Deposit Insurance Corporation (FDIC), as appropriate, assesses a bank's or savings association'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 or savings association; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* (i) Subparts A, B, C, and D, and Appendices A and B, apply to all banks and savings associations except as provided in paragraphs (c)(2) and (3) of this section. Subpart E only applies to banks.

(ii) With respect to subparts A, B, C, and D, and Appendices A and B—

(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.

(B) The FDIC has the authority to enforce these regulations for State savings associations.

(iii) With respect to subparts A, B, C, and D, and appendix A, 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.

§ 25.12 Definitions.

For purposes of subparts A, B, C, and D, and appendices A and B, of this part, the following definitions apply:

(a) *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), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank or savings association at which deposits are received, cash dispersed, or money lent.

(e)(1) *Bank or savings association* means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits or a savings association;

(2) *Bank and savings association* means, except as provided in § 25.11(c), a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits and a savings association.

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and the OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank or savings association:

(i) Has not been reported or collected by the bank or savings association or an affiliate for consideration in the bank's or savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's or savings association's assessment area(s) or a broader statewide or regional area(s) that includes the bank's or savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's or savings association's retail banking services under § 25.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* or savings association means a bank or savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank or savings association is in effect, in accordance with § 25.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the

Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank or savings association*—(1) *Definition. Small bank or savings association* means a bank or savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion. *Intermediate small bank or savings association* means a small bank or savings association with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the appropriate Federal banking 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 twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank or savings association* means a bank or savings association 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 or savings association is in effect, in accordance with § 25.25(b).

Subpart B—Standards for Assessing Performance

§ 25.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The appropriate Federal banking agency assesses the CRA performance of a bank or savings association in an examination as follows:

(1) *Lending, investment, and service tests.* The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 25.22 through 25.24, in evaluating the performance of a bank or savings association, except as provided in paragraphs (a)(2), (3), and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks and savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose bank or savings association, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank and savings association performance standards.* The appropriate Federal banking agency applies the small bank or savings association performance standards as provided in § 25.26 in evaluating the performance of a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, unless the bank or savings association elects to be assessed as provided in paragraphs (a)(1), (2), or (4) of this section. The bank or savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks or savings associations under § 25.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a bank or savings association under a strategic plan if the bank or savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in § 25.27.

(b) *Performance context.* The appropriate Federal banking agency applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's or savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's or savings association's assessment area(s) maintained by the bank or savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's or savings association's product offerings and business strategy as determined from data provided by the bank or savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the bank or savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's or savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's or savings association's past performance and the performance of similarly situated lenders;

(6) The bank's or savings association's public file, as described in § 25.43, and any written comments about the bank's or savings association's CRA performance submitted to the bank or savings association or the appropriate Federal banking agency; and

(7) Any other information deemed relevant by the appropriate Federal banking agency.

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a bank or savings association one of the following four ratings pursuant to § 25.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the bank's or savings association'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 or savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a bank or savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the appropriate Federal banking agency anticipates banks and savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the banks and savings associations expect to make a profit. Banks and savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank or savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the bank or savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a State or local education loan program), originated by the bank or savings association for a student at an ''institution of higher education,'' as that term is 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).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank or savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the bank or savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's or savings association's assessment area(s) or the broader statewide or regional area(s) that includes the bank's or savings association's assessment area(s).

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's or savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's or savings association's business, the appropriate Federal banking agency will evaluate the bank's or savings association's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's or savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the bank or savings association has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank or savings association elects to have the appropriate Federal banking agency evaluate.

(2) The appropriate Federal banking agency considers originations and purchases of loans. The appropriate Federal banking agency will also consider any other loan data the bank or savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank or savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the bank or savings association participates or by third parties in which the bank or savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The appropriate Federal banking agency will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a bank's or savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's or savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's or savings association's lending in the bank's or savings association's assessment area(s);

(ii) The dispersion of lending in the bank's or savings association's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's or savings association's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's or savings association's assessment area(s), of the bank's or savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's or savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's or savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's or savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the bank or savings association, if the bank or savings association provides data on the affiliate's loans pursuant to § 25.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank or savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the bank's or savings association's affiliates in a particular assessment area, the bank or savings association shall elect to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's or savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a bank's or savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank or savings association participates or by a third party in which the bank or savings association has invested:

(1) Will be considered, at the bank's or savings association's option, if the

bank or savings association reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The appropriate Federal banking agency rates a bank's or savings association's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's or savings association's option, the appropriate Federal banking agency will consider, in its assessment of a bank's or savings association's investment performance, a qualified investment made by an affiliate of the bank or savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank or savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The appropriate Federal banking agency evaluates the investment performance of a bank or savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The appropriate Federal banking agency rates a bank's or savings association's investment performance as provided in appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's or savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's or savings association's assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

(c) *Affiliate service.* At a bank's or savings association's option, the appropriate Federal banking agency will consider, in its assessment of a bank's or savings association's service performance, a community development service provided by an affiliate of the bank or savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The appropriate Federal banking agency evaluates the availability and effectiveness of a bank's or savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's or savings association's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's or savings association's branches, the bank's or savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank or savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The appropriate Federal banking agency evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank or savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The appropriate Federal banking agency rates a bank's or savings association's service performance as provided in appendix A of this part.

§ 25.25 Community development test for wholesale or limited purpose banks and savings associations.

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose bank's or savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank or savings association.* In order to receive a designation as a wholesale or limited purpose bank or savings association, a bank or savings association shall file a request, in writing, with the appropriate Federal banking agency, at least three months prior to the proposed effective date of the designation. If the appropriate Federal banking agency approves the designation, it remains in effect until the bank or savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the bank or savings association that it has revoked the designation on its own initiative.

(c) *Performance criteria.* The appropriate Federal banking agency evaluates the community development performance of a wholesale or limited purpose bank or savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank or savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's or savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's or savings association's option, the appropriate Federal banking agency will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank or savings association, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The appropriate Federal banking agency considers all qualified investments, community development loans, and community development services that benefit areas within the bank's or savings association's assessment area(s) or a broader statewide or regional area that includes the bank's or savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The appropriate Federal banking agency considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's or savings association's assessment area(s), if the bank or savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The appropriate Federal banking agency rates a bank's or savings association's community development performance as provided in appendix A of this part.

§ 25.26 Small bank and savings association performance standards.

(a) *Performance criteria*—(1) *Small banks and savings associations that are not intermediate small banks or savings associations.* The appropriate Federal banking agency evaluates the record of a small bank or savings association that is not, or that was not during the prior calendar year, an intermediate small bank or savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks and savings associations.* The appropriate Federal banking agency evaluates the record of a small bank or savings association that is, or that was during the prior calendar year, an intermediate small bank or savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's or savings association's lending performance is evaluated pursuant to the following criteria:

(1) The bank's or savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's or savings association's assessment area(s);

(3) The bank's or savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's or savings association's loans; and

(5) The bank's or savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's or savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank or savings association provides community development services; and

(4) The bank's or savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank or savings association performance rating.* The appropriate Federal banking agency rates the performance of a bank or savings association evaluated under this section as provided in appendix A of this part.

§ 25.27 Strategic plan.

(a) *Alternative election.* The appropriate Federal banking agency will assess a bank's or savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank or savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;

(2) The appropriate Federal banking agency has approved the plan;

(3) The plan is in effect; and

(4) The bank or savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the bank's or savings association's obligation, if any, to report data as required by § 25.42.

