

Transcript of Open Board Meeting
October 24, 2023

CHAIR POWELL. Let's get started. I'd like to welcome our guests here at the Federal Reserve, our online viewers as well. Today we will consider a final rule to revise the rules implementing the Community Reinvestment Act, which were developed jointly by the Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. I want to thank staff for all of their work and I look forward to hearing your presentations. I will now turn it over to our colleague, Vice Chair Barr.

VICE CHAIR BARR. Thank you, Mr. Chair. Today, the federal banking agencies are acting on a final rule to strengthen and modernize the regulations implementing the Community Reinvestment Act and encourage banks to expand access to credit, investment, and banking services in low- and moderate-income communities. I have worked on and written about the role of the CRA in expanding access to credit and financial inclusion for more than a quarter of a century. Thus, it was a privilege to finish the job of leading the Federal Reserve Board's efforts to strengthen and modernize CRA regulations, building on the strong foundation set by former Vice Chair Lael Brainard. I'd like to thank the staff, those around the table and many others here at the Board and at the FDIC and the OCC, for their long and tireless work to get to this place today. We all owe them our deepest gratitude. Congress enacted the Community Reinvestment Act in 1977 as one of a set of laws, together with the Home Mortgage Disclosure Act, the Fair Housing Act, and the Equal Credit Opportunity Act, to address redlining, other forms of racial discrimination, and lack of access to credit in low- and moderate-income communities. Fair lending laws and the CRA set the unequivocal standard that there is no place for such discrimination in the financial system, and that borrowers in every community deserve to be treated fairly. During the first decade or so following CRA's enactment, regulators paid the law

scant attention, and there was little progress in expanding credit to low- and moderate-income areas. Regulators and banks generally focused on process-oriented evaluations, such as the time spent at bank board meetings discussing community needs, rather than on results. This began to change at the end of the 1980s. Legislative changes to CRA in 1989 required regulators to publicly disclose the institution's rating and performance evaluation, which used the power of transparency to advance CRA's goals. Also in 1989, a bank regulator for the first time denied an application for a merger based on poor performance under the CRA. The merger denial demonstrated that there could be serious consequences for poor CRA performance. The CRA regulations were substantially revised in 1995, to develop more objective, performance-based assessment standards that minimize burden while stimulating improved performance. Now, more than 25 years later, we are able to build on the 1995 rule and address concerns aired over the years, including the desire for more clarity and transparency about how retail loans are evaluated, which community development activities are eligible for CRA credit, and when loans and investments can be considered under CRA outside of a bank's branch network. The final rule is the result of many years of public engagement and several rounds of rulemaking by the Board, FDIC, and OCC. I appreciate the level of engagement from both banks and community and civil rights stakeholders, and the many perspectives we have heard, and listened to, have assisted the agencies in further refining the approach described in the proposed rule from last year. This final rule is a win-win for everyone involved. The preamble to the final rule sets forth eight objectives that the final rule intends to achieve, and I'll highlight four of these here. First, the revisions strengthen the core purpose of the statute. Under the final rule, the agencies will evaluate bank performance across the varied activities they conduct and in the communities in which they operate so that CRA is a strong and effective tool to address inequities in access to credit. It will

also enhance financial inclusion by supporting Minority Depository Institutions and Community Development Financial Institutions, Native Land Areas, persistent poverty areas, and other high-need rural and urban areas all across the country. Second, the final rule updates our rules for major changes that have occurred in the banking sector since 1995, including mobile and online banking. The rule maintains a focus on evaluating bank performance in areas where banks have deposit-taking facilities, but also enables evaluation of retail lending and community development activities outside of branch networks. Third, the final regulation provides greater clarity and consistency in application of the regulations. The rule adopts metrics for evaluating retail lending and community development financing, including public benchmarks, for greater clarity and consistency. It also sets clear criteria for community development activities that qualify for CRA credit, adopts a public list of qualifying activities, and sets up a process to confirm an activity's eligibility. Fourth, the revisions establish tiers for CRA evaluations and data collection based on bank size and type. Small banks would continue to be evaluated under the existing framework with the option to be evaluated under the new framework. The rule also would exempt small and intermediate banks from new data requirements and limits certain new data requirements to banks with over \$10 billion in assets. The final rule takes a critical step forward in modernizing the CRA regulations to help ensure that banks meet the needs of all the communities they serve, consistent with safety and soundness. As I have said before, fair lending is safe and sound lending, and the CRA regulations we promulgate today will help make the financial system safer and fairer. With that, let me turn things over to Eric Belsky.

ERIC BELSKY. Thank you, Vice Chair for Supervision Barr, and good morning. Today's consideration of the draft final rule represents the culmination of a long process. The updates to the regulations reflect the unified approach among the OCC, FDIC, and the Federal

Reserve, as well as feedback from myriad stakeholders. I'd like to add my thanks to the staff across the agencies that worked to develop the rule. The final rule, which you are voting on today, has key changes from the proposal that are informed by hundreds of public comments from a range of stakeholders, as well as agency analysis. We'll highlight a number of these changes in our presentation today. I would also note that starting with the Federal Reserve's Advance Notice of Proposed Rule Making in 2020, our staff have conducted significant data analysis to understand the implications of different decision points, to foster public understanding and transparency, I note that we have made the dataset we used for this purpose available to the public. Two topics that I want to note, that I think are important to the rule making effort; first, the draft final rule uses metrics and benchmarks to help standardize the evaluation of a bank's lending performance, second, I also want to note that we are mindful to focus new data collection on what we thought most essential to achieving the stated objectives, importantly the draft final rule imposes no new data requirements for small and intermediate banks as defined in the rule. With that, I'm going to turn it over to my colleague, Carrie Johnson.

