



Statement of

Darryl E. Getter
Specialist in Financial Economics

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Proposed Rule to Modernize the Community
Reinvestment Act”**

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Mr. Chairman, Ranking Member, and Members of the subcommittee, thank you for the opportunity to testify before you today. My name is Darryl E. Getter. I am a Specialist in Financial Economics at the Congressional Research Service (CRS), focusing on financial regulation in mortgage, consumer, and small business credit markets. CRS's role is to provide objective, nonpartisan research and analysis to Congress. CRS takes no position on the desirability of any specific policy. Any arguments presented in my written and oral testimony are for the purposes of informing Congress, not to advocate for a particular policy outcome. My testimony begins with some background about the Community Reinvestment Act (CRA).¹ A general overview of the proposed rule follows.²

CRA Background and Objectives of the Proposed Rule

Congress passed the Community Reinvestment Act of 1977 (CRA; P.L. 95-128, 12 U.S.C. §§2901-2908) in response to concerns that federally insured banking institutions were not making sufficient credit available in the local areas in which they were chartered and acquiring deposits. According to some in Congress at that time, a bank charter should entail a continuing obligation for a bank to serve the credit needs of the community where it was chartered.³ Consequently, the CRA was enacted to “re-affirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas” and “to help meet the credit needs of the localities in which they are chartered, consistent with the prudent operation of the institution.”

The CRA requires federal banking regulators to conduct examinations to assess whether a bank is meeting local credit needs.⁴ The regulators assign CRA credits where banks engage in qualifying activities in the areas where they have deposit-taking operations. Qualifying activities include mortgage, consumer, and business lending; community investments; and low-cost services that would benefit low- and moderate-income (LMI) areas and entities. CRA credits are subsequently used to issue each bank a performance rating. The CRA requires federal banking regulators to take those ratings into account when institutions apply for charters, branches, mergers, and acquisitions, or seek to take other actions that require regulatory approval.

Congress became concerned with the geographical mismatch of deposit-taking and lending activities for a variety of reasons.⁵ Deposits serve as a primary source of borrowed funds that banks may use to facilitate their lending. Hence, there was concern that banks were using deposits collected from local

¹ This section is adapted from CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

² This section is adapted from the Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation, “Community Reinvestment Act,” 87 *Federal Register* 33884-34066, June 3, 2022; and Federal Reserve Bank of St. Louis, *Ask the Regulators: CRA Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking*, May 11, 2022, at <https://bsr.stlouisfed.org/connectingcommunities/#104/ask-the-regulators-cra-reform-update-overview-of-the-interagency-cra-notice-of-proposed-rulemaking>.

³ See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Community Credit Needs*, S. 406, 95th Cong., 1st sess., March 23-25, 1977, pp. 1-429.

⁴ The Office of the Comptroller of the Currency conducts a Community Reinvestment Act of 1977 (CRA) examination of national banks every three years; see “CRA Questions and Answers” at <https://www.occ.treas.gov/topics/compliance-bsa/cra/questions-and-answers.html>. For banks supervised by the Federal Reserve, see “Consumer Compliance and CRA Examination Mandates,” at https://www.federalreserve.gov/supervisionreg/caletters/Attachment_CA_13-20_Frequency_Guidance.pdf. The Gramm-Leach-Bliley Act of 1999 (GLBA; P.L. 106-102) mandated the examination for smaller banks of \$250 million or less. For more information, see “Consumer Compliance Examinations—Examination and Visitation Frequency,” at <https://www.fdic.gov/regulations/compliance/manual/2/ii-12.1.pdf>. P.L. 109-351, the Financial Services Regulatory Relief Act of 2006, reduced the frequency of on-site CRA examinations for smaller banking institutions.