(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 appropriate Federal banking agency will evaluate the bank's or savings association's performance.

(2) *Multiple assessment areas.* A bank or savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* 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 the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the appropriate Federal banking agency for approval, a bank or savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank or savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank or savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank or savings association shall submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan. The bank or savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank or savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank or savings association shall address in its plan all three performance categories and, unless the bank or savings association has been designated as a wholesale or limited purpose bank or savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's or savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank or savings association may submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank or savings association shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank or savings association submits, and the appropriate Federal banking agency approves, both ''satisfactory'' and ''outstanding'' performance goals, the appropriate Federal banking agency will consider the bank or savings association eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank or savings association may elect in its plan that, if the bank or savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will evaluate the bank's or savings association's performance under the lending, investment, and service tests, the community development test, or the small bank or savings association performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The appropriate Federal banking agency will act upon a plan within 60 calendar days after the appropriate Federal banking agency receives the complete plan and other material required under paragraph (e) of this section. If the appropriate Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the appropriate Federal banking agency considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank or savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The appropriate Federal banking agency evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's or savings association's qualified investments; and

(iii) The availability and effectiveness of the bank's or savings association's systems for delivering retail banking services and the extent and innovativeness of the bank's or savings association's community development services.

(h) *Plan amendment.* During the term of a plan, a bank or savings association may request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank or savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The appropriate Federal banking agency approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a bank or savings association a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's or savings association's performance under the lending, investment and service tests, the community development test, the small bank or savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The appropriate Federal banking agency assigns a rating for a bank or savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank or savings association that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank or savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank or savings association may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a bank's or savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or savings association or in any assessment area by any affiliate whose loans have been considered as part of the bank's or savings association's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit 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 section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's or savings association's assigned

rating, the appropriate Federal banking agency considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank or savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank or savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.29 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)); and

(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.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 25.41 Assessment area delineation.

(a) *In general.* A bank or savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the bank's or savings association's record of helping to meet the credit needs of its community. The appropriate Federal banking agency does not evaluate the bank's or savings association's delineation of its assessment area(s) as a separate performance criterion, but the appropriate Federal banking agency reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks or savings associations.* The assessment area(s) for a wholesale or limited purpose bank or savings association must consist generally 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 political subdivisions, such as counties, cities, or towns, in which the bank or savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks and savings association.* The assessment area(s) for a bank or savings association other than a wholesale or limited purpose bank or savings association must:

(1) Consist generally 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 political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank or savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank or savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank or savings association chooses, such as those consumer loans on which the bank or savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank or savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's or savings associations assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's or savings association's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank or savings association serves a geographic area that extends substantially beyond a state boundary, the bank or savings association shall delineate separate assessment areas for the areas in each state. If a bank or savings association serves a geographic area that extends substantially beyond an MSA boundary, the bank or savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks and savings association serving military personnel.* Notwithstanding the requirements of this section, a bank or savings association 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.

(g) *Use of assessment area(s).* The appropriate Federal banking agency uses the assessment area(s) delineated by a bank or savings association in its evaluation of the bank's or savings association's CRA performance unless the appropriate Federal banking agency determines that the assessment area(s) do not comply with the requirements of this section.

§ 25.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank or savings association, except a small bank or savings association, shall collect, and maintain in machine readable form (as prescribed by the appropriate Federal banking 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 or savings association:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall report annually by March 1 to the appropriate Federal banking agency in machine readable form (as prescribed by the appropriate Federal banking agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank or savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With 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 or savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank or savings association is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank or savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A bank or savings association may collect and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) data for consumer loans originated or purchased by the bank or savings association for consideration under the lending test. A bank or savings association may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the bank or savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank or savings association shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank or savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a bank or savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank or savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank or savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank or savings association. For home mortgage loans, the bank or savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank or savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank or savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank or savings association.

(f) *Small banks and savings associations electing evaluation under the lending, investment, and service tests.* A bank or savings association that qualifies for evaluation under the small bank or savings association performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks or savings association pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The appropriate Federal banking agency prepares annually for each bank or savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(l) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank or savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank or savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank or savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies 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 geography in the county or assessment area according to whether the median income in the geography 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;

(iii) A list showing each geography in which the bank or savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank or savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank or savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the FDIC, 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 small business and small farm lending by all institutions subject to reporting under this part or parts 228 or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking 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 an institution.

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank or savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The appropriate Federal banking agency publishes a list of the depositories at which the statements are available.

§ 25.43 Content and availability of public file.

(a) *Information available to the public.* A bank or savings association shall maintain a public file 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 or savings association's performance in helping to meet community credit needs, and any response to the comments by the bank or savings association, 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 savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's or savings association's most recent CRA Performance Evaluation prepared by the appropriate Federal banking agency. The bank or savings association shall place this copy in the public file within 30 business days after its receipt from the appropriate Federal banking agency;

(3) A list of the bank's or savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank or savings association during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's or savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank or savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank or savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank or savings association chooses.

(b) *Additional information available to the public*—(1) *Banks and savings associations other than small banks or savings associations.* A bank or savings association, except a small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year, shall include in its public file the following information pertaining to the bank or savings association and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank or savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's or savings association's assessment area(s) and outside the bank's or savings association's assessment area(s); and

(ii) The bank's or savings association's CRA Disclosure Statement. The bank or savings association shall place the statement in the public file within three business days of its receipt from the appropriate Federal banking agency.

(2) *Banks and savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A bank or savings association required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a bank or savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank or savings association shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks and savings associations.* A small bank or savings association or a bank or savings association that was a small bank or savings association during the prior calendar year shall include in its public file:

(i) The bank's or savings association'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; and

(ii) The information required for other banks or savings associations by paragraph (b)(1) of this section, if the bank or savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks and savings associations with strategic plans.* A bank or savings association that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank or savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Banks and savings associations with less than satisfactory ratings.* A bank or savings association that received a less than satisfactory rating during its most recent examination shall 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 or savings association shall update the description quarterly.

(c) *Location of public information.* A bank or savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank or savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's or savings association'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 in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank or savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank or savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank or savings association shall ensure that the information required by this section is current as of April 1 of each year.

§ 25.44 Public notice by banks and savings associations.

A bank or savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank or savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only an insured national bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. An insured national bank shall 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. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

§ 25.45 Publication of planned examination schedule.

The appropriate Federal banking agency publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks and savings associations scheduled for CRA examinations in that quarter.

Subpart D—Transition Provisions

§ 25.51 Consideration of Bank Activities.

(a) In assessing a bank's CRA performance, the appropriate Federal banking agency will consider any loan, investment, or service that was eligible for CRA consideration at the time the bank conducted the activity.

(b) Notwithstanding paragraph (a), in assessing a bank's CRA performance, the appropriate Federal banking agency will consider any loan or investment that was eligible for CRA consideration at the time the bank entered into a legally binding commitment to make the loan or investment.

§ 25.52 Strategic Plan Retention.

A bank or savings association strategic plan approved by the appropriate Federal banking agency and in effect as of December 31, 2021, remains in effect, except that provisions of the plan that are not consistent with this part in effect as of January 1, 2022, are void, unless amended pursuant to § 25.27.

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

§ 25.61 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the FDIC) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(h).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total

deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(n); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

§ 25.63 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

§ 25.64 Credit needs determination.

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

§ 25.65 Sanctions.

