

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DATE: October 16, 2023

TO: Board of Governors

FROM: Staff¹

SUBJECT: Final Rule Amending Community Reinvestment Act Regulations (Regulation BB)

ACTION REQUESTED: Approval to publish in the Federal Register the attached draft final rule to revise the Board's regulations implementing the Community Reinvestment Act (CRA). A substantially similar final rule is being presented for final action at, and would be published jointly with, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). Staff also request authority to make technical, non-substantive changes to the attached draft final rule prior to publication in the Federal Register.

EXECUTIVE SUMMARY:

- **CRA framework:** As is the case under the current regulation, the draft final rule would establish a tiered CRA evaluation framework that differentiates requirements by bank asset size. The draft final rule would also significantly build on metrics and other criteria that are used under the current framework, but in a more consistent and transparent manner. Specifically, consistent with the proposal, the draft final rule would:
 - Maintain the current CRA evaluation for banks with less than \$600 million in total assets (small banks) but provide them the option of evaluation under a new test for retail lending;
 - Maintain the current community development evaluation and implement a new retail lending evaluation for banks with between \$600 million and \$2 billion in total assets (intermediate banks) and provide them the option of evaluation under a new test for community development financing; and
 - Implement separate evaluations for retail lending, retail services and products, community development financing, and community development services for banks with over \$2 billion in total assets (large banks). For large banks with over

¹ Mr. Belsky, Mr. Firschein, Ms. Johnson, Ms. Neill, Mr. Patel, and Mr. Hawkins (Division of Consumer and Community Affairs); Mr. Van Der Weide, Mr. Winerman, Mr. Alexander, Mr. Smith, and Mr. Gaffney (Legal Division).

\$10 billion in total assets, the evaluation of retail services and products would include digital delivery systems.

The draft final rule would also provide flexibility for banks with limited retail services and products (limited purpose banks) to be evaluated exclusively on community development financing activities. In addition, the draft final rule retains the strategic plan option for banks that can demonstrate that an alternative method for evaluation (a strategic plan) is appropriate.

- **Geographic areas in which a bank’s activities are considered:** As is the case today, under the draft final rule, the Retail Lending Test would evaluate retail lending of banks in areas that encompass or are adjacent to deposit-taking facilities (known as facility-based assessment areas). For large banks with 80 percent or less of their lending in facility-based assessment areas, however, closed-end home mortgage or small business lending would also be evaluated in “retail lending assessment areas” where they originated more than 150 closed-end home mortgage loans or 400 small business loans in both the prior two years. In addition, under the draft final rule, the agencies would evaluate retail lending in a bank’s “outside retail lending area” for large banks, as well as for intermediate banks if the majority of their retail lending is outside their facility-based assessment areas.

The Community Development Financing Test would evaluate how well large banks (and optionally, intermediate banks) meet community development financing needs in each facility-based assessment area, State, or multistate metropolitan statistical area (MSA), as applicable, and at the institution level (*i.e.*, relating to the bank’s performance overall, rather than its performance in a particular state, multistate MSA, or specific facility-based assessment area).

The Community Development Services Test would consider the importance of community development services in fostering partnerships among different stakeholders, building capacity, and credit conditions for effective community development, including in rural areas, in facility-based assessment areas, in States, multistate MSAs, as applicable, and nationwide.

The Retail Services and Products Test would 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, with conclusions on this test in facility-based assessment areas, in States, multistate MSAs, as applicable, and at the institution level. Retail banking products (which includes both deposit products and credit products and programs) would only positively contribute to a bank’s conclusion on this test.

- **Key changes from the proposal:** The draft final rule would generally adopt the proposed framework with certain key changes, including those summarized below. Relative to the proposal, the draft final rule:

- Simplifies the Retail Lending Test by reducing the number of product lines for the distribution analysis. Specifically, the number of product lines potentially evaluated is reduced from six to three for most banks. In addition, the agencies would only evaluate the automobile lending performance of banks that are majority automobile lenders, or at the bank's option.
- Adjusts the standards for retail lending performance to make the "Low Satisfactory," "High Satisfactory," and "Outstanding" supporting conclusions under the Retail Lending Test more achievable.
- Increases weighting of community development financing activities for large banks by giving equal weight to retail activities and community development activities (compared to the proposal's 60 percent retail/40 percent community development split).
- Limits evaluation of mortgage and small business lending in retail lending assessment areas by: (1) exempting a large bank that conducts 80 percent or more of specified retail lending activity inside its facility-based assessment areas; (2) increasing the threshold for delineating retail lending assessment areas from 100 closed-end and open-end home mortgage loans to 150 closed-end home mortgage loans, and from 250 to 400 small business loans; and (3) reducing the number of product lines potentially evaluated in these areas to closed-end home mortgage and small business lending.
- Adds a metric and impact factor to evaluate the community development investments of large banks with over \$10 billion in assets under the Community Development Financing Test to be responsive to feedback on the importance of evaluating certain bank community development investments such as in Federal Low-Income Housing Tax Credit and New Markets Tax Credit projects given that the draft final rule would not have a separate large bank investment test.
- Provides flexibility and clarity for the strategic plan option.
- Increases the amount of time for banks to come into compliance with the new requirements from 12 months to more than 24 months after the final rule is adopted and published on the Board's website (discussed further below).
- For CRA ratings downgrades, maintains the current standard for "discriminatory and other illegal credit practices" rather than adopting the proposal's incorporation of illegal credit and non-credit practices.
- Treats responsive credit products and responsive deposit products only as a positive contributor to the Retail Services and Products Test conclusion.
- Ensures consideration of small business loans that meet a size and purpose test under the economic development category of community development.

- **Data and reporting:** The draft final rule would not change data collection and reporting requirements for banks with less than \$2 billion in total assets (*i.e.*, small and intermediate banks). Large banks would be subject to updated and expanded data collection, maintenance, and reporting requirements to support the implementation of metrics and benchmarks for retail lending, community development financing, and retail services and products. The draft final rule would limit certain new data requirements to large banks with over \$10 billion in assets.
- **Implementation and timing:** The effective date of the draft final rule would be the first day of the first calendar quarter that begins at least 60 days after publication in the Federal Register, which staff expect would be April 1, 2024. However, in response to feedback, most definitions, assessment area requirements, and other general provisions would become applicable on January 1, 2026. Reporting requirements would become applicable on January 1, 2027, with data being reported by April 1, as would data collection and maintenance for operations subsidiaries,² affiliates, and third-party community development loans and investments.

BACKGROUND AND OBJECTIVES:

The CRA is a seminal piece of legislation that requires the Board, the FDIC, and the OCC (together referred to as the agencies) to assess a bank’s record of meeting the credit needs of its entire community, including low- and moderate-income (or LMI) neighborhoods, consistent with the safe and sound operation of the bank.³ Upon completing this examination, the statute requires the agencies to prepare a written evaluation of the bank’s CRA performance, which is made public. The statute further provides that each agency must consider a bank’s CRA performance in connection with the bank’s application for a deposit facility, as the term is defined in the CRA.⁴ The agencies implement the CRA through their CRA regulations, which

² The draft final rule would add a new definition of “operations subsidiary” to the Board’s CRA regulation and “operating subsidiary” to the FDIC’s and OCC’s regulations to identify those bank affiliates whose activities would be required to be attributed to a bank’s CRA performance. Specifically, the draft final rule defines “operations subsidiary” as 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.

³ 12 U.S.C. 2903(a).

⁴ “Application for a deposit facility” is defined as an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for: a charter for a national bank or Federal

are supplemented by supervisory guidance and establish the framework and criteria by which the agencies assess a bank's CRA performance.

The agencies set out to achieve eight objectives in the draft final rule. The discussion of each objective below includes examples of aspects of the draft final rule that support the objective.

