FDIC Federal Deposit Insurance Corporation

MEMO

TO: The Board of Directors

FROM: Mark Pearce
Director
Division of Depositor and Consumer Protection

DATE: April 27, 2022

RE: Notice of Proposed Rulemaking on Community Reinvestment Act Regulations

I. SUMMARY

Staff presents the attached Notice of Proposed Rulemaking (NPR or proposal) for approval by the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) and for authorization by the Board of its publication in the **Federal Register** for a comment period that ends on August 5, 2022. The NPR, to be issued jointly with the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC), proposes comprehensive regulatory amendments implementing the Community Reinvestment Act of 1977 (CRA).[1]

As explained below, the proposed approach includes a combination of new metrics and quantitative standards to help examiners evaluate retail lending and community development financing in separate tests. The use of metrics and standards would help to achieve greater clarity, consistency, and transparency for banks and communities, while also calibrating expectations based on differences in local market conditions. The qualitative aspect of the current approach would remain a central component of evaluation procedures, in particular for assessing performance context, retail services, and community development services. Expanding where banks receive CRA credit for qualified community development activities would incentivize banks to conduct activities not only within the bank's facility-based assessment areas, but also in other areas, such as in rural communities and Native Land Areas.

CONCUR:

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Harrel M. Pettway
General Counsel

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

II. BACKGROUND

Congress passed the CRA in 1977 to encourage regulated financial institutions (banks) to help meet the credit needs of the local communities in which they are chartered, consistent with banks' safe and sound operations, by requiring an examination of banks' records of meeting the credit needs of their entire community, including low- and moderate-income (LMI) neighborhoods.

The agencies charged with implementing the statute—the FDIC, the Federal Reserve, the OCC, and the Office of Thrift Supervision (OTS) (collectively, the Federal banking agencies)—first issued regulations in 1978 to implement the statute.[2] Since then, the Federal banking agencies (including the OTS until 2011) have revised the CRA regulations several times and have provided guidance on the interpretation and application of the CRA regulations through the Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers).[3] The last major regulatory revisions were completed in 1995.[4]

The Federal banking agencies have held hearings on CRA modernization and have met with various stakeholders to get their views. In addition, on April 3, 2018, the U.S. Department of the Treasury also released recommendations, based on stakeholder input, to modernize the CRA regulations.[5]

On October 19, 2020, the Federal Reserve published an Advanced Notice of Proposed Rulemaking (ANPR[6]) to solicit public input regarding modernizing the Federal Reserve's CRA regulatory and supervisory framework. The Federal Reserve sought comment on all aspects of the ANPR including feedback from stakeholders regarding, among other things, accounting for changes in the banking system, applying metrics to certain CRA evaluation standards, and providing greater clarity for CRA eligible activities. Over 600 comment letters were received from stakeholders in response to the Federal Reserve's ANPR.

On July 20, 2021, the FDIC, the OCC, and the Federal Reserve committed to working together to jointly strengthen and modernize regulations implementing the CRA.[7]

III. ANALYSIS

In an effort to modernize the current CRA regulatory framework to more effectively meet the needs of LMI communities and individuals, the NPR proposes substantive changes in five key areas: (1) Delineation of Assessment Areas; (2) Overall Framework, and Performance Standards and Metrics; (3) Community

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[2] 43 Fed. Reg. 47144 (Oct. 12, 1978).
[3] Interagency Questions and Answers Regarding Community Reinvestment; Guidance, https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/2016-16693.pdf.
[4] 60 Fed. Reg. 22156 (May 4, 1995).
[5] *See* "Community Reinvestment Act - Findings and Recommendations." U.S. Department of the Treasury, (April 3, 2018), https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf.
[6] 85 Fed. Reg. 66410 (Oct. 19, 2020).
[7] *See* "Interagency Statement on Community Reinvestment Act Joint Agency Action" (July 20, 2021), https://www.fdic.gov/news/press-releases/2021/pr21067.html

Development Activities; (4) Data Collection, Maintenance, and Reporting; and 5) Performance Conclusions and Ratings. The following sections provide a brief overview of the proposal's changes in those areas.