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Appendix A to Part 25—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a bank's or savings association's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's or savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's or savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks and savings associations evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The appropriate Federal banking agency assigns each bank's or savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a bank's or savings association's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a bank's or savings association's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a bank's or savings association's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank or savings association;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The appropriate Federal banking agency assigns each bank's or savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a bank's or savings association's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a bank's or savings association's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a bank's or savings association's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The appropriate Federal banking agency assigns each bank's or savings association's service performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a bank's or savings association's service performance ''outstanding'' if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's service performance ''high satisfactory'' if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a bank's or savings association's service performance ''low satisfactory'' if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a bank's or savings association's service performance ''needs to improve'' if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a bank's or savings association's service performance as being in ''substantial noncompliance'' if, in general, the bank or savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The appropriate Federal banking agency assigns each wholesale or limited purpose bank's or savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The appropriate Federal banking agency rates a wholesale or limited purpose bank's or savings association's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks and savings associations evaluated under the small bank and savings association performance standards*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The appropriate Federal banking agency rates a small bank's or savings association's lending performance ''satisfactory'' if, in general, the bank or savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's or savings association's size, financial condition, the credit needs of its assessment area(s), 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 qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans 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 or savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's or savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's or savings association's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank or savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank or savings association may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks and savings associations*—(i) *Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small bank's or savings association's community development performance ''satisfactory'' if the bank or savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's or savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's or savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small bank's or savings association's community development performance ''outstanding'' if the bank or savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's or savings association's capacity and the need and availability of such opportunities for community development in the bank's or savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank or savings association may also receive a community development test 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.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank or savings association may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank or savings association that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank or savings association that is not an intermediate small bank or savings association that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's or savings association's performance is ''outstanding,'' the appropriate Federal banking agency considers the extent to which the bank or savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank or savings association may also receive a 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.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The appropriate Federal banking agency approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's or savings association's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the appropriate Federal banking agency will approve those goals as ''outstanding.''

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a bank or savings association operating under an approved plan to determine if the bank or savings association has met its plan goals:

(i) If the bank or savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the bank's or savings association's performance under the plan as ''satisfactory.''

(ii) If the bank or savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the bank's or savings association's performance under the plan as ''outstanding.''

(iii) If the bank or savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the bank or savings association as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank or savings association elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

Appendix B to Part 25—CRA Notice

(a) *Notice for main offices and, if an interstate bank and savings association, 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 30 days before the beginning of each quarter, the [OCC or FDIC, as appropriate] publishes a nationwide list of the banks and savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC or FDIC, as appropriate], at [address]. You may send written comments about our performance in helping to meet community credit needs to [name and address of official at bank or savings association] and to the [OCC or FDIC, as appropriate], at [address]. Your letter, 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, as appropriate]. You may also request from the [OCC or FDIC, 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 or savings and loan holding company, as appropriate]. 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 or savings and loan holding companies, as appropriate].

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Comptroller of the Currency (OCC) and 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 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 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 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 or savings association, as appropriate] is available at [name of office located in state], located at [address].]

At least 30 days before the beginning of each quarter, the [OCC or FDIC, as appropriate] publishes a nationwide list of the banks and savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC or FDIC, as appropriate] at [address]. You may send written comments about our performance in helping to meet community credit needs to [name and address of official at bank or savings association, as appropriate] and to the [OCC or FDIC, as appropriate] at [address]. Your letter, 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, as appropriate]. You may also request from the [OCC or FDIC, 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 or savings and loan holding company, as appropriate]. 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 or savings and loan holding companies, as appropriate].

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons discussed in the common preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 30. 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.*

■ 31. Revise part 228 as set forth at the end of the common preamble.

■ 32. Amend part 228 by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''Board'';

■ b. Removing ''[Agency]'s'' wherever it appears and adding in its place ''Board's'';

■ c. Removing ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding in its place ''operations subsidiary'';

■ d. Removing ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding in its place ''operations subsidiaries''; and

■ e. Removing ''*[operations subsidiaries or operating subsidiaries]*'' wherever it appears and adding in its place ''*operations subsidiaries*''.

■ 33. Amend § 228.11 by:

■ a. Adding paragraph (a);

■ b. In paragraph (b), removing ''Community Reinvestment Act (12 U.S.C. 2901 *et seq.*) (CRA)'' and adding in its place ''CRA''; and

■ c. Adding paragraph (c).

The additions 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.

■ 34. Amend § 228.12 by:

■ a. Revising the definition of ''Affiliate''.

■ b. Adding the definition of ''Bank'' in alphabetical order.

■ c. In the definition of ''Depository institution'', removing ''12 CFR 25.11, 228.11, and 345.11'' and adding ''§ 228.11 and 12 CFR 25.11 and 345.11'' in its place.

■ d. In the definition of ''Distressed or underserved nonmetropolitan middle-income census tract'', removing ''Board of Governors of the Federal Reserve System (Board)'' and adding ''Board'' in its place;

■ e. In the definition of ''Large depository institution'', removing ''12 CFR 228.26(a) or 345.26(a)'' and adding ''§ 228.26(a) or 12 CFR 345.26(a)'' in its place.

■ f. Adding the definition of ''Operations subsidiary'' in alphabetical order.

The revision and additions 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.

* * * * *

Bank means a State member bank as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(d)(2)), except as provided in § 228.11(c)(3), and includes an uninsured State branch (other than a limited branch) of a foreign bank described in § 228.11(c)(2).

* * * * *

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.

* * * * *

■ 35. Delayed indefinitely, further amend § 228.12 by:

■ a. Revising paragraph (3) in the definition of ''Loan location'';

■ b. Revising paragraph (2) in the definition of ''Reported loan''; and

■ c. Revising the definitions of ''Small business'', ''Small business loan'', ''Small farm'', and ''Small farm loan''.

The revisions read as follows:

§ 228.12 Definitions.

* * * * *

Loan location * * *

(3) A small business loan or small farm loan is located in the census tract reported pursuant to subpart B of 12 CFR part 1002.

* * * * *

Reported loan means * * *

(2) A small business loan or small farm loan reported by a bank pursuant to subpart B of 12 CFR part 1002.

* * * * *

Small business means a small business, other than a small farm, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106.

Small business loan means a loan to a small business as defined in this section.

Small farm means a small business, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106, and that is identified with one of the 3-digit North American Industry Classification System (NAICS) codes 111–115.

Small farm loan means a loan to a small farm as defined in this section.

* * * * *

§ 228.13 [Amended]

■ 36. Amend § 228.13 in paragraph (k) by removing ''part 25, 228, or 345 of this title'' and adding ''this part or 12 CFR part 25 or 345'' in its place.

§ 228.14 [Amended]

■ 37. Amend § 228.14 in paragraphs (b)(2)(ii) and (b)(3) by removing ''[other Agencies]'' and adding in its place ''OCC and FDIC''.

§ 228.21 [Amended]

■ 38. Amend § 228.21 in paragraph (b)(1) by removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 25 or 345'' in its place.

§ 228.22 [Amended]

■ 39. Delayed indefinitely, amend § 228.22 by:

■ a. In paragraphs (e)(2)(ii)(C) and (D), removing ''Businesses'' and adding in its place ''Small businesses''.

■ b. In paragraphs (e)(2)(ii)(E) and (F), removing ''Farms'' and adding in its place ''Small farms''.

§ 228.26 [Amended]

■ 40. Amend § 228.26 by:

■ a. In paragraph (f)(2)(ii)(A), removing ''12 CFR 228.26(a) or 345.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''paragraph (a) of this section or 12 CFR 345.26(a)'' and ''§ 228.42(b) or 12 CFR 25.42(b) or 345.42(b)'' in their places, respectively; and

■ b. In paragraph (f)(2)(ii)(B), removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 228.42(b) or 12 CFR 25.42(b) or 345.42(b)'' in its place.