CARRIE JOHNSON. Hi everyone. The staff presentation is going to highlight different aspects of the draft final rule to strengthen and modernize the CRA regulations. First, we're going to discuss the performance evaluation framework; this spells out how banks would be evaluated for their CRA performance. Staff believes that the draft final rule's performance evaluation approach would support robust, comprehensive, and transparent assessments of how well a bank is meeting the credit needs of its entire community. A few of the categories in this evaluation would be assessing mortgage lending, for example, how well is a bank's mortgage lending serving low- and moderate-income borrowers, assessing their small business lending, for example, how well is a bank's small business lending serving businesses of different revenue

sizes, and assessing community development financing, for example, how much community development activity is a bank engaging in relative to its level of deposits. The draft final rule builds on the way that CRA examinations are conducted today and it seeks to provide more clarity, consistency, and transparency in how banks are evaluated. The second topic we'll discuss are provisions on where banks would be evaluated for their CRA performance. The draft final rule provisions retain a focus on evaluating banks where they have a branch or a deposit taking ATM, while also evaluating activity that takes place through online and mobile banking channels. Third we'll discuss which activities would be eligible for community development consideration under the draft final rule. With that, I'm going to turn things to Lisa and Taz, and Lisa will start discussing the evaluation framework.

LISA ROBINSON. Good morning, consistent with the proposal, the final rule would establish a tiered CRA evaluation framework that takes into account bank asset size and business model. It would update the asset size threshold for small, intermediate, and large banks. As in the proposal, small banks would be defined as those with total assets of less than \$600 million, an increase from \$376 million today. Intermediate banks would be defined as banks with total assets between \$600 million and two billion, and large banks would be defined as being at least two billion or greater. For large banks, the draft final rule has four tests that would apply; the retail lending test, the community development finance test, the retail services and products test, and finally the community development services test. Intermediate banks would be evaluated under two tests; the new retail lending test and the status quo community development evaluation approach, with the ability to opt into the community development financing test. Importantly, the final rule would maintain the current CRA evaluation for small banks unless a small bank opts to

opt into the retail lending test. And Taz and I will walk through the four performance tests, and I'll turn it over to Taz now.

TAZ GEORGE. Okay, thank you Lisa. I'll start with the retail lending test. This test would evaluate how well a bank's retail lending, such as its closed-end home mortgage loans and small business loans. It's helping to meet the credit needs of its entire community. The test would include two different sets of metrics to evaluate retail lending in specific geographic areas. The first metric would evaluate the dollar amount of a bank's retail lending relative to its deposits in a community. The second set of metrics would apply to each of the bank's product lines and would evaluate the bank's percentage of loans to low- and moderate-income neighborhoods in an area. The metrics would also evaluate the percentage of loans to low- and moderate-income borrowers and to small businesses of different sizes. The draft final rule would set thresholds to help develop conclusions about a bank's performance. For example, the percentage of mortgage lending to moderate-income borrowers that would correspond with a high satisfactory, and this would be a change relative to current evaluations which do not provide guidelines on the percentage of lending that generally corresponds with different levels of performance. Overall, staff believe that the metrics in the draft final rule would help to provide more consistency and transparency relative to the status quo. In addition, the agencies would consider qualitative factors, such as the bank's business model and information about the community when evaluating a bank's retail lending. Let me also highlight a few important changes from the proposal. First, the draft final rule reduces the number of product lines included for some of the metrics. In the proposal, the maximum was six product lines and under the draft final rule, most banks would have no more than three; closed-end home mortgage loans, small business loans, and small farm loans. In addition, the draft final rule significantly narrows the number of banks

that would have automobile lending evaluated. Only if a majority of the bank's loans are automobile loans or if the bank chooses to have its automobile lending evaluated. A second change is making the performance standards for an outstanding high satisfactory and low satisfactory more achievable compared to the proposal. Overall, staff believe that the thresholds and performance standards in the draft final rule are reasonable and generally attainable. Next, I'll speak to the community development financing test. As with the proposal, this test would evaluate both community development loans and community development investments. The test would use three components; first it would establish a standardized metric to calculate the dollar amount of a bank's community development loans and investments in an area relative to its deposits. Second, the test would also establish standardized benchmarks to aid in evaluating performance. And third, the test would also designate impact and responsiveness factors to recognize activities that can be particularly high impact, such as loans and investments in persistent poverty counties and in Native Land areas. And with that, I'll turn things back to Lisa.

LISA ROBINSON. Thank you, Taz. Now switching to the third test, the retail services and products test. This test would include two parts; first it would evaluate bank branches as well as ATMs, as well as online and mobile banking platforms that serve low- and moderate-income individuals and communities. Second, it would evaluate the availability and responsiveness of bank credit and deposit products. Overall, the focus on bank products would recognize important ways for banks to expand financial inclusion. And a few points here; this part of the test could only positively contribute to a bank's performance. The draft rule would include special purpose credit programs as an example of credit products, responsive credit products. And only banks with assets of \$10 billion or more would be evaluated for responsive checking and savings accounts. Now, I'll turn to the fourth test; the community development services test. This final

performance test for large banks focuses on volunteer activities supporting community development, which can focus on partnerships among different stakeholders, build capacity, and create conditions for effective community development, including in rural areas. The draft final rule recognizes such activities as Board service, financial literacy activities, and includes an impact and responsiveness factors to recognize services that are particularly high impact. In addition, the draft final rule would maintain the existing requirement that volunteer activities must be related to the provision of financial services or the expertise of bank staff. And I want to also emphasize, like today, that banks would be able to submit a strategic plan to their regulator, which the agency would review and approve. This would continue to provide flexibility for banks with unique business models. And now that we've discussed the four performance tests, we want to briefly cover ratings. In addition, there are detailed provisions in the draft final rule for how the agency would combine performance for different tests across different communities into overall ratings. As it happens now, the agencies would assign to each bank an overall CRA rating of outstanding, satisfactory, needs to improve, or substantially noncompliance. For large banks, ratings would average together the bank's performance on its four tests. The draft final rule would change the weighting to the two focused tests as well as the two community development focused tests with a 50/50 split. It also retains a provision to end the existing CRA framework for downgrading a bank's performance if they engage in discriminatory or illegal credit practices. Before we turn to talk about assessment areas and where a bank can be evaluated for their performance, I also want to discuss data requirements for the metrics that would contribute to a robust and transparent examination, and you've heard what Eric mentioned earlier, there would be no new data reporting requirements for small banks and intermediate banks. The draft final rule would not impose any banks, any data requirements for those banks,