- (1) Strengthen the achievement of the core purpose of the statute. The draft final rule would establish an updated performance evaluation framework for evaluating banks' records of meeting the credit needs of their entire communities across geographies and activities. The draft final rule approach also seeks to encourage financial inclusion – for example, by separately evaluating low-income and moderate-income lending and loans to smaller small businesses, by evaluating banks' activities with Minority Depository Institutions (MDIs) and Community Development Financial Institutions (CDFIs), and by including impact and responsiveness factors, such as factors for bank activities in Native Land Areas, persistent poverty areas, and high-poverty census tracts.
- (2) Adapt to changes in the banking industry, including the expanded role of mobile and online banking. Since the CRA regulations were last updated, there have been significant changes in how banking services are delivered, including through the use of internet and mobile banking, and hybrid models that combine physical footprints with online lending. The draft final rule would modernize the agencies' approach to evaluating banks in

savings and loan association; deposit insurance in connection with a newly chartered State bank, savings bank, savings and loan association or similar institution; the establishment of a domestic branch or other facility with the ability to accept deposits of a regulated financial institution; the relocation of the home office or a branch office of a regulated financial institution; the merger or consolidation with, or the acquisition of the assets, or the assumption of the liabilities of a regulated financial institution requiring approval under 12 U.S.C. 1828(c) or under regulations issued under the authority of title IV of the National Housing Act [12 U.S.C. 1724 et seq.]; or the acquisition of shares in, or the assets of, a regulated financial institution requiring approval under 12 U.S.C. 1842 or section 408(e) of the National Housing Act [12 U.S.C. 1730a(e)]. 12 U.S.C. 2902(3).

certain geographies by, for example, evaluating certain banks' retail lending outside of facility-based assessment areas. The draft final rule would continue to recognize the importance of physical branches, while also including consideration of digital and other delivery systems for certain large banks.

- (3) Provide greater clarity and consistency in the application of the regulations. The draft final rule would address longstanding stakeholder requests for more clarity and consistency in the application of CRA regulations. For example, the draft final rule would establish standardized metrics for CRA evaluations of certain banks and would clarify the activities that are eligible for community development consideration. The draft final rule would also create a process through which the agencies would maintain a publicly available illustrative list of non-exhaustive examples of qualifying activities as well as a process for banks to confirm if a particular activity is eligible for community development consideration.
- (4) Tailor performance standards to account for differences in bank size, business model, and local conditions. The draft final rule would tailor performance standards for banks defined as small (less than \$600 million in assets), intermediate (\$600 million to \$2 billion in assets), and large (more than \$2 billion in assets), while also retaining the flexibility provided by the current rules through the strategic plan option and the limited purpose bank designation.
- (5) Tailor data collection and reporting requirements and use existing data whenever possible. As further explained below, the new mandatory data collection and maintenance requirements introduced through the draft final rule would not apply to small and intermediate banks, with some new requirements for banks between \$2 billion

and \$10 billion in assets and additional new requirements for banks with over \$10 billion in assets.

- (6) Promote transparency and public engagement. The draft final rule recognizes that transparency and public engagement are fundamental aspects of the CRA evaluation process. In particular, the draft final rule would establish processes through which the public could provide input on both community credit needs and opportunities in connection with a bank's next scheduled CRA examination as well as a bank's strategic plan. The agencies are also planning to develop data tools for banks and 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.
- (7) Confirm that CRA and fair lending are mutually reinforcing. The agencies have long recognized the importance of ensuring that banks meet the credit needs of their communities and do so in a fair and equitable manner. The draft final rule would continue to provide that a bank's facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude LMI census tracts. The draft final rule would also continue to allow downgrading a bank's CRA rating based on evidence of discriminatory and other illegal credit practices. Furthermore, the draft final rule would add special purpose credit programs (as defined in the Equal Credit Opportunity Act) as a category of responsive credit programs.
- (8) Promote a consistent regulatory approach that applies to banks regulated by all three agencies. The draft final rule reflects a unified approach among the three agencies, as requested by stakeholders.

DISCUSSION:

I. CRA Statutory and Regulatory History

Congress enacted the CRA as part of the Housing and Community Development Act of 1977.⁵ In enacting the CRA, 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.⁶

The CRA directs the agencies to assess a bank's record of meeting the credit needs of its entire community, including low- or moderate-income neighborhoods, consistent with the safe and sound operation of the bank; prepare a written evaluation of a bank's CRA record; and take this record into account when evaluating certain banking applications.⁷ In 1978, the agencies issued the first set of regulations to implement the CRA,⁸ which have been significantly revised by the agencies twice – in 1995⁹ and 2005¹⁰ – with the most substantive interagency update occurring in 1995. In addition, the agencies have periodically published Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers) to provide guidance on the CRA regulations to agency personnel, banks, and the public.¹¹

⁵ Pub. L. 95-128, 91 Stat. 1111 (Oct. 12, 1977). The CRA was one of several laws enacted during that time to address fairness and financial inclusion in access to housing and credit.