⁵ U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing and Community Development Act of 1977*, committee print, prepared by Report to accompany S. 1523, 95th Cong., 1st sess., May 16, 1977, Report No. 95-175 (Washington: GPO, 1977), pp. 33-35.

neighborhoods to fund out-of-state as well as various international lending activities at the expense of addressing the local areas' housing, agricultural, and small business credit needs.⁶ Another motivation for congressional action was to discourage *redlining* practices. One type of redlining can be defined as the refusal of a bank to make credit available to all of the neighborhoods in its immediate locality, including LMI neighborhoods where the bank may have collected deposits. A second type of redlining is the practice of denying a creditworthy applicant a loan for housing located in a certain neighborhood even though the applicant may qualify for a similar loan in another neighborhood. This type of redlining pertains to circumstances in which a bank refuses to serve all of the residents in an area, perhaps due to discrimination.⁷

The CRA applies to banking institutions with deposits insured by the Federal Deposit Insurance Corporation (FDIC), such as national banks, savings associations, and state-chartered commercial and savings banks.⁸ The CRA does not apply to credit unions, insurance companies, securities companies, and other nonbank institutions because of the differences in their financial business models.⁹ The Office of the Comptroller of the Currency (OCC), the Federal Reserve System, and the FDIC administer the CRA, which is implemented via Regulation BB.¹⁰ The CRA requires federal banking regulatory agencies to evaluate the extent to which regulated institutions are effectively meeting the credit needs within their designated assessment areas, including LMI neighborhoods, in a manner consistent with the federal prudential regulations for *safety and soundness*.¹¹

⁶ During the 20th century, U.S. banks began to expand their operations across designated geographical boundaries. For example, large regional banks in the 1960s and 1970s expanded their lending operations internationally and, in some cases, established foreign branches. The U.S. banking system was also transitioning from a system characterized primarily by unit banking, in which a small, independent bank operated solely in one state with no branches, to interstate banking. Interstate banking and branching allows a bank to conduct activities (e.g., accepting deposits, lending) across geographical (state) boundaries, forgoing the need to establish separate subsidiaries for each locality in which it operates and, therefore, having to duplicate the operating costs and capital requirements in each subsidiary. See James V. Houpt, "International Activities of U.S. Banks and in U.S. Banking Markets," *Federal Reserve Bulletin*, September 1999, pp. 599-615, at <http://www.federalreserve.gov/pubs/bulletin/1999/0999lead.pdf>; Frederick R. Dahl, "International Operations of U.S. Banks: Growth and Public Policy Implications," *Law and Contemporary Problems*, Winter 1967, pp. 100-130; and David L. Mengle, "The Case for Interstate Branch Banking," *Federal Reserve Bank of Richmond, Economic Review*, vol. 76 (November 1990), at http://www.richmondfed.org/publications/research/economic_review/1990/pdf/er760601.pdf. The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328, 108 Stat. 2338) overrode long-standing state prohibitions against nationwide banking. See Susan McLaughlin, "The Impact of Interstate Banking and Branching Reform: Evidence from the States," *Federal Reserve Bank of New York, Current Issues in Economics and Finance*, vol. 1, no. 2 (May 1995), at http://www.ny.frb.org/research/current_issues/ci1-2.pdf.

⁷ For a description of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, P.L. 90-284, 42 U.S.C. §3601 et seq.), see http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_fhact.pdf. For more information about the Fair Housing Act, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by David H. Carpenter; and CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*, by Libby Perl.

⁸ See Office of the Comptroller of the Currency (OCC), *Community Reinvestment Act*, Fact Sheet, March 2014, at <http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-reinvestment-act.pdf>.

⁹ Credit unions have membership restrictions, meaning these institutions may only lend to their members. A credit union may get permission to lend outside of its membership if it wants to operate in an underserved area. See CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter. Insurance and securities companies do not hold federally insured deposits and are not subject to the CRA.

¹⁰ The OCC is the primary regulator for national banks. The Federal Reserve System is the primary regulator for bank holding companies and some state banks. The Federal Deposit Insurance Corporation (FDIC) is the primary regulator for state banks not under the Federal Reserve. For more information, see CRS In Focus IF10035, *Introduction to Financial Services: Banking*, by Raj Gnanarajah and David W. Perkins. Several states also have separate community reinvestment laws applicable to banking institutions under their supervision.