as I mentioned. But also, we would also-- existing data requirements we would use it wherever possible, whenever possible, for large banks and the draft final rule would introduce certain new data requirements for large banks. This includes the community development financing activities to support that evaluation of the community development test. And then for banks over \$10 billion, there are requirements for the aggregated deposits data at the county level to develop retail lending and community development financing metrics. And with that, I'll turn it over to Taz.

TAZ GEORGE. Thank you. I'm now going to talk about the different components of the draft final rule that address where banks are evaluated for their performance. I'll start with areas that are within a bank's branch network. Under the current approach, banks delineate specific assessment areas, which are the areas around a bank's branches, main office, and deposit taking ATMs, and where the bank's CRA evaluations are focused. The draft final rule would continue the approach of requiring banks to delineate these areas, which would be referred to as facility-based assessment areas. Large banks would be required to delineate facility-based assessment areas based on one or more entire counties, while intermediate and small banks could include a partial county. In addition, the draft final rule would continue the current prohibition on banks delineating facility-based assessment areas that reflect illegal discrimination or that arbitrarily exclude low- or moderate-income census tracts. This is one of the long-standing ways that CRA regulations have recognized that CRA and fair lending are mutually reinforcing. For areas that are within a bank's branch network, all performance tests would be applied when conducting the bank's CRA evaluation. For example, large banks would be evaluated on all four performance tests in each of these areas. Let me now turn to retail lending outside of a bank's branch network. The draft final rule would include a new requirement that large banks have their retail lending

evaluated in an area outside of the bank's branch network if the bank originated a large enough number of closed-end home mortgage or small business loans in that area. These areas are referred to as retail lending assessment areas and would only be evaluated under the retail lending test. This approach would help to account for changes in the banking landscape, including online and mobile bank business models that do not rely on branches or other facilities. Upon consideration of feedback from commenters, the draft final rule makes some significant changes to the proposed approach in order to reduce the impact on banks, while still achieving the object to account for changes in banking over time. For example, the draft final rule exempts predominantly branch based banks from the requirement to delineate retail lending assessment areas. The draft final rule would also establish outside retail lending areas, which are, which would evaluate retail lending taking place outside of a bank's assessment areas at the institution level. This would apply to all large banks and to certain intermediate banks. Together, the retail lending assessment area and outside retail lending area approaches would help to ensure comprehensive evaluations of a bank's retail lending, including for banks that conduct a substantial amount of their lending outside of their branch networks. And finally, I'll touch on community development, areas where community development activities are considered. To recognize different bank business models and activities taking place across the country, banks would receive consideration for all eligible community development activities conducted anywhere nationwide, including outside of the bank's branch network. And with that, Lisa, back to you.

LISA ROBINSON. Okay. I will now talk about community development activities. We've heard consistent feedback from stakeholders over the years that they would like more clarity on what kind of community development activities will be considered in CRA

examinations. The draft final rule creates eleven categories of community development that build on the current regulation and current guidance. The categories are intended to provide certainty and clarity on eligible activities. It also provides that agencies will publish an illustrative list of community development activities that are eligible for CRA credit. Additionally, it would create a pre-approval process as you heard earlier, for banks to confirm with the agencies whether a particular loan, investment, or service is an eligible community development activity. A few examples of the eleven categories in the draft final rule, it would include the economic development, with the provision for certain direct loans to small businesses that support job creation or retention in low to moderate income for low to moderate income persons. In addition, it would include a category for bank activities with minority depository institutions, women depository institutions, low-income credit unions, as well as community development financial institutions. Before closing, I wanted to touch on the transition period. Relative to the proposal, the draft final rule would extend the amount of time for banks to come into compliance with the new requirements. If approved, the draft final rule would provide a transition period of more than 24 months from today, until January 2026, therefore, most definitions, assessment area requirements, and other general provisions we discussed today, would not-- would become applicable January 1, 2026. That concludes our staff presentation, and we are now ready to take any questions. I'll turn it back to you, Chair Powell.

CHAIR POWELL. Thank you, and thank you very much for your presentation. So we're going to have a round of potential questions from Board members and separate from a we'll have a round where we go around and say our positions. And so, on potential questions, let's begin that round and we'll begin with Vice Chair Jefferson, if you have a question.

VICE CHAIR JEFFERSON. Thank you, Chair Powell, I do have a question for the staff. First, thank you very much for your presentations. My question is the following; so, does the final rule do enough to encourage bank activity with community development financial institutions and minority depository institutions, especially those serving rural and minority communities? I ask this because these entities are critical to the community development ecosystem, and without proper incentives to support them, it would be hard to reach truly underserved communities and households.

LISA ROBINSON. Thank you for the question. First, the final rule includes specific provisions, as I mentioned, for MDIs, CDFIs, the low income credit unions, as well as women depository institutions, specifically the final rule, the draft final rule includes a new category within community development that focuses on these entities and I just want to clarify that the second important point about providing consideration for these entities is that the draft final rule would recognize activities with these organizations as responsive and impactful, and that's a new aspect of our proposal of the draft final rule. And third, the draft final rule would specify that retail lending focused partnerships such as banks purchasing loans from these entities, would be classified as a responsive credit product.