■ 41. 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 12 CFR part 262.

(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) through (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]

■ 42. Amend § 228.42 by:

■ a. In paragraph (h), removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 25 or 345'' in its place; and

■ b. In paragraph (j)(2), removing ''*[Agency]'s*'' and adding ''*Board's*'' in its place.

■ 43. Delayed indefinitely, further amend § 228.42 by:

■ a. Revising paragraph (a)(1);

■ b. Removing and reserving paragraph (b)(1); and

■ c. In paragraphs (g)(1)(i) and (g)(2)(i), removing ''small business loans and small farm loans reported as originated or purchased'' and adding in their place ''small business loans and small farm loans reported as originated''.

The revision reads as follows:

§ 228.42 Data collection, reporting, and disclosure.

(a) * * *

(1) *Purchases of small business loans and small farm loans data.* A bank that opts to have the Board consider its purchases of small business loans and small farm loans must collect and maintain in electronic form, as prescribed by the Board, until the completion of the bank's next CRA examination in which the data are evaluated, the following data for each small business loan or small farm loan 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 or on the bank's Report of Assets and

Liabilities of U.S. Branches and Agencies of Foreign Banks, as applicable;

(iii) The date of the loan purchase;

(iv) The loan amount at purchase;

(v) The loan location, including State, county, and census tract;

(vi) An indicator for whether the purchased loan was to a business or farm with gross annual revenues of $250,000 or less;

(vii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(viii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $1 million; and

(ix) An indicator for whether the purchased loan was to a business or farm for which gross annual revenues are not known by the bank.

* * * * *

§ 228.43 [Amended]

■ 44. Amend § 228.43 in paragraph (b)(2)(i) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding in its place ''operations subsidiaries'''.

■ 45. Delayed indefinitely, further amend § 228.43 by:

■ a. Revising the heading of paragraph (b)(2); and

■ b. Adding paragraph (b)(2)(iii).

The revision and addition read as follows:

§ 228.43 Content and availability of public file.

* * * * *

(b) * * *

(2) *Banks required to report HMDA data and small business lending data.* * * *

(iii) *Small business lending data notice.* A bank required to report small business loan or small farm loan data pursuant to 12 CFR part 1002 must include in its public file a written notice that the bank's small business loan and small farm loan data may be obtained on the CFPB's website at: *https://www.consumerfinance.gov/data-research/small-business-lending/.*

* * * * *

§ 228.46 [Amended]

■ 46. Amend § 228.46 in paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''Staff Group: Community Reinvestment Act at *https://www.federalreserve.gov/apps/ContactUs/feedback.aspx*, 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''.

§ 228.51 [Amended]

■ 47. Amend § 228.51 in paragraph (e) by removing ''[other Agencies' regulations]'' and adding in its place ''12 CFR part 25 or 345''.

Appendix A to Part 228 [Amended]

■ 48. Amend appendix A by:

■ a. In paragraph I.b introductory text, removing ''12 CFR 25.42(b)(1), 228.42(b)(1), or 345.42(b)(1) or 12 CFR part 1003'' and adding ''§ 228.42(b)(1), 12 CFR 25.42(b)(1) or 345.42(b)(1), or 12 CFR part 1003'' in its place; and

■ b. In paragraph I.b.2, removing ''12 CFR 25.42(b)(3), 228.42(b)(3), or 345.42(b)(3)'' and adding ''§ 228.42(b)(3) or 12 CFR 25.42(b)(3) or 345.42(b)(3)'' in its place.

■ 49. Delayed indefinitely, further amend appendix A by:

■ a. Adding a sentence at the end of paragraph I.a.1;

■ b. Removing ''subject to reporting pursuant to § 228.42(b)(1), 12 CFR 25.42(b)(1) or 345.42(b)(1),'' in paragraph I.b introductory text and adding in its place ''subject to reporting pursuant to subpart B of 12 CFR part 1002'';

■ c. Adding a sentence at the end of paragraph III.a.1;

■ d. Revising paragraphs III.c.3.i and ii, III.c.4.i and ii, III.c.5.i and ii, and III.c.6.i and ii;

■ e. In paragraph III.c.8.iii, revising *Example A–7*;

■ f. Revising the third and fourth introductory paragraphs to section IV;

■ g. Adding a sentence at the end of paragraph IV.a.1;

■ h. Revising the introductory paragraph to IV.c.3 and paragraphs IV.c.3.i and ii;

■ i. Revising the introductory paragraph to IV.c.4 and paragraphs IV.c.4.i and ii;

■ j. Revising the introductory paragraph to IV.c.5 and paragraphs IV.c.5.i and ii;

■ k. Revising the introductory paragraph to IV.c.6 and paragraphs IV.c.6.i and ii;

■ l. In section V, in paragraph a, in table 1, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''; and

■ m. In section VII:

■ i. In paragraph a.1.ii, in table 3, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''; and

■ ii. In paragraph a.1.iii, in table 4, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''.

The revisions and additions read as follows:

Appendix A to Part 228—Calculations for the Retail Lending Test

* * * * *

I. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as those terms are defined in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Bank Volume Metric at the bank's option.

* * * * *

III. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Geographic Bank Metric at the bank's option.

* * * * *

c. * * *

3. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

* * * * *

4. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

5. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

6. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

8. * * *

iii. * * *

Example A–7: The applicable benchmark uses a three-year evaluation period. There were 4,000 small business establishments, based upon the sum of the numbers of small business establishments over the years in the evaluation period (1,300 small business establishments in year 1, 1,300 small business establishments in year 2, and 1,400 small business establishments in year 3), in a bank's facility-based assessment area. Of these small business establishments, 500 small business establishments were in low-income census tracts, based upon the sum of the numbers of small business establishments in low-income census tracts over the years in the evaluation period (200 small business establishments in year 1,150 small business in year 2, and 150 small business establishments in year 3). The Geographic Community Benchmark for small business loans in low-income census tracts would be 500 divided by 4,000, or 0.125 (equivalently, 12.5 percent). In addition, 1,000 small business establishments in that facility-based assessment area were in moderate-income census tracts, over the years in the evaluation period (400 small business establishments in year 1,300 small business establishments in year 2, and 300 small business establishments in year 3). The Geographic Community Benchmark for small business loans in moderate-income census tracts would be 1,000 divided by 4,000, or 0.25 (equivalently, 25 percent).

$$\frac{\mathit{Small\ Businesses\ in\ Low-Income\ Census\ Tracts}\ (500)}{\mathit{Small\ Businesses}\ (4{,}000)} = \mathit{Geographic\ Community\ Benchmark}\ (12.5\%)$$

$$\frac{\mathit{Small\ Businesses\ in\ Moderate-Income\ Census\ Tracts}\ (1{,}000)}{\mathit{Small\ Businesses}\ (4{,}000)} = \mathit{Geographic\ Community\ Benchmark}\ (25\%)$$

* * * * *

IV. * * *

For small business loans, the Board calculates these metrics and benchmarks for each of the following designated borrowers: (i) small businesses with gross annual revenues of $250,000 or less; and (ii) small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million.

For small farm loans, the Board calculates these metrics and benchmarks for each of the following designated borrowers: (i) small farms with gross annual revenues of $250,000 or less; and (ii) small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.

* * * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Borrower Bank Metric at the bank's option.