(1) Delineation of Assessment Areas

Currently, the CRA regulations require that banks delineate assessment areas where the bank has its main office, branches, and deposit-taking remote service facilities, and to include in those assessment areas the surrounding geographies where the bank has originated or purchased a substantial portion of its loans.[8]

a. Proposed Approach—Delineation of Assessment Areas

The NPR would retain the current regulation's delineation of assessment areas, and would add a new requirement that additional assessment areas be delineated where large banks have certain concentrations of retail lending. This new requirement would expand the number of assessment areas certain banks would be required to delineate.

Under the proposal, banks would continue to delineate assessment areas around their main office, branches, and deposit-taking remote service facilities, termed "facility based assessment areas" (FBAAs). In addition, the proposal would require large banks, including those evaluated under a strategic plan, to delineate "retail lending assessment areas" (RLAAs) where they have certain concentrations of retail lending outside of banks' FBAAs.

Facility-Based Assessment Areas. Delineation of FBAAs would ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and, typically, conduct a substantial portion of their lending activity.[9] In addition, the proposal would retain the prohibition that assessment areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts.

Retail Lending Assessment Areas. A large bank would be required to delineate RLAAs in Metropolitan Statistical Areas (MSAs) or nonmetropolitan areas of a state outside of the bank's FBAAs in which the bank originates over 100 home mortgage loans or over 250 small business loans in each of the preceding two years.

In addition to these discrete assessment areas, a large bank would also receive consideration for community development loans, investments, and services at its eligible state, multistate MSA, and institution levels. These changes are intended to achieve a careful balance between emphasizing a bank's performance in its FBAAs, while ensuring it receives credit for qualifying activities conducted outside of FBAAs in broader geographic areas.

(2) Overall Framework, and Performance Standards and Metrics

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[8] 12 C.F.R. § 345.41(c)(2).

[9] Banks, other than small and intermediate banks would be required to delineate FBAAs that consist of one or more contiguous counties. Small and intermediate banks would continue to have the flexibility to delineate partial counties, consistent with current practice recognizing their typically smaller services areas.

Currently, the CRA regulations provide for different methods of evaluating a bank's CRA performance depending on the bank's asset size and business strategy. For each type of bank, the agencies evaluate the bank's retail and community development activities. Banks with less than $346 million in assets are considered small banks and are currently evaluated under a retail lending test.[10] Banks with assets of at least $346 million but less than $1.384 billion are considered intermediate small banks and are evaluated under a retail lending test and a community development test.[11] Banks with $1.384 billion or more in assets are considered large banks and their CRA performance is evaluated under the large bank lending, investment, and service tests.[12] Wholesale and limited purpose banks are evaluated under a community development test.[13] Any bank can elect to be evaluated under an approved strategic plan.[14]

a. Proposed Approach – Overall Framework

The three bank size categories would be retained under the proposal, but would have higher thresholds:

- Small banks: Assets of up to $600 million;
- Intermediate banks: Assets of at least $600 million but less than $2 billion;
- Large banks: Assets of at least $2 billion or more.[15]

Under these proposed thresholds, approximately 779 banks currently categorized as intermediate small banks would be recategorized as "small banks," and approximately 217 banks currently categorized as large banks would be recategorized as "intermediate banks." Bank-size thresholds would continue to be adjusted annually for inflation and published by the FDIC.[16] The wholesale and limited purpose bank designations would also be retained, as would be the option, for any bank, to be evaluated under an approved strategic plan.

A bank's CRA performance would continue to be tailored to bank size and business model. Large banks, including a bank evaluated under a strategic plan, would be evaluated under the following four proposed tests: (1) Retail Lending; (2) Community Development Financing; (3) Retail Services and Products; and (4) Community

[10] 12 C.F.R. § 345.26(a)(1).
[11] 12 C.F.R. § 345.26(a)(2).
[12] 12 C.F.R. §§ 345.21, 345.22, 345.23, and 345.24.
[13] 12 C.F.R. § 345.25.
[14] 12 C.F.R. § 345.27.
[15] Under this framework, large banks would be banks that had average quarterly assets, computed annually, of at least $2 billion in both of the prior two calendar years; intermediate banks would be banks that had average quarterly assets, computed annually, of at least $600 million in both of the prior two calendar years and less than $2 billion in either of the prior two calendar years; and small banks would be banks that had average quarterly assets, computed annually, of less than $600 million in either of the prior two calendar years. The agencies are in the process of seeking approval from the U.S. Small Business Administration (SBA) to use the $600 million threshold, where applicable and adjusted annually for inflation, rather than the SBA's recently updated size standards.
[16] The dollar figure would be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