VICE CHAIR JEFFERSON. Thank you.

CHAIR POWELL. Thank you. Vice Chair for Supervision Barr, please.

VICE CHAIR FOR SUPERVISION BARR. Thank you, Mr. Chair. Carrie, the staff have done a wonderful job of explaining the details of the rule. I wonder whether you might bring this up a level and talk about why the rule changes are important in encouraging banks to serve their communities.

CARRIE JOHNSON. So I think a couple things I touch on, so one as the staff talked about for the retail lending test, there would be like happens today in the draft final rule, we'd continue to focus on evaluating specific product lines and the draft final rule would, for banks, mortgage lending or their small business lending, would separately evaluate, for example, from mortgage lending, how well is the bank serving low-income borrowers and moderate-income borrowers, and how well is the bank serving low-income census tracts and moderate-income census tracts. Similarly for small business lending, one provision in the draft final rule that would be a change relative to what happens today, is small business lending activity would be evaluated for banks of different, for small businesses with different gross annual revenue levels, and so we think that will help have a more comprehensive evaluation of how well banks are serving small businesses of different sizes, including the smallest small businesses, which the draft final rule sets at gross annual revenue of \$250 thousand or less. In addition, the changes we talked about in terms of where banks would be evaluated for their activity would result in more comprehensive evaluations, particularly for banks that don't have a branch-based business model. And then there's some things in the retail services and products test that I'd highlight in terms of impact on communities, for example the draft final rule would evaluate where a bank's branches and their deposit taking ATMs were located. That would include looking at are they located in low- and moderate-income communities as well as being located in certain distressed or underserved non-metropolitan or rural areas, and also in Native Land areas. And the other focus on, that Lisa talked about in terms of bank evaluations of their responsive credit and deposit products, would be an opportunity for evaluations to focus on responsive credit products and partnerships that are focused on financial inclusion as well as deposit products which we know

can serve as the basis for providing future access to credit for low- and moderate-income individuals.

CHAIR POWELL. Thank you. Governor Bowman, please.

GOVERNOR BOWMAN. Thank you, Chair Powell. First, I'd like to thank Carrie, and Lisa, and Taz for your presentation. That was extremely helpful and very informative as we're thinking about and approaching this open board meeting. So, I understand from the materials that if the final rule were applied retroactively, we would see a tenfold increase in the number of banks that would not achieve a satisfactory rating. This is just one of the data points that indicates the breadth and materiality of the revisions in this rule. Do you foresee any potential unintended consequences with these revisions, such as the risk that banks may cease activities in certain communities? And what will be the outcome if a much larger number of banks are not able to achieve satisfactory ratings under the final rule?

CARRIE JOHNSON. So, thank you for that question, I can start. In terms of how the, I think about it in the draft final rule discusses that historical analysis. The draft final rule for the first time would set performance standards for evaluating a bank's retail lending but the analysis in the preamble talks about, it's not a prediction of what conclusions would be for bank performance going forward. So some things that I think are important to note about the analysis, so one-- Sorry, so there's a number, there's the draft final rule analysis doesn't include an accounting of qualitative factors, so under the draft final rule there would be both a metrics component but also a significant qualitative component and so that back testing we think was an informative and important step in terms of describing how staff analyzed the performance thresholds, but we don't necessarily think they're predictive of what the end result would be on a bank's retail lending test performance. In addition, we obviously used available data and the draft

final rule discusses the different limitations of the data that's available. And then lastly, the other thing that I think we thought a lot about in looking at that analysis is that it's just focused on one test, it's not you know, a large bank would have their ratings based on performance in all four tests and so in that sense, how a bank would be evaluated under the draft final rule wouldn't just be based on their retail lending performance.

GOVERNOR BOWMAN. Okay, I have one more question. So, we've recently seen tremendous devastation as the result of the truly horrific wildfire in Lahaina in Hawaii, banks are often at the forefront of responding to natural disasters, and I know that banks have already stepped up to help respond to the wildfire in Hawaii in response and in support of the Native Hawaiian population as well as the other population that live in that area. How does this rule incentivize banks to increase their activities that promote the recovery in designated disaster areas?

CARRIE JOHNSON. Actually, I think there's two things that I'd highlight about that; one is that banks today would get credit for doing disaster recovery activities and that would continue to be a category of community development, but the second thing I think would be a more material change getting at the question you're asking, is today bank community development activity is limited to where they have a branch or a nearby area and there's a lot, there's a lack of clarity that we've heard from stakeholders about where exactly banks can get credit for their community development activity. In the draft final rule, banks would be able to get credit for their community development activity nationwide. So, it provide a lot more clarity that banks could get credit for disaster recovery activities nationwide.

GOVERNOR BOWMAN. Analysis with that would be covered under—

CARRIE JOHNSON. So there's not, in terms of how much activity that would include?

GOVERNOR BOWMAN. Or how it counts with the overall evaluation.

CARRIE JOHNSON. So that would be included in the bank's community development financing test evaluation, so the dollar amount of their community development activity, including any disaster recovery activity they did would be measured relative to their deposit base, as well as having a qualitative assessment of the impact and the responsiveness of the bank's activities.

GOVERNOR BOWMAN. Thank you very much, Carrie.

CHAIR POWELL. Thank you. Governor Waller.

GOVERNOR WALLER. I have no questions.

CHAIR POWELL. Okay, thanks. Governor Cook.

GOVERNOR COOK. Thank you, Carrie, Lisa, and Taz, for your clear presentations. The final rule points to the potential tradeoff between additional data collection and reporting requirements on the one hand, and greater use of metrics to attain certainty on the other. Can you talk more about how the final rule balances these objectives and tailors data collection requirements based on bank business model, size, and capacity?