⁶ 12 U.S.C. 2901(a).

⁷ 12 U.S.C. 2903(a).

⁸ 43 FR 47144 (Oct. 12, 1978).

⁹ 60 Fed. Reg. 22190 (May 4, 1995).

¹⁰ 70 Fed. Reg. 44268 (Aug. 2, 2005).

¹¹ See 81 FR 48506 (July 25, 2016).

II. The Current CRA Evaluation Framework

Under the current CRA framework, the agencies use different methods to assess CRA performance for banks based on asset size and business model. For example, current rules provide a streamlined assessment method for small banks that emphasizes lending performance; a hybrid assessment method for intermediate small banks that combines a lending test with a community development test; and a more in-depth assessment method for large banks that focuses on three separate performance measures. The three performance measures for large banks are lending (to assess retail and community development loans), investment (to assess qualified investments), and service (to assess retail and community development services). As an alternative, the current rules give banks of any size the choice to be evaluated under a strategic plan, which is a plan that must set out measurable, annual goals for lending, service, and investment activities, and must be developed with community input and approved by the appropriate Federal financial supervisory agency.

To facilitate the evaluation of a bank's CRA performance, banks must delineate one or more assessment areas where their main offices, branches, and deposit-taking automated teller machines (ATMs) are located, as well as surrounding geographies where a substantial portion of their loans are originated or purchased.

The current CRA rules also delineate the type of activities that are eligible for consideration in the evaluation of a bank's CRA performance. For example, certain banks are subject to a performance test that includes a review of their retail lending (*e.g.*, home mortgage loans, small business loans, small farm loans, and consumer loans) and, if applicable, retail banking service activities. Banks subject to 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.

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

III. The Proposed Rule

The proposed rule was published for public comment in the Federal Register on June 3, 2022.¹² In response, the agencies received approximately 950 comment letters from a wide range of stakeholders, 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; individual commenters; and other interested parties. These stakeholders provided comments covering a wide-ranging set of topics across the entire proposed rule, and commenter sentiment varied widely. Staff at the agencies have carefully considered all the commenter feedback in developing the draft final rule. As discussed further below, staff have modified several aspects of the draft final rule upon consideration of commenter feedback.

IV. Description of the Draft Final Rule

This section describes the key aspects of the draft final rule.

A. Bank Asset Size Categories and Limited Purpose Banks

¹² 87 Fed. Reg. 33884 (June 3, 2022).

The draft final rule would implement a revised regulatory framework for the CRA that, like the current framework, is based on bank asset size and business model. This tiering of the framework recognizes the capacity and resource differences among banks and is consistent with the proposal.

The draft final rule would classify banks as either small, intermediate, large, or limited purpose banks. The asset size thresholds would be adjusted annually for inflation and have been increased relative to the bank asset size thresholds in the current CRA rule. The asset size classifications included in the draft final rule are the same as those in the proposal: small banks would be those with assets of less than \$600 million as of December 31 in either of the prior two calendar years; intermediate banks would be those with assets of at least \$600 million and less than \$2 billion as of December 31 in both of the prior two calendar years; and large banks would be those with assets of at least \$2 billion as of December 31 in both of the prior two calendar years.

The draft final rule would revise the definition of limited purpose bank to include both those banks currently considered “limited purpose banks” and those currently considered “wholesale banks.”¹³ The agencies have also clarified that limited purpose banks are not evaluated as small, intermediate, or large banks.

B. Evaluation Framework

Overview. The draft final rule’s performance evaluation framework would utilize performance tests to assess a bank’s record of meeting the credit needs of its entire community, consistent with the agencies’ objectives described above. Depending on a bank’s asset size or

¹³ Specifically, the draft final rule would define 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. This definition would incorporate the existing “wholesale bank” designation, which would be eliminated as unnecessary.

limited purpose bank designation, and consistent with the proposal, the draft final rule would evaluate banks under one or a combination of the following seven performance tests, as shown in the following table:

Applicability of Performance Tests Under Draft Final Rule¹⁴

Small Banks	Small Bank Lending Test (default) or Retail Lending Test (opt-in)			
Intermediate Banks	Retail Lending Test		Intermediate Bank Community Development Test (default) or Community Development Financing Test (opt-in)	
Large Banks	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
Limited Purpose Banks	Community Development Financing Test for Limited Purpose Banks			

To provide flexibility, the draft final rule would also retain a revised form of the strategic plan option as an alternative method for evaluation under the CRA.