* * * * *

c. * * *

3. For small business loans, the Board calculates a Borrower Community Benchmark for small businesses with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

4. For small business loans, the Board calculates a Borrower Community Benchmark for small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

5. For small farm loans, the Board calculates a Borrower Community Benchmark for small farms with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

6. For small farm loans, the Board calculates a Borrower Community Benchmark for small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

V. * * *

a. * * *

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CATEGORIES OF DESIGNATED CENSUS TRACTS AND DESIGNATED BORROWERS

Major product line	Designated census tracts	Designated
* *	* *	* * *
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 Greater 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 Greater than $250,000 but Less Than or Equal to $1 million.

* * * * *

VII. * * *

a. * * *

1. * * *

ii. * * *

TABLE 3 TO APPENDIX A—RETAIL LENDING TEST, GEOGRAPHIC DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Category of designated census tracts	Weight
* *	* *	* * *
Small Business Loans	Low-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
* *	* *	* * *

* * * * *

iii. * * *

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST, BORROWER DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Categories of designated borrowers	Weight
	* * * *	* * *
Small Business Loans	Small businesses with gross annual revenues of $250,000 or less.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues of $250,000 or less.
	Small businesses with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues greater than $250,00 but less than or equal to $1 million.
Small Farm Loans	Small farms with gross annual revenues of $250,000 or less.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues of $250,000 or less.
	Small farms with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.
* *	* *	* * *

* * * * *

Appendix B to Part 228 [Amended]

■ 50. Amend appendix B by:

■ a. In paragraph I.a.2.i, removing ''12 CFR 25.42, 228.42, or 345.42'' and adding ''§ 228.42 or 12 CFR 25.42 or 345.42'' in its place;

■ b. In paragraphs III.b.1 and 2, removing ''12 CFR 228.26(a) or 345.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 228.26(a) or 12 CFR 345.26(a)'' and ''§ 228.42(b) or 12 CFR 25.42(b) or 345.42(b)'' in their places, respectively; and

■ c. In paragraphs c.1 and 2, removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 228.42(b) or 12 CFR 25.42(b) or 345.42(b)'' in its place.

■ 51. 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 30 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 *https://www.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 *https://www.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 30 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 *https://www.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 *https://www.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.]

■ 52. Effective April 1, 2024, through January 1, 2031, add appendix G to part 228 to read as follows:

Appendix G to Part 228—Community Reinvestment Act (Regulation BB)

Note: The content of this appendix reproduces part 228 implementing the Community Reinvestment Act as of March 31, 2024. Cross-references to CFR parts (as well as to included sections, subparts, and appendices) in this appendix are to those provisions as contained within this appendix and the CFR as of March 31, 2024.

Subpart A—General

§ 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 Board:

(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).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Board assesses a 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; and

(2) Providing that the Board takes that record into account in considering certain applications.

(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 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 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.

§ 228.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *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), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 228.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a State member bank as that term is defined in section 3(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(d)(2)), except as provided in § 228.11(c)(3), and includes an uninsured State branch (other than a limited branch) of a foreign bank described in § 228.11(c)(2).

(f) *Branch* means a staffed banking facility approved as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 228.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this chapter;

(3) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 228.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.384 billion. *Intermediate small bank* means a small 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.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the Board, 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 twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *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 § 228.25(b).

Subpart B—Standards for Assessing Performance

§ 228.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The Board assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The Board applies the lending, investment, and service tests, as provided in §§ 228.22 through 228.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The Board applies the community development test for a wholesale or limited purpose bank, as provided in § 228.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The Board applies the small bank performance standards as provided in § 228.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 228.42.

(4) *Strategic plan.* The Board evaluates the performance of a bank under a strategic plan if the bank submits, and the Board approves, a strategic plan as provided in § 228.27.

(b) *Performance context.* The Board applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 228.43, and any written comments about the bank's CRA performance submitted to the bank or the Board; and

(7) Any other information deemed relevant by the Board.

(c) *Assigned ratings.* The Board assigns to a bank one of the following four ratings pursuant to § 228.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the Board reflects 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.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the Board anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the Board considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (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 that term is 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).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the Board considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

§ 228.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the Board will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the Board will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 228.42(c)(1), the data for each category that the bank elects to have the Board evaluate.

(2) The Board considers originations and purchases of loans. The Board will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the Board to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The Board will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The Board evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the Board will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 228.42.

(2) The Board considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the Board consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the Board consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The Board does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 228.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The Board rates a bank's lending performance as provided in appendix A of this part.

§ 228.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the Board will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The Board evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The Board rates a bank's investment performance as provided in appendix A of this part.

§ 228.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the Board will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The Board evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* 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) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The Board evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The Board rates a bank's service performance as provided in appendix A of this part.

§ 228.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The Board assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the Board, at least three months prior to the proposed effective date of the designation. If the Board approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the Board notifies the bank that the Board has revoked the designation on its own initiative.

(c) *Performance criteria.* The Board evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the Board will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 228.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The Board considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The Board considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The Board rates a bank's community development performance as provided in appendix A of this part.

§ 228.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* The Board evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The Board evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) 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 area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The Board rates the performance of a bank evaluated under this section as provided in appendix A of this part.

§ 228.27 Strategic plan.

(a) *Alternative election.* The Board will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the Board as provided for in this section;

(2) The Board 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 Board's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 228.42.

(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 Board will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* 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 the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the Board for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the Board at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the Board on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the Board to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the Board approves, both ''satisfactory'' and ''outstanding'' performance goals, the Board will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the Board will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The Board will act upon a plan within 60 calendar days after the Board receives the complete plan and other material required under paragraph (e) of this section. If the Board fails to act within this time period, the plan shall be deemed approved unless the Board extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the Board considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The Board evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the Board to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The Board approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 228.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the Board assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The Board assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The Board's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory 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. In connection with any type of lending activity described in § 228.22(a), evidence of discriminatory or other credit 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 section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the Board considers 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.

§ 228.29 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), (ii), and (iii) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the 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'' has the meaning given to that term in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

Subpart C—Records, Reporting, and Disclosure Requirements

§ 228.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the Board evaluates the bank's record of helping to meet the credit needs of its community. The Board does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the Board reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally 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 political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally 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 political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, 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 and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks serving military personnel.* 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.

(g) *Use of assessment area(s).* The Board uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the Board determines that the assessment area(s) do not comply with the requirements of this section.

§ 228.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the Board) 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:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the Board in machine readable form (as prescribed by the Board) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With 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) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this chapter, 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 part 1003 of this chapter.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the Board) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the Board consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this chapter by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the Board consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the Board by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The Board 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 assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies 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 geography in the county or assessment area according to whether the median income in the geography 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;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The Board, in conjunction with the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation, 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 small business and small farm lending by all institutions subject to reporting under this part or parts 25, 195, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board 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 an institution.

(j) *Central data depositories.* The Board makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The Board publishes a list of the depositories at which the statements are available.

§ 228.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file 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 Board. The bank shall place this copy in the public file within 30 business days after its receipt from the Board;

(3) A list of the bank's branches, their street addresses, and geographies;

(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 geographies;

(5) A list of 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. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* 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);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies 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.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the Board.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a bank that elected to have the Board consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) 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; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information

submitted to the Board 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 shall 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 shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(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 in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another 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 applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 228.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall 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.

§ 228.45 Publication of planned examination schedule.

The Board publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Appendix A to Part 228—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 228.21 and 228.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The Board assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The Board rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The Board rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The Board rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The Board rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The Board assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The Board rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The Board rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The Board rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The Board rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The Board assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The Board rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The Board rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The Board rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The Board rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The Board rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The Board assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The Board rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The Board rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The Board rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The Board rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The Board rates a small bank's lending performance ''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 assessment area(s), 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 qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans 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 assessment area(s);

(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 assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The Board rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The Board rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified 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 assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test 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.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the Board considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a 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.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The Board approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the Board will approve those goals as ''outstanding.''