CARRIE JOHNSON. So, I can start with that. So in general, we got a lot of feedback from commenters about the impact of the draft final rule both in terms of the benefits of the proposal and the objectives the agencies were putting forward in the proposal, as well as the impact of the data requirements. And staff have really carefully considered all of that feedback

and it's discussed in detail in the draft final rule preamble. In terms of thinking about the data collection and reporting requirements, as Lisa noted, the draft final rule would have no new requirements, data requirements for small and intermediate banks. In other areas, we also thought about how to tailor those requirements, so for example, the community development activity requirements would apply to all large banks, but the deposit data requirements would only apply to large banks over \$10 billion in assets. The draft final rule also removes some data components that were included in the proposal, so for example, the number of banks that would be required to collect or report automobile lending data would be really significantly pulled back relative to the proposal. It would only be required for those banks that are designated as a majority auto lender.

GOVERNOR COOK. Were the [inaudible] responsive to comments from industry stakeholders in the transition implementation period in the proposal was too short?

LISA ROBINSON. Yeah, I think so. We received numerous feedback from commenters that the 12 months was extremely short, and staff took that into consideration as we thought about expanding that to the 24 months, and we think that that gives banks and other stakeholders adequate time to prepare for compliance and mind you that those would be effective January 1, 2026. However, the reporting of that information would not occur until the following year.

CHAIR POWELL. Thank you, Governor Kugler.

GOVERNOR KUGLER. Thank you, Chair, and thank you Carrie, Lisa, and Taz for a very informative presentation. I have a question about banking deserts. The pace of bank branch closures has accelerated in recent years, increasing the problem of banking deserts, while technology has enabled more banking services to be provided online. Residents of banking deserts may encounter challenges establishing deposit accounts, obtaining loans, and maintaining

banking relationships. Can you tell us how the rule helps address the problem of banking deserts?

LISA ROBINSON. Thank you again for that question. I think this will also touches a bit on Governor Jefferson's question about rural communities and what we're doing there. First, let me say under the draft final rule the agencies would continue to evaluate a bank's share of branches and ATMs in low- and moderate-income communities, but we also added another category to evaluate those branches and ATMs in underserved and distressed, non-metropolitan, middle-income census tracts, which include many remote and sparsely populated areas, as well as native land areas. Second, it would continue to evaluate opening and closings of branches as we do today. And third, the draft final rule would evaluate retail lending activity of certain banks outside of their facility based assessment areas, and staff believes that this will allow for retail lending in banking deserts and may, that may be included in their CRA evaluation, which wasn't, is not very clear today and not allowed. And lastly, it would evaluate community development activities nationwide and so we believe that that will encourage banks to provide community development activities in areas of high need or areas that we call CRA deserts.

GOVERNOR KUGLER. Thank you very much.

CHAIR POWELL. Thank you, and I have, I have one question which is; this is in the spirit of unintended consequences, so we heard from many large and medium sized banks during the comment period, about landing into a part of a county but not a whole county. If you think about a county around Washington D.C., where there would be a lot of quasi urban activity, but then they would be a big stretch of county that's maybe agricultural, and what we heard was that if they had to be tested on the whole county, then there would be counties in which they would just have to stop lending rather than extend into the parts of the county where they didn't have,

where their business model really wasn't relevant. So you mentioned, Taz, that for how you were-- my question just is, how do you think about that issue?

TAZ GEORGE. Yeah. Well we thought about that, some of the tradeoffs in the approach between requiring counties to delineate, or requiring banks to delineate assessment areas based on an entire county versus a partial county, and there's a number of provisions I can touch on related to that. For one, for small and intermediate banks, they would continue to have the same ability as under the current approach to delineate a partial county assessment area. So no changes in that regard. For a large bank, we would require facility based assessment areas to be an entire county, one or more entire counties, but as part of the bank's evaluation, examiners could consider the performance context of the assessment area when developing conclusions. And so, the example that you provided, for instance, a county where part of the county may be a rural area that the bank doesn't have facilities or that there's other reasons that the bank is not able to serve, that's information that the agencies could take into account when developing conclusions. Carrie, I don't know if there's anything else you would add to that.

CARRIE JOHNSON. That's right, the only other thing I'd add is then the draft final rule talks about at full county requirement as being something that we think supports fair lending in terms of designating entire geographic areas.

CHIAR POWELL. Okay. Thank you, thanks for your answer. If there are no further questions, then we will now have a round where we will state our positions on the proposal and we'll begin with Vice Chair Jefferson.

VICE CHAIR JEFFERSON. Thank you, Chair Powell. I would like to thank the staff for the work that has gone into the preparation of this final rule to modernize the Board's regulation implementing the Community Reinvestment Act. There have been significant changes to the

business of banking since the last time this regulation was revisited and it is important that our rule reflect those changes. The updates in the final rule will better account for new ways of banking and will improve our evaluation of whether the banks are meeting the needs of the communities they serve. In addition, the change will provide much needed consistency, clarity, and transparency in the application of the regulation. I support the issuance of the final rule.

Thank you.

CHAIR POWELL. Thank you. Vice Chair for Supervision Barr, please.

VICE CHAIR FOR SUPERVISION BARR. Thank you, Chair Powell. As I mentioned at the outset, the CRA plays a critical role in encouraging banks to expand access to credit, investment, and banking services in low- and moderate-income communities. The final rule in front of us today seeks to ensure that the CRA continues to be a strong and effective tool to address inequities in access to credit. It will further transparency and consistency in CRA evaluations through use of metrics and benchmarks and adapt to changes in the banking industry, including the expanded role of mobile and online banking. These final regulations have been a long time coming, several years, several rounds of rulemaking, several thousands of comment letters. I am so impressed by the dedication, skill, and care that the staff have brought to this endeavor. It makes me very proud to be part of this organization and to have had the opportunity to work with you. Thank you for all the work that has been done today, and the work that lays ahead. The regulatory reforms we put in place will contribute to economic revitalization across the country for many years to come. I support the final rule.