¹¹ Safety and soundness regulation refers to banks maintaining prudent loan underwriting standards and sufficient regulatory capital to buffer against default risks.

Dissatisfaction with CRA in the late 1980s and early 1990s set the stage for a substantive update.¹² Community groups viewed CRA as ineffective at expanding credit access. Factors such as the savings and loan crisis, however, translated into tight credit and few banks looking to expand their operations, which arguably may have reduced the focus on CRA objectives. Banks also indicated that policy guidance from the regulators was unclear. Furthermore, banks viewed early CRA examination processes as placing too much emphasis on documentation and paperwork and too little emphasis on performance.

Following President Clinton's call for reform in 1993, the regulatory agencies issued a Joint Final Rule in 1995.¹³ Among the various revisions, the term *service area* was replaced with the concept of a CRA *assessment area*, where a bank's lending activities would be evaluated. This geographical area included the location of a bank's main office, branches, and deposit-taking automatic teller machines, as well as surrounding areas where the bank originates and purchases a substantial portion of loans.¹⁴ In addition, the CRA examination was customized to account for differences in bank sizes and business models. The definition of *community development* was also expanded beyond economic needs to include the promotion of community welfare. The community development definition also clarified the definitions of small businesses and farms covered by the rule.¹⁵

Since 1995, various stakeholders—both community groups and banks—have seen the need to further revisit CRA regulations. For example, the adoption of digital technologies by the financial industry has had potentially significant implications for financial inclusion (i.e., the increased access of traditionally underserved populations and markets to affordable financial services and products). As banks conduct more digital payments and online transactions, some commentators have raised concerns about the extent to which populations that are marginally attached to the economy might be excluded.¹⁶ Meanwhile, a bank may provide electronic and digital financial products and services, which may benefit a broader community outside of a delineated geographical assessment area; however, it may not automatically receive community development credit.¹⁷ Some banks may receive CRA credit while others may not for various activities (e.g., delivering financial products electronically rather than at a brick-and-mortar location, partnering with some nonprofit organizations for various community activities) depending upon a CRA examiner's interpretation. Inconsistencies in awarding CRA credit arguably increase uncertainty about eligible CRA activities and standards.

¹² Michael S. Barr, "Credit Where It Counts: The Community Reinvestment Act and Its Critics," *New York University Law Review*, May 2005, pp. 110-112.

¹³ See OCC, Federal Reserve System, FDIC, Office of Thrift Supervision, "Community Reinvestment Act Regulations and Home Mortgage Disclosure; Final Rules," 60 *Federal Register* 22156-22223, May 4, 1995.

¹⁴ Service areas were defined using the *equidistance principle*, which required a bank to serve areas that were uniformly equidistant from its branches and deposit-taking ATMs. The equidistant principle, however, was deemed inappropriate because it did not align with many banks' business models. The assessment area concept was adopted to provide greater flexibility for banks to establish boundaries that were in better alignment with the locations that it reasonably expected to serve, including allowing for the establishment of more contiguous political subdivisions.

¹⁵ The 1995 rule harmonized the definition of small businesses and farms as activities that promote economic development and meet the size eligibility standards consistent with the Small Business Administration's size limitations for its 504 Certified Development Company program and Small Business Investment Company program. For more information, see CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger and Anthony A. Cilluffo; and CRS Report R41456, *SBA Small Business Investment Company Program*, by Robert Jay Dilger and Anthony A. Cilluffo.

¹⁶ See Raphael Bostic, Shari Bower, Oz Shy, et al., *Shifting the Focus: Digital Payments and the Path to Financial Inclusion*, Federal Reserve Bank of Atlanta, Working Paper No. 20-1, September 30, 2020, at <https://www.atlantafed.org/-/media/documents/promoting-safer-payments-innovation/publications/2020/09/30/shifting-the-focus-digital-payments-and-the-path-to-financial-inclusion/Shifting-the-Focus-Digital-Payments-and-the-Path-to-Financial-Inclusion.pdf>.