Development Services. Each test would use various metrics and qualitative measures to evaluate a bank's CRA performance. The agencies propose to tailor aspects of the proposal within the large bank category. The agencies propose that certain provisions of the Retail Services and Products Test and Community Development Services Test would apply only to large banks that had average quarterly assets, computed annually, of over $10 billion in both of the prior two calendar years.

Intermediate banks would be evaluated under the proposed Retail Lending Test and the current community development test. The Retail Lending Test would measure the bank's retail lending in FBAAs, and in areas outside FBAAs.[17] The community development test would measure the bank's community development loans, investments, and services in FBAAs and in areas outside FBAAs. Intermediate banks would have the option to opt in to the Community Development Financing Test, and if it opts in, the bank may request consideration for activities that qualify under the Retail Services and Products Test and the Community Development Services Test.[18]

Small banks would continue to be evaluated under the current small bank performance standards that evaluate the bank's retail lending in FBAAs. A small bank would have the option to opt in to the Retail Lending Test, and could continue to receive positive consideration for activities that qualify under the Retail Services and Products, Community Development Financing, and Community Development Services Tests.

In addition, the proposed rule would continue to maintain the current flexibilities that allow banks to include or exclude the activities of bank affiliates. However, banks with affiliates that are operations subsidiaries of the bank would be required to include the activities of those affiliates in the evaluation of the bank's CRA performance.[19] Under this approach, the agencies also would factor in evidence of discriminatory or illegal practices engaged in by the bank's operations subsidiaries because those activities would be considered a component of the bank's own operations.

It is important to note that the current provision concerning the effect of evidence of discriminatory or other illegal credit practices that currently affect a bank's CRA rating would be expanded under the proposed rule to include discriminatory and other illegal practices.

b. Proposed Approach—Performance Standards: Tests

i. Retail Lending Test

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[17] Intermediate banks would not have their retail lending outside of assessment areas evaluated as a whole, unless an intermediate bank conducted more than 50 percent of its retail lending outside of its FBAAs. For an intermediate bank passing this threshold, the outside assessment area analysis would use the same bank metrics and tailored benchmarks applied to large banks.

[18] An intermediate bank may opt to be evaluated under the Community Development Financing Test in proposed § 228.24. If the bank so chooses, the Board could adjust the bank's rating of "Satisfactory" to "Outstanding" at the institution level if the bank requests and receives additional consideration for activities that qualify under the Retail Services and Products Test in proposed § 228.23, the Community Development Services Test in proposed § 228.25, or both.

[19] Staff believes that banks exercise a high level of ownership, control, and management of their operations subsidiaries, such that the activities of these subsidiaries could reasonably be attributable directly to the bank.

The Retail Lending Test would evaluate a bank's retail lending[20] in its FBAAs, and as applicable, RLAAs, and outside retail lending area,[21] which is the nationwide area outside of the bank's FBAAs and RLAAs. The Retail Lending Test would evaluate a bank's retail lending performance in two stages.

First, a bank's total retail lending volume would be evaluated in each FBAA through a "Retail Lending Volume Screen." The Retail Lending Volume Screen would measure the total volume of a bank's retail lending relative to its capacity to lend in an FBAA, compared to peer lenders. A bank would pass the Retail Lending Volume Screen if its performance were at or above 30 percent of the benchmark for that FBAA. If the bank meets or surpasses the threshold, the bank's major product lines would be evaluated under the distribution metrics discussed below. If the bank were below the threshold, further review would be performed by an examiner to determine whether the bank's performance context justifies the level of retail lending in that FBAA, in which case, the bank's major product lines would continue to be evaluated at the next stage. If the examiner determines that the low level of lending is not justified, then a recommended conclusion of "Needs to Improve" or "Substantial Noncompliance," as appropriate, would be assigned for that FBAA.