For each performance test in the draft final rule, the agencies would 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, the agencies would assign one of the following 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 would assign one of the following four conclusions: “Outstanding”; “Satisfactory”; “Needs to Improve”; or “Substantial Noncompliance.”

¹⁴ As under the proposal, the activities of a bank’s operations subsidiaries would be attributed to the bank for purposes of evaluating the bank’s CRA performance.

The conclusions assigned in connection with each of the applicable performance tests would be combined to develop a bank's CRA rating. The agencies would assign a bank one of the following four ratings, consistent with the statute: "Outstanding"; "Satisfactory"; "Needs to Improve"; or "Substantial Noncompliance."

For banks that would be evaluated under more than one of the performance tests in the draft final rule, specific weights would be applied to each performance test conclusion, with such weighting varying by asset size. In response to commenter feedback that the proposal underweighted the Community Development Financing Test, the draft final rule adjusts the weightings for large banks as follows: the Retail Lending Test would be weighted at 40 percent (down from 45 percent in the proposal); the Retail Services and Products Test would be weighted at 10 percent (down from 15 percent in the proposal); the Community Development Financing Test would be weighted at 40 percent (up from 30 percent in the proposal); and the Community Development Services Test would be weighted at 10 percent, as proposed. For intermediate banks, each applicable performance test would be weighted at 50 percent, as under the proposal.

As noted above, banks of all sizes would maintain the option to demonstrate that they should be evaluated under an approved strategic plan. The draft final rule would update the standards for obtaining approval for such plans to provide greater clarity.

Retail Lending Test. Under the draft final rule, the Retail Lending Test would evaluate 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, small farm loans, and, for certain banks, automobile loans. The Retail Lending Test would evaluate how banks are serving LMI individuals, small businesses, small farms, and LMI census tracts in

the bank's facility-based assessment areas and, as applicable, retail lending assessment areas and the bank's outside retail lending area.¹⁵

The Retail Lending Test in the draft final rule would include two sets of metrics, as well as additional factors that would be used to complement the use of metrics. First, the Retail Lending Volume Screen would measure the volume of a bank's lending relative to its deposit base in its facility-based assessment area and would compare that ratio to the aggregate ratio for all reporting banks with at least one branch in the same facility-based assessment area.

Second, under the draft final rule, the agencies would evaluate the geographic distribution and borrower distribution of a bank's major product lines in the bank's Retail Lending Test Areas (*i.e.*, the bank's facility-based assessment areas, and, as applicable, retail lending assessment areas,¹⁶ and outside retail lending area) using a series of metrics and benchmarks. For example, if an agency evaluates a bank's closed-end mortgage lending in a Retail Lending Test Area, the geographic distribution analysis would evaluate the bank's percentage of lending in low-income census tracts and moderate-income census tracts. Similarly, the borrower distribution analysis would evaluate the bank's percentage of closed-end mortgage lending to low-income borrowers and moderate-income borrowers. 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."

Under the draft final rule, after an agency determines a recommended conclusion for a Retail Lending Test Area, the agency would consider a list of additional factors that are intended

¹⁵ Section IV.C of this memorandum explains which banks are evaluated in retail lending assessment areas and outside retail lending areas.

¹⁶ As discussed further below, only closed-end home mortgage loans and small business loans are potentially evaluated in retail lending assessment areas.

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. The agencies would be able to use these factors to inform an upward or downward adjustment of a bank's Retail Lending Test conclusion. For example, one additional factor included in the draft final rule is a bank's closed-end home mortgage, small business, small farm, or automobile lending in distressed and underserved nonmetropolitan middle-income census tracts where the bank's nonmetropolitan facility-based assessment area or nonmetropolitan retail lending assessment area includes very few or no LMI census tracts.