(3) *Rating.* The Board 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 Board 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 Board 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 § 228.27(f)(4).

Appendix B 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 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of ________(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 (title of responsible official), Federal Reserve Bank of ________(address). 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 30 days before the beginning of each quarter, the Federal Reserve System publishes a list of the banks that are scheduled for CRA examination by the Reserve Bank in that quarter. This list is available from (title of responsible official), Federal Reserve Bank of ________(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 (title of responsible official), Federal Reserve Bank of ________(address). 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 common preamble, the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations as follows:.

PART 345—COMMUNITY REINVESTMENT

■ 53. 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).

■ 54. Revise part 345 as set forth at the end of the common preamble.

■ 55. Amend part 345 by:

■ a. Removing the word ''[Agency]'' wherever it appears and adding ''FDIC'' in its place;

■ b. Removing the word ''[Agency]'s'' wherever it appears and adding ''FDIC's'' in its place;

■ c. Removing ''[operations subsidiary or operating subsidiary]'' wherever it appears and adding ''operating subsidiary'' in its place;

■ d. Removing ''[operations subsidiaries or operating subsidiaries]'' wherever it appears and adding ''operating subsidiaries'' in its place; and

■ e. Removing ''*[operations subsidiaries or operating subsidiaries]*'' wherever it appears and adding ''*operating subsidiaries*'' in its place.

■ 56. Amend § 345.11 by:

■ a. Adding paragraph (a);

■ b. In paragraph (b), removing ''FDIC'' and adding ''Federal Deposit Insurance Corporation (FDIC)'' in its place; and

■ c. Adding paragraph (c).

The additions 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 facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending area of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.16 and, as applicable, §§ 345.17 and 345.18.

(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.

■ 57. Amend § 345.12 as follows:

■ a. Adding the definition of ''Bank'' in alphabetical order;

■ b. In the definition of ''Depository institution'', removing ''12 CFR 25.11, 228.11, and 345.11'' and adding ''§ 345.11 and 12 CFR 25.11 and 228.11'' in its place;

■ c. In the definition of ''Distressed or underserved nonmetropolitan middle-income census tract'', removing ''the Federal Deposit Insurance Corporation (FDIC)'' and adding ''the FDIC'' in its place;

■ d. In the definition of ''Large depository institution'', removing ''12 CFR 228.26(a) or 345.26(a)'' and adding ''§ 345.26(a) or 12 CFR 228.26(a)'' in its place; and

■ e. Adding the definition of ''Operating subsidiary'' in alphabetical order.

The additions 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.

* * * * *

■ 58. Delayed indefinitely, further amend § 345.12 by:

■ a. In the definition of ''Loan location'', revising paragraph (3);

■ b. In the definition of ''Reported loan'', revising paragraph (2); and

■ c. Revising the definitions of ''Small business'', ''Small business loan'', ''Small farm'', and ''Small farm loan''.

The revisions read as follows:

§ 345.12 Definitions.

* * * * *

Loan location * * *

(3) A small business loan or small farm loan is located in the census tract reported pursuant to subpart B of 12 CFR part 1002.

* * * * *

Reported loan means * * *

(2) A small business loan or small farm loan reported by a bank pursuant to subpart B of 12 CFR part 1002.

* * * * *

Small business means a small business, other than a small farm, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106.

Small business loan means a loan to a small business as defined in this section.

Small farm means a small business, as defined in section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) and implemented by 12 CFR 1002.106, and that is identified with one of the 3-digit North American Industry Classification System (NAICS) codes 111–115.

Small farm loan means a loan to a small farm as defined in this section.

* * * * *

§ 345.13 [Amended]

■ 59. Amend § 345.13 in paragraph (k) by removing ''part 25, 228, or 345 of this title'' and adding ''this part or 12 CFR part 25 or 228'' in its place.

§ 345.14 [Amended]

■ 60. Amend § 345.14 in paragraphs (b)(2)(ii) and (b)(3) by removing ''[other Agencies]'' and adding in its place ''Board and OCC''.

§ 345.21 [Amended]

■ 61. Amend § 345.21 in paragraph (b)(1) by removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 25 or 228'' in its place.

§ 345.22 [Amended]

■ 62. Delayed indefinitely, amend § 345.22 by:

■ a. Removing the term ''Businesses'' in paragraphs (e)(2)(ii)(C) and (D) and adding in its place ''Small businesses''; and

■ b. Removing the term ''Farms'' in paragraphs (e)(2)(ii)(E) and (F) and adding in its place ''Small farms''.

§ 345.26 [Amended]

■ 63. Amend § 345.26 by:

■ a. In paragraph (f)(2)(ii)(A), removing ''12 CFR 228.26(a) or 345.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''paragraph (a) of this section or 12 CFR 228.26(a)'' and ''§ 345.42(b) or 12 CFR 25.42(b) or 228.42(b)'' in their places, respectively; and

■ b. In paragraph (f)(2)(ii)(B), removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 345.42(b) or 12 CFR 25.42(b) or 228.42(b)'' in its place.

■ 64. 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]

■ 65. Amend § 345.42 by:

■ a. In paragraph (h), removing ''12 CFR part 25, 228, or 345'' and adding ''this part or 12 CFR part 25 or 228'' in its place; and

■ b. In paragraph (j)(2), removing ''*[Agency]'s*'' and adding ''*FDIC's*'' in its place.

■ 66. Delayed indefinitely, further amend § 345.42 by:

■ a. Revising paragraph (a)(1);

■ b. Removing and reserving paragraph (b)(1); and

■ c. Removing the phrase ''small business loans and small farm loans reported as originated or purchased'' in paragraphs (g)(1)(i) and (g)(2)(i) wherever it appears and adding in its place ''small business loans and small farm loans reported as originated''.

The revision reads as follows:

§ 345.42 Data collection, reporting, and disclosure.

(a) * * *

(1) *Purchases of small business loans and small farm loans data.* A bank that opts to have the FDIC consider its purchases of small business loans and small farm loans must collect and maintain in electronic form, as prescribed by the FDIC, until the completion of the bank's next CRA examination in which the data are evaluated, the following data for each small business loan or small farm loan 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 or on the bank's Report of Assets and Liabilities of U.S. Branches and

Agencies of Foreign Banks, as applicable;

(iii) The date of the loan purchase;

(iv) The loan amount at purchase;

(v) The loan location, including State, county, and census tract;

(vi) An indicator for whether the purchased loan was to a business or farm with gross annual revenues of $250,000 or less;

(vii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $250,000 but less than or equal to $1 million;

(viii) An indicator for whether the purchased loan was to a business or farm with gross annual revenues greater than $1 million; and

(ix) An indicator for whether the purchased loan was to a business or farm for which gross annual revenues are not known by the bank.

* * * * *

§ 345.43 [Amended]

■ 67. Amend § 345.43 in paragraph (b)(2)(i) by removing ''[operations subsidiaries' or operating subsidiaries']'' and adding ''operating subsidiaries' '' in its place.

* * *

■ 68. Delayed indefinitely, further amend § 345.43 by:

■ a. Revising the heading of paragraph (b)(2); and

■ b. Adding paragraph (b)(2)(iii).

The revision and addition read as follows:

§ 345.43 Content and availability of public file.