¹⁷ See American Bankers Association, *CRA Modernization: Meeting Community Needs and Increasing Transparency*, December 2017, at <https://www.aba.com/-/media/documents/white-paper/cra-whitepaper2017.pdf>.

For these and other reasons, the federal banking regulators have been engaging stakeholders and seeking public input on CRA reform for several years.¹⁸ On May 5, 2022, the three bank regulators jointly issued a proposed rule to modernize and strengthen the CRA regulations.¹⁹ The proposed rule includes the following provisions:

- The definition of CRA assessment areas has been updated and expanded to allow more activities that occur outside of a bank's primary assessment area to be evaluated. Furthermore, the proposed rule clarifies that *all* activities that meet the community development definition are eligible for CRA consideration regardless of whether they occur in a delineated assessment area.
- The proposed rule expands the definition of community development to clarify the eligibility of product and service activities as well as to encourage partnerships with various financial entities that promote greater access of traditionally underserved populations and geographies to financial products and services.
- The proposed rule evaluates how banks' delivery systems, including internet and mobile banking, are responsive to LMI community needs.
- The proposed rule incorporates greater use of data and documentation to measure CRA effectiveness. Specifically, the proposed rule adopts a metrics-based approach to evaluate a bank's retail lending and community development financing (i.e., lending and investment) activities. In addition, banks must demonstrate the impact of their activities in census tracts that are likely to have the greatest need for community development. The emphasis on better data as well as more precise documentation of community development activities arguably provides greater clarity, consistency, and transparency for all stakeholders.

The proposed rule also customizes CRA examinations and data collection requirements to bank size and business models. Smaller banks would continue to be evaluated under the existing (status quo) CRA regulatory framework with the option to be evaluated under aspects of the new proposed framework. Public comments on the proposed rule are due by August 5, 2022.

Overview of the Proposed Rule

This section provides an overview of selected key topics in the proposed rule. The proposed rule updates how banks can determine their assessment areas, the definition of community development, and the evaluation framework for large and intermediate banks. The data collecting and reporting customized by bank size and business are also discussed.

Under the updated CRA framework, the following bank definitions would apply.

- *Small banks* are defined as those with average quarterly assets, computed annually, of less than \$600 million in either of the prior two calendar years.

¹⁸ On June 5, 2020, the OCC published a final rule updating its CRA framework that would have applied only to the banks it directly supervises. On May 18, 2021, the OCC announced that it would reconsider the rule. For more information, see CRS In Focus IF11865, *Implementation of the Community Reinvestment Act by the Office of the Comptroller of the Currency*, by Darryl E. Getter.

¹⁹ See U.S. Treasury, OCC, "Agencies Issue Joint Proposal to Strengthen and Modernize Community Reinvestment Act Regulations," New Release 2022-47, at <https://www.occ.treas.gov/news-issuances/news-releases/2022/nr-ia-2022-47.html>.

- *Intermediate banks* are defined as those with average quarterly assets, computed annually, of at least \$600 million in both of the prior two calendar years but less than \$2 billion in either of the prior two calendar years.
- *Large banks* are those with average quarterly assets, computed annually, of at least \$2 billion in both of the prior two calendar years.²⁰
- *Wholesale banks* provide services to larger clients, such as large corporations and other financial institutions; they generally do not provide financial services to retail clients, such as individuals and small businesses.
- *Limited purpose* banks offer a narrow product line (e.g., concentration in credit card lending) rather than providing a wider range of financial products and services.

These definitions will be used throughout this discussion unless otherwise specified.

Assessment Areas

Banks are currently required to delineate the assessment area(s) in which their primary regulator will conduct its CRA examination.²¹ The proposed CRA framework introduces a *facility-based assessment area*, which would be based upon where a bank has its physical main office, branches, and deposit-taking remote service facilities.²² Deposit-taking remote service facilities consist of automated teller machines (ATMs) as well as interactive or virtual ATMs. (The regulators have requested public feedback on how to treat bank business models that allows customers to make deposits on phones and mobile devices with the help of a bank's staff.) For large banks, wholesale banks, and limited purpose banks, a facility-based assessment area would include one or more metropolitan statistical areas (MSAs) or metropolitan divisions or one or more contiguous counties within an MSA, a metropolitan division, or the nonmetropolitan area of a state. Intermediate and small banks, however, may continue to use partial county destinations given that they have smaller service areas. Delineated facility-based assessment areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts.