CHAIR POWELL. Thank you. Governor Bowman, please.

GOVERNOR BOWMAN. Thank you, Chair Powell. I'd also like to thank the staff again for all of your work over the past few years, especially Joseph for your leadership in this area. I

know that you have led your teams admirably and this is a great culmination in all of that work and I'm sure you're ready for the next phase of this process. But I'm also glad to see that the Board is returning to the open broad meeting format to deliberate on important regulatory matters transparently, and within the view of the American public. This practice is critical to the legitimacy of the rule making process for all public institutions, but it is especially important to preserve the Federal Reserve's independence in this way. An open process for this rule is important because the rule will materially change the way that banks think about and choose to make investments in their communities. In an increasingly uncertain economic environment, with high inflation and high interest rates, this rule could significantly increase the administrative costs of compliance, diverting funds from potential investments to the acquisition and ongoing costs of data management compliance systems. The purpose of the Community Reinvestment Act is to improve access to credit in all communities where things are located, especially low and moderate income and minority communities. The CRA was enacted in 1977, shortly after the Civil Rights Movement and against the backdrop of other significant federal laws designed to increase and address financial inclusion and equal access to credit. At the time that Congress passed the CRA, it found that banks had a continuing and affirmative obligation to help meet the credit needs of their local communities. Congress reinforced this obligation by instructing the agencies to encourage banks to help meet the credit needs of those same communities. Throughout the years since, Congress has amended the CRA statute a number of times, but at its core, CRA's main objective has endured. The CRA provides important protections for access to credit and it provides insurance that all Americans, especially minority and low- and moderate-income communities have access to opportunities to build wealth and financial-- and access to financial services. The vast majority of the remaining 4,200 banks in the United States are

community banks with well-under \$10 billion in assets. These banks have simple, straightforward business models and they are focused on serving their unique communities, focusing on providing resources, investments, and credit for the betterment of the entire community. Given this landscape, and these banks' focus and their important focus on serving their communities, as we approach finalizing this CRA regulation, it is essential that this final rule is straightforward, clear, and strikes the appropriate balance between encouraging banks to meet the credit needs of their communities and avoiding the creation of a rule that may unintentionally disincentivize or effectively prohibit banks from supporting their communities. The final rule contains several helpful improvements, including providing a list of community development activities that qualify for CRA credit. A new, preapproval process also provides banks with a path to ensure that a certain activity will qualify for CRA credit before engaging in a loan or planning an investment activity. Other changes may incentivize banks to consider CRA investments in communities on native lands, or that experience persistent poverty. The rule also includes specific provisions related to women and minority owned depository institutions and certified community development financial institutions. In addition, the rule would allow counting community development loans and investments made during a bank's prior evaluation period if they remain on a bank's balance sheet. Many of these changes are welcome improvements, enhancing the transparency and certainty of CRA requirements and evaluations but even with these notable improvements, regrettably, I cannot support the finalization of this rule. In the final rule, the agencies have arguably exceeded the authority granted by the CRA statute. In addition, the final rule is unnecessarily complex, overly prescriptive, and contains disproportionately greater costs than benefits, adding significantly greater regulatory burden for all banks, but especially for community banks. The premise of the changes being made in this

rule is that banks are not doing enough to meet the credit needs of their communities, yet there's no evidence provided to support this premise. In light of these issues and the complexity and extraordinary length of this rule, at 1,500 pages, I would have preferred that we more fully address these issues and publish a new proposed rule for comment instead of finalizing the rule before us today. My written statement details a number of the rule's provisions that raise the concerns I just noted. For the purposes of this meeting, I'll detail a few issues that should have been addressed in the text of the final rule. The first is the threshold for large banks. The final rule adopts a new two billion dollar threshold for a bank to be considered a large bank for the purposes of CRA. In my view, this threshold is not only far too low, but it also does not sufficiently differentiate between smaller community banks and the largest banks. In no other provision of the regulatory framework is a bank with two billion dollars in assets considered a large bank. For well over a decade, community banks have been defined to include banks with up to \$10 billion in assets, characterizing these banks as large banks simply ignores established definitions and it's inconsistent with existing regulatory practice. Further, the final rule essentially applies the same evaluation for a two billion dollar bank as it does for a two trillion dollar bank. The lack of recognition that these banks are fundamentally different, with different balance sheets and business models, misses an important opportunity to appropriately tailor CRA expectations to a bank's size, risk, service area, and business model. Under the final rule, community banks with more than \$600 million in total assets would see significant changes to their CRA requirements when compared with current CRA rule. When I agreed to support the initial proposal, I did so with the understanding that all banks under \$10 billion in assets would be subject to only existing CRA rules and would have the option to choose to adopt the new CRA framework. Unfortunately, the rule being finalized today disregards this agreement and

materially changes requirements for these banks, including mandating compliance with a new retail lending test, significantly altering and expanding assessment areas and increasing data and reporting obligations. Instead of requiring these changes, in my view community banks should have the option at their discretion to opt into the new retail lending test and assessment areas or to continue with the existing framework. I'm concerned at the aggregate effect of the increased burden could lead to a reduction in lending to offset the increased cost with new data requirements. To better understand this risk, the final rule should include a proportionality measurement to ensure that the cost of compliance neither outweighs the benefit from, nor detracts from the investment that would have been made in the absence of the new framework.