In response to commenter feedback, the agencies sought ways to ensure that the draft final rule's Retail Lending Test appropriately balances the agencies' objectives. For example, the draft final rule adjusts some of the multipliers used in the proposal to establish performance ranges to make "Outstanding," "High Satisfactory," and "Low Satisfactory" Retail Lending Test supporting conclusions more attainable under the draft final rule relative to the proposal, while maintaining what staff believes to be an appropriate degree of rigor. Moreover, as compared to the proposal, the draft final rule would reduce the number of product lines potentially evaluated under the Retail Lending Test from six to three for most banks (*i.e.*, closed-end home mortgage loans, small business loans, and small farm loans).¹⁷ In addition, under the draft final rule, the agencies would evaluate a bank's automobile loans if such loans represent a majority of the bank's retail lending, or at the bank's option.

¹⁷ Open-end home mortgage loans, multifamily loans, and automobile loans are no longer evaluated as a matter of course under the Retail Lending Test.

Retail Services and Products Test. The Retail Services and Products Test would utilize 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 LMI individuals, small businesses, small farms, and LMI census tracts. Retail banking services include retail financial services provided by a bank to consumers, small businesses, and small farms, and includes a bank's systems for delivering retail financial services. Retail banking products include credit and deposit products or programs that facilitate a lending or depository relationship between the bank and consumers, small businesses, or small farms.

Under the draft final rule, this performance test would maintain the overall approach set out in the proposal, with certain modifications, and would incorporate benchmarks to evaluate the availability of a bank's branch and remote service facilities (including ATMs) under the retail banking services aspect of the test. In addition, the agencies would evaluate the digital and other delivery systems of some banks.¹⁸

Evaluation of a bank's retail banking products would include a review of the responsiveness of the bank's credit products and programs, as well as the availability and usage of responsive deposit products. This aspect of the performance test would be designed to evaluate a bank's efforts to provide products that are responsive to the needs of LMI communities. Both credit products and deposit products would be evaluated at the institution level and, in a change from the proposal, would be given only positive consideration, meaning that these evaluations would not under any circumstances cause a bank to receive a lower Retail

¹⁸ Evaluation of the delivery systems of a large bank with assets greater than \$10 billion would include a review of the bank's branch availability and services, remote service facilities, and digital systems and other delivery systems. The agencies would not consider the digital systems and other delivery systems of large banks with assets less than or equal to \$10 billion, unless the bank does not operate any branches.

Services and Products Test conclusion. The agencies would not evaluate the availability and usage of responsive deposit products in connection with large banks with assets less than or equal to \$10 billion, except at the bank's option.

Community Development Financing Test. The Community Development Financing Test would evaluate 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 MSA, as applicable, and at the institution level.¹⁹

The Community Development Financing Test would include 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, investments, and services that are particularly impactful or responsive. The draft final rule would also include a metric for banks with assets greater than \$10 billion to measure the bank's community development investments relative to deposits. This metric would be intended to ensure that a focus on certain bank community development investments (including Federal Low-Income Housing Tax Credit and New Market Tax Credit investments) is applied at the institution level and would only contribute positively to a bank's Community Development Financing Test conclusion.

Community Development Services Test. The Community Development Services Test would consider the importance of community development services in fostering partnerships among different stakeholders, building capacity, and creating conditions for effective community

¹⁹ Section IV.D of this memorandum explains which activities would qualify as "community development" activities under the draft final rule.

development, including in rural areas. The agencies would evaluate large banks under this performance test in facility-based assessment areas, States, multistate MSAs, as applicable, and nationwide.

Under the draft final rule, the evaluation would include 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. The proposal would have allowed consideration of all volunteer activities that meet an identified community need in nonmetropolitan areas, but many commenters opposed the inclusion of volunteer activities unrelated to the provision of financial services in any location. Accordingly, the draft final rule would maintain the existing requirement that volunteer services considered under the Community Development Services Test be related to the provision of financial services or the expertise of bank staff and must have a community development purpose. Under the draft final rule, a bank would also receive consideration under the Community Development Services Test for activities that promote financial literacy for LMI individuals, households, and families, even if the activities benefit individuals, households, and families of other income levels as well.

The proposal would have incorporated a metric measuring community development service hours per full-time employee for banks with assets greater than \$10 billion, but some commenters expressed concern with the complexity and burden associated with the requirement. The draft final rule accordingly would not include this metric, as staff believe doing so would increase complexity and burden with limited benefit to assessing community development services.