Under the new proposal, large banks may have activities evaluated that occur outside of their facility-based assessment areas.

- A large bank must delineate a *retail lending assessment area* if it has a lending volume of either at least 100 home mortgages or at least 250 small business loans in 2 consecutive years outside of its facility-based assessment areas in any MSA or non-MSA areas of a state. (Banks would be evaluated only on retail lending activity in these areas.)
- Large or certain intermediate banks may establish an *outside retail lending area* for any retail lending that would occur outside of all facility-based and retail-lending assessment areas. This category would capture any LMI lending that is too geographically dispersed to satisfy the requirements for creating a more distinctive assessment area.

²⁰ The FDIC generally defines community banks as having assets that do not exceed \$10 billion. Banks with assets between \$1 billion and \$10 billion are considered to be large community banks. For more information, see Federal Deposit Insurance Corporation, *FDIC Community Banking Study*, December 2020, at <https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf>. For this reason, *large banks* as used in the context of CRA differs from when discussed in the context of prudential regulation.

²¹ See Kenneth Benton and Donna Harris, "Understanding the Community Reinvestment Act's Assessment Area Requirements," Federal Reserve Bank of Philadelphia, *Consumer Compliance Outlook*, First Quarter 2014, at <https://consumercomplianceoutlook.org/2014/first-quarter/understanding-cras-assessment-area-requirements/>.

²² Large banks may have multiple facility-based assessment areas. The regulators are not proposing that loan production offices, facilities where banks may assemble credit information and process loan applications, should constitute a facility-based assessment area.

- The proposal would allow for all eligible community development activities (discussed in the next section) to be eligible for CRA consideration. This flexibility would reduce uncertainty about the eligibility of community development activities that occur outside of assessment areas.

The agencies propose to update how these areas are defined and to affirm that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts.

Community Development Definition

Under the proposed rule, the current grouping of community development activities—deemed *responsive* to community needs and, therefore, eligible for CRA consideration—would increase from four to the following 11 categories:²³

- *affordable rental housing* (developed in conjunction with federal, state, local, or tribal government programs), multifamily rental housing with affordable rents, activities that support LMI homeownership, and purchases of mortgage-backed securities that finance affordable housing;
- *economic development* that supports small business and small farms (e.g., activities with an SBA Development Company, Small Business Investment Company, New Markets Venture Capital Company, Community Development Entity, Department of Agriculture Rural Business Investment Company, among various other activities listed in the proposed rule);
- *community supportive service* that serves or assists LMI individuals (e.g., childcare, education, workforce development, job training programs, health services, housing services);
- *revitalization activities* that occur in targeted census tracts (undertaken with a federal, state, local, or tribal government plan, program, or initiative), including reuse of vacant or blighted buildings, or activities consistent with a plan for a business improvement district;
- *essential community facilities* that benefit or serve residents of targeted census tract (e.g., schools, libraries, childcare facilities, parks, hospitals, healthcare facilities);
- *essential community infrastructure* that benefits or serves residents of targeted census tracts (e.g., broadband, telecommunications, mass transit, water supply and distribution, sewage treatment and collection systems);
- *recovery activities* that support revitalization in designated disaster areas, typically subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (with certain exceptions as determined by the Federal Reserve, the FDIC, and the OCC);
- *disaster preparedness and climate resiliency activities* that benefit or serve residents of targeted census tracts with the preparation for natural and weather-related disasters or climate-related risks;
- *activities undertaken with “impact” financial institutions*, such as minority depository institutions (MDIs), women’s depository institutions (WDIs), low-income credit unions

²³ Instead of *innovative* or *flexible* as discussed in current CRA regulations, the regulators state that *responsiveness* better captures the focus on community credit needs.