The second issue I'd like to raise is the lack of congressional authorization. One of the purported goals of the final rule is to modernize the CRA to account for changes in the way banks operate. While I support efforts to modernize the CRA to make it align more closely with current practices of extending credit in communities, including acknowledging the increased presence of mobile and online banking, Congress, not the banking agencies, is responsible for modernizing the CRA statute. In doing so, Congress could consider several approaches to modernize the CRA, including reflecting the variety of financial institutions that provide credit and financial services in their communities. In my view, some of the changes being made by the agencies in this rule, including those that evaluate banks outside of their deposit taking footprint, are likely beyond the scope of our authority under the statute. Furthermore, at the same time that we're recognizing the effects of the mobile and online banking in this rule, we are not willing to consider similar effects from mobile and online banking in other areas of our authorities, such as the evaluation of competitive effects of our merger and acquisition proposals. The third area I'd like to identify is the unintended consequences. I'm also concerned that the final rule contains

many changes that will have unintended consequences-- the unintended consequence of reduced community investment. The addition of the retail lending assessment areas in the outside retail lending areas combined with the new requirement of large banks to include an entire county instead of a partial county as an assessment area, may create disincentives for banks to continue lending in these areas. Essentially resulting in limited credit access. The fourth area I want to address is rating changes. The final rule would make it much more difficult for banks to maintain exciting CRA ratings without making significant changes to their current activities. As described in the materials before the Board today, based on changes to the retail lending test alone, nearly 10 percent of banks would be rated "needs to improve" based on the data from 2018-2020. Today the numbers of banks with a "needs to improve" rating stands at roughly one percent. The approach in the final rule assumes that the low number of banks with a "needs to improve" rating is a sign of shortcomings in the rule. Ignoring that banks have a deep commitment to supporting their communities and are already meeting the letter and spirit of the CRA statute. If a bank receives a "needs to improve" rating under the retail lending test, it would not be possible to achieve a satisfactory rating under the CRA rule. Furthermore, we don't know the impact of the community development financing test on banks' CRA ratings. The materials indicate that the agencies do not have the data available to determine how to apply the community development financing test. Noting that the agencies will need to issue guidance. However, based on the retail lending test alone, we know that a significant number of banks will see their CRA ratings fall, which will have real and meaningful consequences. Because any bank that receives a rating below satisfactory is generally prohibited from merger and acquisition activity. This prohibition could result in significant harm to certain communities and potentially to the broader economy. It is not appropriate for the banking agencies to materially increase the requirements on banks

resulting in a downgrade of currently satisfactory performance to "needs to improve" without a thorough, data supported analysis that justifies a recalibration evidenced by actual shortcomings in bank activities. The final rule contains no discussion or explanation why currently satisfactory practices will no longer be satisfactory. As a result, many banks will not be able to receive a satisfactory rating without significant changes that are largely dictated by regulators. Those changes are likely to be directed by several elements of the rule that give banks extra credit only for certain selected activities, loans, or products. By raising the standards for what will qualify as satisfactory performance, regulators are effectively mandating that banks offer preferred products and services to counteract the downward pressure on the ratings. So fifth is the use of unknowable benchmarks. The rule also contains a market benchmark and a community benchmark for the retail lending test evaluation. The market benchmark reflects performance relative to peers, and the community benchmark reflect performance relative to firm and household demographics. Banks would also not be made aware of the market benchmark in advance and they would not know which benchmark would apply for their evaluation. The lack of transparency regarding these benchmarks raises potential due process concerns. The benchmark should be published and measurable, not unknown and unknowable. Further, institutions should not be graded on a curve or compared to others with different business models and product offerings. The sixth is supervisory expectations and I promise I'm coming to, close to the end. But the final rule also may put banks in a no win situation with their supervisors. CRA requires banks to help meet the credit needs of their communities, but they must do so consistent with safe and sound operations. Just as a bank may be criticized for not meeting expectations under these new CRA obligations, I worry that the changes imposed by this rule will result in banks being criticized for extending credit to less credit worthy borrowers to

account for increased barriers to achieve a satisfactory rating. The final issue that I'll note today, in today's meeting, but more is described in my statement, is complexity. In general, this rule is unnecessarily long and complex. So much so that banks and members of the public will find it difficult to understand. Taken together it will be a challenge for banks, particularly smaller banks, to understand what they must do to continue to receive satisfactory ratings under the CRA. This is exacerbated by the fact that over the past few months, banks have been overwhelmed with lengthy, complex, and costly regulatory proposals, rules, and guidance that do not address any identified shortcomings in banking regulation, yet add significant burden. At a time when confidence in public institutions is waning, we should focus on rule makings that aim to solve identified or documented problems. And in conclusion, although I'm not able to support this final rule, I do continue to fully support the underlying intent and goals of the CRA. The statute remains as important today as it was in 1977 when Congress first enacted it. But even in the absence of CRA, banks should serve the credit needs of their entire communities, especially minority and low- and moderate-income communities. But as banks begin to comply with the new CRA requirements, it would be helpful to understand how the implementation of this rule impacts to provision of credit in these communities. Regulators must implement this rule in a way that is transparent and fair to ensure that banks understand how their community investment activities will continue to meet the credit needs of their communities and fulfill their obligations to comply with CRA. Thank you, Mr. Chair.

CHAIR POWELL. Thank you, Governor Waller, please.

GOVERNOR WALLER. Thank you to staff for their diligent work on this rule over the past number of years and having to deal with me in particular. The Community Reinvestment Act, CRA, serves an important role in our economy by promoting the availability of credit across

all communities in America. But historically it was not always clear what banks had to do to comply with the CRA rules established by the agencies. The rise of internet banking made it even more difficult to determine what the relevant "community" should be for assessing compliance with the CRA. Furthermore, the lack of standardized metrics for evaluation gave supervisors tremendous discretion over the scores an individual bank received on complying with CRA requirements. As I see it, the goal of CRA modernization was to deal with both issues. The final rule that we are deciding on today significantly improves on the initial proposed rule. And while I'm sympathetic to many of Governor Bowman's concerns, no rule will be perfect on every dimension, and overall, this rule is an improvement in that it continues to support community reinvestment as required by law while providing more clarity to banks on the criteria needed to comply with the CRA. As a result, I support this final rule.