* * * * *

(b) * * *

(2) *Banks required to report HMDA data and small business lending data.* * * *

(iii) *Small business lending data notice.* A bank required to report small business loan or small farm loan data pursuant to 12 CFR part 1002 must include in its public file a written notice that the bank's small business loan and small farm loan data may be obtained on the CFPB's website at: *https://www.consumerfinance.gov/data-research/small-business-lending/.*

* * * * *

§ 345.46 [Amended]

■ 69. Amend § 345.46 in paragraph (b) by removing ''[Agency contact information]'' and adding in its place ''*CRACommentCollector@fdic.gov* or to the address of the appropriate FDIC regional office found at *https://www.fdic.gov/resources/bankers/community-reinvestment-act/cra-regional-contacts-list.html*''.

§ 345.51 [Amended]

■ 70. Amend § 345.51 in paragraph (e) by removing ''[other Agencies' regulations]'' and adding ''12 CFR part 25 or 228'' in its place.

Appendix A to Part 345 [Amended]

■ 71. Amend appendix A by:

■ a. In paragraph I.b introductory text, removing ''12 CFR 25.42(b)(1), 228.42(b)(1), or 345.42(b)(1) or 12 CFR part 1003'' and adding ''§ 345.42(b)(1), 12 CFR 25.42(b)(1) or 228.42(b)(1), or 12 CFR part 1003'' in its place; and

■ b. In paragraph I.b.2, removing ''12 CFR 25.42(b)(3), 228.42(b)(3), or 345.42(b)(3)'' and adding ''§ 345.42(b)(3) or 12 CFR 25.42(b)(3) or 228.42(b)(3)'' in its place.

■ 72. Delayed indefinitely, further amend appendix A by:

■ a. Adding a sentence at the end of paragraph I.a.1;

■ b. Removing the phrase ''subject to reporting pursuant to § 345.42(b)(1), 12 CFR 25.42(b)(1) or 228.42(b)(1),'' in paragraph I.b introductory text and adding in its place the phrase ''subject to reporting pursuant to subpart B of 12 CFR part 1002'';

■ c. Adding a sentence at the end of paragraph III.a.1;

■ d. Revising paragraphs III.c.3.i and ii, III.c.4.i and ii, III.c.5.i and ii, and III.c.6.i and ii;

■ e. In paragraph III.c.8.iii, revising Example A–7;

■ f. Revising the third and fourth introductory paragraphs to section IV;

■ g. Adding a sentence at the end of paragraph IV.a.1;

■ h. Revising the introductory paragraph to IV.c.3 and paragraphs IV.c.3.i and ii;

■ i. Revising the introductory paragraph to IV.c.4 and paragraphs IV.c.4.i and ii;

■ j. Revising the introductory paragraph to IV.c.5 and paragraphs IV.c.5.i and ii;

■ k. Revising the introductory paragraph to IV.c.6 and paragraphs IV.c.6.i and ii;

■ l. In section V, in paragraph a, in table 1, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''; and

■ m. In section VII:

■ i. In paragraph a.1.ii, in table 3, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''; and

■ ii. In paragraph a.1.iii, in table 4, revising the entries for ''Small Business Loans'' and ''Small Farm Loans''.

The additions and revisions read as follows:

Appendix A to Part 345—Calculations for the Retail Lending Test

* * * * *

I. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as those terms are defined in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Bank Volume Metric at the bank's option.

* * * * *

III. * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Geographic Bank Metric at the bank's option.

* * * * *

c. * * *

3. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

* * * * *

4. * * *

i. Summing, over the years in the evaluation period, the numbers of small businesses in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based assessment area or retail lending assessment area.

* * * * *

5. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in low-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

6. * * *

i. Summing, over the years in the evaluation period, the numbers of small farms in moderate-income census tracts in the facility-based assessment area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based assessment area or retail lending assessment area.

* * * * *

8. * * *

iii. * * *

Example A–7: The applicable benchmark uses a three-year evaluation period. There were 4,000 small business establishments, based upon the sum of the numbers of small business establishments over the years in the evaluation period (1,300 small business establishments in year 1, 1,300 small business establishments in year 2, and 1,400 small business establishments in year 3), in a bank's facility-based assessment area. Of these small business establishments, 500 small business establishments were in low-income census tracts, based upon the sum of the numbers of small business establishments in low-income census tracts over the years in the evaluation period (200 small business establishments in year 1,150 small business in year 2, and 150 small business establishments in year 3). The Geographic Community Benchmark for small business loans in low-income census tracts would be 500 divided by 4,000, or 0.125 (equivalently, 12.5 percent). In addition, 1,000 small business establishments in that facility-based assessment area were in moderate-income census tracts, over the years in the evaluation period (400 small business establishments in year 1,300 small business establishments in year 2, and 300 small business establishments in year 3). The Geographic Community Benchmark for small business loans in moderate-income census tracts would be 1,000 divided by 4,000, or 0.25 (equivalently, 25 percent).

$$\frac{\textit{Small Businesses in Low} - \textit{Income Census Tracts}\ (500)}{\textit{Small Businesses}\ (4{,}000)} = \textit{Geographic Community Benchmark}\ (12.5\%)$$

$$\frac{\textit{Small Businesses in Moderate} - \textit{Income Census Tracts}\ (1{,}000)}{\textit{Small Businesses}\ (4{,}000)} = \textit{Geographic Community Benchmark}\ (25\%)$$

* * * * *

IV. * * *

For small business loans, the FDIC calculates these metrics and benchmarks for each of the following *designated borrowers:* (i) small businesses with gross annual revenues of $250,000 or less; and (ii) small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million.

For small farm loans, the FDIC calculates these metrics and benchmarks for each of the following designated borrowers: (i) small farms with gross annual revenues of $250,000 or less; and (ii) small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million.

* * * * *

a. * * *

1. * * * A bank's loan purchases that otherwise meet the definition of a covered credit transaction to a small business, as provided in 12 CFR 1002.104 and 1002.106(b), may be included in the numerator of the Borrower Bank Metric at the bank's option.

* * * * *

c. * * *

3. For small business loans, the FDIC calculates a Borrower Community Benchmark for small businesses with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

4. For small business loans, the FDIC calculates a Borrower Community Benchmark for small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small businesses with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small businesses in the facility-based lending area or retail lending assessment area.

* * * * *

5. For small farm loans, the FDIC calculates a Borrower Community Benchmark for small farms with gross annual revenues of $250,000 or less by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of $250,000 or less in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

6. For small farm loans, the FDIC calculates a Borrower Community Benchmark for small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million by:

i. Summing, over the years in the evaluation period, the numbers of small farms with gross annual revenues of more than $250,000 but less than or equal to $1 million in the facility-based lending area or retail lending assessment area.

ii. Summing, over the years in the evaluation period, the numbers of small farms in the facility-based lending area or retail lending assessment area.

* * * * *

V. * * *

a. * * *

TABLE 1 TO APPENDIX A—RETAIL LENDING TEST CATEGORIES OF DESIGNATED CENSUS TRACTS AND DESIGNATED BORROWERS

Major product line	Designated census tracts	Designated 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 Greater 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 Greater than $250,000 but Less Than or Equal to $1 million.