(LICUs), and Treasury Department-certified community development financial institutions (CDFIs);

- *financial literacy programs*, including housing counseling; and
- *qualifying activities in Native Land Areas* that benefit or serve residents, including LMI residents.

Current CRA regulations require that activities with a *primary purpose* of community development receive CRA credit. Under the proposed rule, the primary purpose standard could be met under two possible approaches. A loan, investment, or service can meet the primary purpose standard if the majority of funds (dollar amounts) is allocated towards activities described in one of the 11 categories above. Alternatively, the primary purpose standard can be met if the bona fide intent of the activity satisfies objectives represented by one of the 11 categories; the intent must be expressed in a prospectus, loan proposal, or community action plan.

The revisions to the community development definition and primary purpose standard determination, therefore, are designed to increase clarity and consistency when awarding CRA credits. In addition, the regulators propose to maintain a publicly available illustrative, non-exhaustive list of qualifying activities eligible for CRA consideration.²⁴ The agencies also propose to establish a process to allow banks to confirm in advance the eligibility of potential community development activities.

CRA Performance Tests

The regulators propose a new CRA evaluation framework consisting of the following four performance tests, which typically have both quantitative and qualitative components.

- *Retail Lending Test.* For each facility-based and retail lending assessment area, the retail lending test would evaluate the volume of retail lending (relative to a bank's deposit base) as well as the distribution of six loan product types to LMI borrowers. The types of loans are closed-end residential mortgages, open-end residential mortgages, multifamily mortgages, small business loans, small farm loans, and automobile loans. The definitions of small business and small farm loans would be aligned with those in rules promulgated by the Consumer Financial Protection Bureau pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203).²⁵ Automobiles would be a new loan category given their importance in certain LMI credit markets.²⁶ The retail lending test would be performed for a loan category considered a major product line, meaning that it comprises 15% or more of a bank's retail lending in a facility-based or retail lending assessment area except for automobile loans.²⁷ A bank's

²⁴ For example, see OCC, "CRA Illustrative List of Qualifying Activities," at <https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf>.

²⁵ Until Section 1071 is finalized, the regulators would continue to define small business and small farms using annual revenues of \$250,000 for small business and \$250,000 to \$1 million for small farms. For more information, see CFPB, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," September 1, 2021, at <https://www.consumerfinance.gov/rules-policy/rules-under-development/small-business-lending-data-collection-under-equal-credit-opportunity-act-regulation-b/>; Bureau of Consumer Financial Protection, "Small Business Lending Data Collection Under the Equal Credit Opportunity Act (Regulation B)," 86 *Federal Register* 56356-56606, October 8, 2021; and CRS Report R45878, *Small Business Credit Markets and Selected Policy Issues*, by Darryl E. Getter.

²⁶ A bank with assets totaling more than \$10 billion would be required to collect and maintain data for automobile loans until the completion of its next CRA examination.

²⁷ Because automobile loans have lower dollar values compared to mortgages and business loans, they would rarely meet the 15% threshold. For this reason, the regulators propose to use both a dollar volume percentage and a loan count percentage of

set of distribution metrics, tailored to each assessment area and product line, would be compared to its peers before it receives a performance score, discussed in the section entitled, “Performance Test Conclusions and Overall CRA Ratings”.