CHAIR POWELL. Thank you, Governor Cook, please.

GOVERNOR COOK. Thank you. I would like to recognize and thank staff for their hard work on this draft final rule on the federal banking agencies' obligations under the Community Reinvestment Act, or CRA. This rule is a culmination of years of careful and thoughtful consideration by Federal Reserve staff, as well as staff of the other federal banking agencies. Through the CRA, Congress had given the Federal Reserve and the other federal banking agencies, responsibility for examining banks' records of meeting the credit needs of their entire community, including low- and moderate-income neighborhoods and for providing a written evaluation of those records. The statute also requires the banking agencies to consider banks' CRA performance when evaluating certain applications by those institutions. Further, the CRA, together with other federal laws, authorizes supervisors to issue downgrades or pursue other penalties based on illegal discrimination by banks. I strongly support efforts by supervisors to

hold institutions engaged in illegal discrimination accountable. The agencies received hundreds of comments in response to their proposed rule. I believe input from the public is critical to good regulation particularly if feedback is obtained from a broad range of stakeholders. In this case, commenters included financial institutions, other businesses, federal, state, local, and tribal governments, community development organizations, academics, individual commenters, and others. And the draft final rule has benefited from this public comment process. I am particularly supportive of provisions in the draft final rule intended to encourage important community development financing and services through minority and women's depository institutions, MDIs and WDIs, low income credit unions, or LICUs, and community development financing institutions, or CDFIs. The rule does this by increasing certainty and transparency about the treatment of activities conducted in partnership with these entities, specifically the draft final rule would provide automatic community development consideration for loans, investments, and services involving these entities, as well as for direct investment in those entities. Having served on the board of a CDFI in Grand Rapids, Michigan, I saw firsthand the critical role these entities play in providing vital financing to the communities they serve. We are fortunate in the U.S. to have a diverse financial system, with a wealth of institutions of different sizes and business models. And I am pleased that the draft final rule encourages banks' support and involvement with MDIs, WDIs, LICUs, and CDFIs. I appreciate the time and consideration of staff in preparing this draft final rule and I support its finalization. Thank you Chair Powell.

CHAIR POWELL. Thank you. Governor Kugler, please.

GOVERNOR KUGLER. Thank you, Chair. The Community Reinvestment Act is a landmark statute that serves a vital role in supporting economic opportunity for low- and moderate-income individuals and communities by requiring banks to help meet the credit needs

of the communities they serve. Since the CRA regulations were last updated, the banking industry has undergone transformative changes. Modernization of our regulations is needed to better achieve the purposes of the CRA, and to ensure an appropriately rigorous regulatory framework. That is why I am pleased that the Board, OCC, and FDIC are updating the CRA regulations and I am happy to support the finalization of this rule. Among the many positive changes that this rule makes to the CRA regulatory framework, I want to call special attention to provisions intended to enhance financial inclusion by separately evaluating loans to low- and moderate-income individuals and small businesses. The final rule will also provide greater support to minority depository institutions, CDFIs, native land areas, persistent poverty counties, and other areas of need. Finally, I am pleased to see changes to the rule that are designed to further encourage bank engagement in community development activities. I want to thank the wide range of stakeholders that participated in the comment process, and I also want to commend staff for their diligent work in this rule making as well as Vice Chair Barr, for his leadership in this effort. I support this rule.

CHAIR POWELL. Thank you. And I'd like to add my thanks again to the staff from all the agencies for their work over the past several years, in this case several years is not an exaggeration, I think it took almost as much work as it took to renovate the Martin Building. So, it's good to have, to bring this to a conclusion today. CRA was enacted 50 years ago to encourage banks to help meet the credit needs of their entire communities, especially low- and moderate-income neighborhoods, and I hear from all the stakeholders, community groups, banks, and individuals in communities that it's meant to serve, about the good that CRA does. To help ensure that CRA can continue to play its vital role in supporting economic opportunity in low- and moderate-income and other underserved communities, the agencies have worked together to

modernize the framework and I'm pleased that those efforts have culminated today. The final rule will better achieve the purposes of the law by encouraging banks to expand access to credit, investment, and banking services in low- and moderate-income communities, adapting to changes in the banking industry, such as mobile and online banking, providing greater clarity and consistency in the application of the CRA regulations and tailoring to bank size and type. As a result, I support the final rule and I look forward to CRA's next chapter. With that, we will now proceed to vote on the final rule. I need a motion to approve a final rule to revise the Board's regulation implementing the Community Reinvestment Act and to authorize staff to make any minor or non-substantive changes to prepare the documents for publication in the *Federal Register*.

VICE CHAIR JEFFERSON. So moved.

CHAIR POWELL. I need a second.

VICE CHAIR FOR SUPERVISION BARR. Second.

CHAIR POWELL. I will now ask for individual votes. Vice Chair Jefferson.

VICE CHAIR JEFFERSON. Aye, yes.

CHAIR POWELL. Vice Chair for Supervision Barr.

VICE CHAIR FOR SUPERVISION BARR. Yes.

CHAIR POWELL. Governor Bowman.

GOVERNOR BOWMAN. No.

CHAIR POWELL. Governor Waller.

GOVERNOR WALLER. Yes.

CHAIR POWELL. Governor Cook.

GOVERNOR COOK. Yes.

CHAIR POWELL. Governor Kugler.

GOVERNOR KUGLER. Yes.

CHAIR POWELL. And I also vote yes. The motion has carried, and the final rule is approved. And again, thanks to everyone for your great work over so many years. The meeting is now adjourned. Thank you.