* * * * *

VII. * * *

a. * * *

1. * * *

ii. * * *

TABLE 3 TO APPENDIX A—RETAIL LENDING TEST, GEOGRAPHIC DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Category of designated census tracts	Weight
* *	* *	* * *
Small Business Loans	Low-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small businesses in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
Small Farm Loans	Low-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in low-income census tracts.
	Moderate-Income Census Tracts	Percentage of total number of small farms in low- and moderate-income census tracts in the applicable Retail Lending Test Area that are in moderate-income census tracts.
* *	* *	* * *

* * * * *

iii. * * *

TABLE 4 TO APPENDIX A—RETAIL LENDING TEST, BORROWER DISTRIBUTION AVERAGE—WEIGHTS

Major product line	Categories of designated borrowers	Weight
* *	* *	* * *
Small Business Loans	Small businesses with gross annual revenues of $250,000 or less.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues of $250,000 or less.
	Small businesses with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small businesses with gross annual revenues of $250,000 or less and small businesses with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small businesses with gross annual revenues greater than $250,00 but less than or equal to $1 million.
Small Farm Loans	Small farms with gross annual revenues of $250,000 or less.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues of $250,000 or less.
	Small farms with gross annual revenues greater than $250,000 and less than or equal to $1 million.	Percentage of total number of small farms with gross annual revenues of $250,000 or less and small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million in the applicable Retail Lending Test Area that are small farms with gross annual revenues greater than $250,000 but less than or equal to $1 million.
* *	* *	* * *

* * * * *

Appendix B to Part 345 [Amended]

■ 73. Amend appendix B by:

■ a. In paragraph I.a.2.i, removing ''12 CFR 25.42, 228.42, or 345.42'' and adding ''§ 345.42 or 12 CFR 25.42 or 228.42'' in its place;

■ b. In paragraphs III.b.1 and 2, removing ''12 CFR 228.26(a) or 345.26(a)'' and ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 345.26(a) or 12 CFR 228.26(a)'' and ''§ 345.42(b) or 12 CFR 25.42(b) or 228.42(b)'' in their places, respectively; and

■ c. In paragraphs c.1 and 2, removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 345.42(b) or 12 CFR 25.42(b) or 228.42(b)'' in its place.

■ 74. 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 30 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 30 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.]

■ 75. Effective April 1, 2024, through January 1, 2031, add appendix G to read as follows:

Appendix G to Part 345—Community Reinvestment Regulations

Note: The content of this appendix reproduces part 345 implementing the Community Reinvestment Act as of March 31, 2024. Cross-references to CFR parts (as well as to included sections, subparts, and appendices) in this appendix are to those provisions as contained within this appendix and the CFR as of March 31, 2024.

PART 345—COMMUNITY REINVESTMENT

Subpart A—General

§ 345.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

(2) *OMB control number.* The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 3064–0092.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Federal Deposit Insurance Corporation (FDIC) assesses a 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; and

(2) Providing that the FDIC takes that record into account in considering certain applications.

(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.

§ 345.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *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), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 345.41.

(d) *Remote Service Facility (RSF)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a State nonmember bank, as that term is defined in section 3(e)(2) of the Federal Deposit Insurance Act, as amended (FDIA) (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as provided in § 345.11(c). The term bank also includes an insured State branch as defined in § 345.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, FDIC, and Office of the Comptroller of the Currency, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan means* a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 345.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 345.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.503 billion. Intermediate small bank means a small bank with assets of at least $376 million as of December 31 of both of the prior two calendar years and less than $1.503 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the FDIC, 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 twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *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 § 345.25(b).

Subpart B—Standards for Assessing Performance

§ 345.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The FDIC applies the lending, investment, and service tests, as provided in §§ 345.22 through 345.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The FDIC applies the community development test for a wholesale or limited purpose bank, as provided in § 345.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The FDIC applies the small bank performance standards as provided in § 345.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 345.42.

(4) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.27.

(b) *Performance context.* The FDIC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 345.43, and any written comments about the bank's CRA performance submitted to the bank or the FDIC; and

(7) Any other information deemed relevant by the FDIC.

(c) *Assigned ratings.* The FDIC assigns to a bank one of the following four ratings pursuant to § 345.28 and Appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the FDIC reflects 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.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (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 that term is 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).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

§ 345.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the FDIC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the FDIC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 345.42(c)(1), the data for each category that the bank elects to have the FDIC evaluate.

(2) The FDIC considers originations and purchases of loans. The FDIC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the FDIC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The FDIC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The FDIC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the FDIC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 345.42.

(2) The FDIC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the FDIC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the FDIC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The FDIC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 345.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The FDIC rates a bank's lending performance as provided in Appendix A of this part.

§ 345.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the FDIC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The FDIC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The FDIC rates a bank's investment performance as provided in Appendix A of this part.

§ 345.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefited.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the FDIC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The FDIC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* RSFs, RSFs 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) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The FDIC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The FDIC rates a bank's service performance as provided in Appendix A of this part.

§ 345.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The FDIC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the FDIC, at least three months prior to the proposed effective date of the designation. If the FDIC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the FDIC notifies the bank that the FDIC has revoked the designation on its own initiative.

(c) *Performance criteria.* The FDIC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the FDIC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 345.22 (c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The FDIC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The FDIC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The FDIC rates a bank's community development performance as provided in Appendix A of this part.

§ 345.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* The FDIC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The FDIC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) 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 area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The FDIC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

§ 345.27 Strategic plan.

(a) *Alternative election.* The FDIC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC 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 FDIC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 345.42.

(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 FDIC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* 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 the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the FDIC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the FDIC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the FDIC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the FDIC approves, both ''satisfactory'' and ''outstanding'' performance goals, the FDIC will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the FDIC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The FDIC will act upon a plan within 60 calendar days after the FDIC receives the complete plan and other material required under paragraph (e) of this section. If the FDIC fails to act within this time period, the plan shall be deemed approved unless the FDIC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the FDIC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The FDIC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The FDIC approves the goals and assesses performance under a plan as provided for in Appendix A of this part.

§ 345.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the FDIC assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The FDIC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The FDIC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory 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. In connection with any type of lending activity described in § 345.22(a), evidence of discriminatory or other credit 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 section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the FDIC considers 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.

§ 345.29 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.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 345.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the FDIC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally 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 political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally 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 political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking RSFs, 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 and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks serving military personnel.* 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.

(g) *Use of assessment area(s).* The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

§ 345.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the FDIC) 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:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the FDIC in machine readable form (as prescribed by the FDIC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of 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) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this title, 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 part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the FDIC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the FDIC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the FDIC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The FDIC 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 assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies 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 geography in the county or assessment area according to whether the median income in the geography 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;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The FDIC, in conjunction with the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency, 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 small business and small farm lending by all institutions subject to reporting under this part or parts 25, 195, or 228 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC 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 an institution.

(j) *Central data depositories.* The FDIC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The FDIC publishes a list of the depositories at which the statements are available.

§ 345.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file 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 FDIC. The bank shall place this copy in the public file within 30 business days after its receipt from the FDIC;

(3) A list of the bank's branches, their street addresses, and geographies;

(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 geographies;

(5) A list of 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. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* RSFs, RSFs 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);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies 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.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the FDIC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a bank that elected to have the FDIC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) 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; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the FDIC 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 shall 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 shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(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 in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another 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 applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 345.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in Appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall 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.

§ 345.45 Publication of planned examination schedule.

The FDIC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Appendix A to Part 345—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The FDIC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The FDIC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The FDIC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The FDIC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The FDIC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The FDIC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The FDIC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The FDIC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The FDIC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The FDIC rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The FDIC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The FDIC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The FDIC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The FDIC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The FDIC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The FDIC rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The FDIC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The FDIC rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The FDIC rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The FDIC rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The FDIC rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance ''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 assessment area(s), 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 qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans 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 assessment area(s);

(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 assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The FDIC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The FDIC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified 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 assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test 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.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a 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.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The FDIC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the FDIC will approve those goals as ''outstanding.''

(3) *Rating.* The FDIC 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 FDIC 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 FDIC 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 FDIC 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 § 345.27(f)(4).

Appendix B 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 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. 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 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. 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 October 24, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–25797 Filed 1–31–24; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P