- *Retail Services and Products Test.* The Retail Services and Products Test evaluates all bank delivery systems as well as the consumer credit and deposit products considered responsive to the needs of LMI individuals.²⁸ The evaluation of bank delivery systems has a quantitative component in the form of a geographic distribution test of its branches and ATMs. All large banks would be evaluated on branch availability and other remote services such as ATM availability. Banks with more than \$10 billion in assets would also be evaluated on digital systems such as mobile and online banking. All large banks would be required to demonstrate the responsiveness of these products. For banks with more than \$10 billion in assets, the availability (e.g., hours of operation) of these products would also be examined.
- *Community Development (CD) Financing Test.* The quantitative part of the CD financing test would evaluate the dollar amount of a bank’s CD loans and CD investments in the facility-based assessment area, relative to the dollar value of its deposit base in the facility-based assessment area.²⁹ This test would be performed on all eligible loans (regardless of whether they meet the minimum threshold to be a major loan product, which is required for the Retail Lending Test). The test would also include activities occurring anywhere in a state or multistate MSA (where a bank has a facility-based assessment area) and nationwide areas for any CD activities. The calculations would include new CD originations as well as prior CD financing activities that would still remain on a bank’s balance sheet.³⁰ For each assessment area, the regulators would establish both a local and a national benchmark to compare a bank’s activities to its peers.³¹ Along with the quantitative test, the regulators propose a qualitative evaluation of CD activities to assess the impact of loans that have small dollar amounts yet are responsiveness to community needs and are highly impactful in LMI communities. A weighted average is then computed to determine a score that would correspond with categories discussed in the section entitled “Performance Test Conclusions and Overall CRA Ratings”.
- *Community Development Services Test.* This test evaluates a bank’s ability to foster partnerships among different stakeholders and create conditions for effective community development. The CD Services Test may use metrics such as the number of LMI participants in attendance at an event, the number of organizations participating at an event, the number of sponsored events or sessions, or the number of hours that staff spent at these events. Under certain circumstances, the number of hours volunteered by bank

automobile lending to determine when to evaluate it as a major product line.

²⁸ Automobile loans, which are a form of consumer credit, would be evaluated under the Retail Lending Test. The forms of consumer credit evaluated under the Retail Services and Products Test would include, for example, credit cards.

²⁹ In general, a retail loan may only be considered under the Retail Lending Test and is not eligible for consideration under the CD Financing Test with the exception of multifamily loans under certain circumstances.

³⁰ Past loan originations are allowed in the calculations to discourage *loan churning*, a practice that would allow a bank’s balance sheet to reflect new loan originations solely for the purpose of obtaining CRA credit without an actual increase in lending activity. Specifically, banks may reduce the maturity of loan originations, which would cause borrowers to refinance an existing loan more frequently. Banks may purchase loans from other banks to receive CRA credit even though no new loan origination has occurred. Because previous CRA lending activity would continue to be recognized in these calculations, banks would have the incentive to provide borrowers with longer-term financing.

³¹ These benchmark metrics would be established once sufficient data has been collected.

staff for activities that met a community development need may be considered for credit under the CD Services Test.

When evaluating the impact and responsiveness of a bank's qualifying activities, particularly for the CD Financing and CD Services, the regulators have established *impact review factors* that include but are not limited to the following: serve persistent poverty counties or county-equivalents;³² serve geographic areas with low levels of community development financing; support MDIs, WDIs, LICUs, or CDFIs; serve LMI individuals and families; support small businesses or small farms with gross annual revenues of \$250,000 or less; directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in High Opportunity Areas;³³ benefit Native American communities; are a qualifying grant or donation; reflect bank leadership through multifaceted or instrumental support; or result in a new CD financing product or service that addresses needs for LMI individuals and families. Similar to the 11 community development categories, the list of explicit impact review factors is intended to promote greater transparency and consistency in evaluations of eligible CRA activities.

Given the variation in bank size, business models, and data collection requirements, not all banks are required to take all four performance tests. **Table 1** summarizes which of the CRA performance tests are mandatory for banks by size.

Table 1. Required CRA Performance Tests by Bank Size

Bank Definition	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
Large Bank (assets totaling at least \$2 billion)	mandatory	mandatory; additional requirements (e.g., the possibility of an automobile lending test) for large banks with assets greater than \$10 billion	mandatory	mandatory
Intermediate Bank (assets of at least \$600 million but less than \$2 billion)	mandatory		optional (or status quo, referring to current CRA framework)	mandatory
Small Banks (assets totaling \$600 million or less)	optional (or status quo, referring to the current CRA framework)			
Wholesale and Limited Purpose Banks			mandatory (tailored for their individual business models)	

³² Persistent poverty counties are defined as any county, including county equivalent areas in Puerto Rico, that has had 20% or more of its population living in poverty over the past 30 years, or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the U.S. Census Bureau.