Community Development Financing Test for Limited Purpose Banks. The draft final rule adopts the proposed Community Development Financing Test for Limited Purpose Banks, with

changes made in response to commenter feedback. This performance test 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 which would measure a bank's volume of activities relative to its capacity.

Strategic plans. As noted above, the draft final rule would maintain a strategic plan option as an alternative method for evaluation. Under the draft final rule, the strategic plan option would be available to any bank that sufficiently justifies that it should be evaluated under a plan rather than the performance tests that would otherwise apply. This option would be particularly important for banks with business models that are not conducive to evaluation under the performance tests, such as consumer credit card banks. Upon consideration of commenter feedback on the proposal, the draft final rule provides additional clarity and explains 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.

C. Geographic Areas in which a Bank's Activities are Considered

Facility-based assessment areas. As under the current CRA regulations, the draft final rule would maintain facility-based assessment areas as the cornerstone of the CRA evaluation framework. The draft final rule would adopt the delineation requirements for facility-based assessment areas as proposed with clarifying changes. Specifically, banks would continue to delineate facility-based assessment areas based on where the following facilities are located: main offices, branches, and deposit-taking remote service facilities. As under the proposal, large banks would be required to delineate facility-based assessment areas composed of whole counties, while intermediate and small banks would continue to be permitted to delineate

facility-based assessment areas composed of partial counties. Consistent with the current rule and the proposal, the draft final rule would provide that facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude LMI census tracts.

Retail lending assessment areas. Similar to the proposal, the draft final rule would require 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 would be evaluated under the Retail Lending Test, but not the other performance tests, in retail lending assessment areas for either or both of two product lines (closed-end mortgages or small business loans) if they exceed absolute threshold amounts of lending, as described below.

Relative to the proposal, the draft final rule limits the scope of 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. In addition, the draft 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 (from 100 home mortgage loans in the proposal) or at least 400 small business loans (from 250 in the proposal) in each year of the prior two calendar years. The draft final rule would also simplify the evaluation of a large bank's retail lending performance relative to the proposal by reducing the number of product lines potentially evaluated in a retail lending assessment area from six to two product lines, and evaluating a product only if the bank exceeds the relevant loan count threshold for that product line.

Outside retail lending area. Under the draft final rule, the agencies would evaluate the retail lending performance of all large banks and certain intermediate banks in their outside retail lending areas. This outside retail lending area would consist of the nationwide area outside of the bank's facility-based assessment areas and any retail lending assessment areas. Evaluation in these areas would be designed to facilitate a comprehensive assessment of a bank's retail lending to LMI individuals and communities under the Retail Lending Test, and to adapt to changes in the banking industry. For an intermediate bank, the agencies would 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 bank does not conduct a majority of its retail lending outside of its facility-based assessment areas, the bank would be permitted to opt to have the agencies evaluate the bank's retail lending in its outside retail lending area.

Areas for eligible community development activities. Like the proposal, the draft final rule would provide 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 draft 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 draft final rule combines two components through a weighted average calculation: (1) performance within the bank's facility-based assessment areas; 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 would recognize differences in bank business models.

D. Categories of Community Development

Updated community development definition. Like the current CRA rule, the draft final rule would provide that, in evaluating a bank's CRA performance under the applicable performance tests, the agencies would consider a bank's community development loans, investments, and services. The draft final rule would provide banks with additional clarity regarding the loans, investments, and services that the agencies have determined would support community development and would codify interpretations that the agencies have currently provided through interagency guidance, such as the Interagency Questions and Answers.

Specifically, the draft final rule would define the following eleven community development categories:

- Affordable housing, which would have 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 LMI individuals; and (5) mortgage-backed securities.
- Economic development activities, which include 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, the draft final rule would expand this category of activities to include 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 would include activities that assist, benefit, or contribute to the health, stability, or well-being of LMI individuals, and would replace the current rule’s “community services targeted to low- or moderate-income individuals” category.
- Six categories of place-based activities, each of which would adopt a focus on targeted geographic areas and would include common place-based eligibility criteria that must be met. These six categories replace the revitalization and stabilization activities component of the current rule. The six place-based categories would be: 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, as that term is defined in the draft final rule.
- Activities with MDIs, CDFIs, women’s depository institutions, and low-income credit unions.
- Financial literacy, which would retain the proposed approach of qualifying activities assisting individuals, families, and households of all income levels, including LMI individuals, families, and households.

Illustrative list and confirmation process. The draft final rule would require the agencies to 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 draft final rule would incorporate a process through which banks

would be able to confirm with the appropriate Federal financial supervisory agency whether a particular loan, investment, or service may be eligible for community development consideration.

Impact and responsiveness review. To promote clarity and consistency in the draft final rule, the agencies would 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 proposal but are referred to as impact and responsiveness factors in the draft final rule.

E. Data Collection, Maintenance, and Reporting

The draft final rule would not impose any new mandatory data collection and reporting requirements on small and intermediate banks (*i.e.*, banks below \$2 billion in total assets). For large banks, the draft final rule would leverage existing data requirements where possible, and introduces updated data collection, maintenance, and reporting requirements to fill gaps in the current regulation and facilitate implementation of the draft final rule. For example, the draft final rule would require 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 the Community Development Financing Test, and to evaluate activities under the Retail Services and Products Test. These data requirements would support greater clarity and consistency in the application of the CRA regulations and would be tailored by bank size, such as by introducing certain data requirements only for those large banks with assets over \$10 billion.

F. Effect of CRA Performance on Applications

As with the proposal, the draft final rule includes 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.

G. Content and Availability of Public File, Public Notice by Banks, Publication of Planned Examination Schedule, and Public Engagement

The draft final rule would promote transparency by providing more information to the public on CRA examinations and encourage communication between members of the public and banks. The draft final rule would also provide that the agencies would publish a list of banks scheduled for CRA examinations for the next two quarters at least 30 days in advance of each calendar quarter. The draft final rule would further require a bank's CRA public file to be maintained on the bank's website if the bank maintains one.

H. Transition

Although staff anticipate that the effective date of the draft final rule would be April 1, 2024,²⁰ banks would be required to begin complying with most of the provisions on January 1, 2026, with certain other requirements becoming applicable on January 1, 2027. The draft final rule also includes provisions providing clarity on transitions relating to: applicability of the current CRA regulations; HMDA data disclosures; CRA consideration of eligible loans, investments, services, or products; strategic plans; and the ratings standard relating to minimum performance requirements applicable to large banks. Separately, under the draft final rule, the agencies would transition to using small business and small farm lending data reported pursuant

²⁰ As noted above, the draft final rule will be effective the first day of the first calendar quarter that begins at least 60 days after publication in the Federal Register. Staff expect that date would be April 1, 2024.

to the Consumer Financial Protection Bureau’s small business lending rule under Section 1071 of the Dodd-Frank Act. Specifically, transition to the Section 1071 data would occur only after those data become available. The agencies would publish a notice in the Federal Register announcing the effective date of the applicable transition amendments.

I. Impact on Banks

Staff believe that the draft final rule reflects an appropriate balance in achieving the agencies’ objectives, including relevant considerations regarding the impact of the draft final rule on banks. For example, staff at the agencies believe the transparency and consistency of the newly developed Retail Lending Test – which leverages metrics, benchmarks, and performance ranges – marks a significant improvement over the current rule. The draft final rule also makes a number of adjustments in consideration of comments – for example, by narrowing the automobile loan evaluation to only those banks that have automobile loans as a major product line and reducing the number of retail lending assessment areas.

Consistent with the requirements under the Regulatory Flexibility Act, the agencies evaluated and determined that the draft final rule does not have a significant economic impact on a substantial number of small entities, as defined by the Small Business Administration. Also, as required by the Paperwork Reduction Act (PRA), the agencies have estimated the associated burden for each category of PRA compliance.

Finally, as discussed below, the agencies will engage with banks in comprehensive implementation efforts to improve understanding of and help banks transition to the CRA framework in the draft final rule.

J. Implementation

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

RECOMMENDATION:

Based on the foregoing, staff recommend that the Board approve the attached draft final rule for publication in the Federal Register. Staff also recommend that the Board delegate to staff authority to make technical, non-substantive changes to the attached materials to prepare them for publication in the Federal Register.

Attachment