³³ A *high opportunity area* is defined as either (1) an area designated by the Department of Housing and Urban Development as a *Difficult Development Area* during any year covered by an Underserved Markets Plan (sponsored by either Fannie Mae or Freddie Mac) in the year prior to its effective date, whose poverty rate falls below 10% for metropolitan areas or 15% for non-metropolitan areas; or (2) an area designated by a state or local Qualified Allocation Plan as a high opportunity area whose poverty rate falls below 10% for metropolitan areas or 15% for non-metropolitan areas.

Source: Department of the Treasury, Office of the Comptroller of the Currency; Federal Reserve System; Federal Deposit Insurance Corporation, “Community Reinvestment Act,” 87 *Federal Register* 33884-34066, June 3, 2022; and Federal Reserve Bank of St. Louis, *Ask the Regulators: CRA Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking*, May 11, 2022, at <https://bsr.stlouisfed.org/connectingcommunities/#104/ask-the-regulators-cra-reform-update-overview-of-the-interagency-cra-notice-of-proposed-rulemaking>.

A bank can seek permission from its primary regulator to delineate its assessment areas under the strategic plan option. A bank operating under a strategic plan option would still be expected to submit plans that include the same performance tests and standards. If, however, a bank is substantially engaged in activities outside the scope of these tests, its primary regulator would determine whether a more customized CRA framework would be more appropriate.

Performance Test Conclusions and Overall CRA Ratings

The regulators propose to update how performance test conclusions as well as overall CRA ratings are assigned. In general, a bank may receive 5 possible conclusions that are assigned a point value following a performance test. The conclusions and point values are as follows: *Outstanding* [10 points], *High Satisfactory* [7 points], *Low Satisfactory* [6 points], *Needs to Improve* [3 points], or *Substantial Non-Compliance* [0 points]. For banks with multiple facility-based assessment areas that must take multiple performance tests, the regulators propose averaging their conclusion points by type of performance test to obtain a composite score for a particular test.

Banks receive CRA ratings for their overall institution as well as at the state and multistate MSA levels. Under the proposed rule, banks would continue to receive four possible overall CRA ratings—*Outstanding*, *Satisfactory*, *Needs to Improve*, or *Substantial Non-Compliance*. The determination of the overall CRA rating, however, has been updated to reflect the new proposed CRA performance tests. A bank’s overall CRA rating will be determined by first combining the individual (or average) scores by type of performance test, which are then assigned a specific weight. For a large bank, the specific weights for the Retail Lending Test, CD Lending Test, Retail Service and Product Test, and CD Services Test would be 45%, 30%, 15%, and 10%, respectively. For intermediate banks, the Retail Lending Test and CD Lending Test would both receive specific weights of 50%. Small banks would either receive a rating based solely upon the Retail Lending Test or continue to follow their applicable requirements under the existing (status quo) CRA framework. Finally, the regulators affirm that any discriminatory or certain other illegal practices could adversely affect a bank’s CRA ratings at all levels.

Data Collection and Reporting

The proposed rule has new data collection requirements for large banks with assets over \$10 billion. For example, these banks would be required to collect and maintain depositor location data, which would be aggregated at the county-, state, multistate MSA, and institution level. These banks would also be required to collect and maintain data for automobile loans. For the most part, data collection requirements for small banks will remain unchanged, thereby minimizing data collection and reporting burdens.

Concluding Remarks

Determining the extent to which banks’ financial decisions are motivated by CRA incentives, profit incentives, or both can be challenging particularly in cases where those incentives exist simultaneously. Compliance with CRA does not require banks to make unprofitable, high-risk loans that would threaten the financial health of the bank. Instead, CRA loans have profit potential; and bank regulators require all loans—including CRA loans—to be prudently underwritten. Hence, whether observations of greater CRA lending activities would be attributed to the proposed CRA evaluation framework, if finalized, is unclear.

However, the proposed framework would likely improve the data and documentation of CRA activities already sponsored by banks that currently may not be captured or evaluated under the existing framework.

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