Second, a bank's performance of its retail lending would continue with an evaluation of the geographic and borrower distributions[22] of each of the bank's major product lines in each FBAA and, as applicable, in each RLAA, and outside retail lending area at the institution level. Under the proposal, closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans would each individually be considered a major product line if they constituted 15 percent or more of a bank's retail lending in, respectively, a particular FBAA, RLAA, or outside retail lending area at institution level, by dollar amount[23] over the relevant evaluation period.[24]

ii. Retail Services and Products Test

The Retail Services and Products Test would evaluate a bank's delivery systems and its deposit and other products in FBAAs. First, this test would evaluate a bank's branch delivery systems, including branch availability

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[20] For purposes of the proposed rule, a bank's retail loans would include home mortgage loans, small business loans, small farm loans, and automobile loans to the extent applicable to the bank.

[21] The "outside retail lending area" is a defined term in the proposed rule and means "the nationwide area outside of a bank's [FBAAs] and, as applicable, [the bank's RLAAs]."

[22] The geographic distribution would measure the bank's retail lending performance in connection with LMI census tracts using a geographic bank metric that would be compared against a geographic market benchmark and a geographic community benchmark. The borrower distribution would measure borrower distribution of retail lending in connection with the bank's retail lending to LMI borrowers, and small business and small farms with specific annual revenues outlined in the proposed regulation. Performance would be captured using a borrower bank metric that would be compared against a borrower market and a borrower community benchmark.

[23] The determination of major product line is different with respect to automobile loans. Automobile loans would be a major product line if the average of the percentage of automobile lending dollars out of total retail lending dollars and the percentage of automobile loans by loan count out of all total retail lending is 15 percent or greater in a particular FBAA, RLAA, or outside retail lending area at the institution level, by dollar amount, over the relevant evaluation period.

[24] The agencies would assign a recommended Retail Lending Test conclusion, with an associated performance score for each of a bank's major product lines in each FBAA and, as applicable, each RLAA, and outside retail lending area at the institution levels.

and services. In addition to comparing the distribution of the institution's branches among income geographies in the institution's FBAAs to demographic and market comparators, the bank's record of branch opening and closings would be evaluated. The test would also provide qualitative consideration for branches and services provided in areas with limited access to branches and in distressed and underserved nonmetropolitan areas. ATM availability as well as digital and other non-branch delivery systems would also be evaluated under the Retail Products and Services Test.

Second, the test would evaluate a bank's availability of deposit and other products that are responsive to the needs of LMI individuals; usage of deposit products that are responsive to the needs of LMI individuals; and availability of credit products and programs not considered in the Retail Lending Test.

The agencies propose that the evaluation of digital and other non-branch delivery systems as well as deposit products responsive to the needs of low- or moderate-income individuals would be required for large banks with assets over $10 billion, and not required for large banks with assets $10 billion and under.

iii. Community Development Financing Test

The Community Development Financing Test would measure how well a bank meets the community development lending and investment needs of, as applicable, the bank's FBAAs, eligible states, multistate MSAs, and nationwide areas. This test would rely on metrics and benchmarks,[25] while also incorporating a qualitative impact review to complement the metrics and benchmarks.

First, this test would use a Community Development Financing Metric that would measure the dollar amount of a bank's community development loans and investments,[26] relative to its capacity, as reflected by its dollars of deposits. The proposed benchmarks would reflect local context, including the amount of activities by other banks in the relevant area, and would be used in conjunction with the Metric to assess the bank's performance. The Metric and benchmarks would be consistent across banks and agencies, providing certainty and clarity about the evaluation approach.

Second, the Impact Review would evaluate the impact and responsiveness of a bank's qualifying activities, including a series of specific qualitative factors.[27] The Impact Review provides appropriate recognition under the Community Development Financing Test of activities that are especially impactful and responsive to community needs, including activities that may have relatively small dollar amounts.

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[25] To calculate the metrics and benchmarks, the agencies propose an approach that would allocate the dollar value of community development activities to one or more counties, states, or to the institution level, depending on the geographic scope of the activity.
[26] Under the proposal, both new and prior loans and investments remaining on the bank's balance sheet would count towards the bank's community development financing metric on an annual basis.
[27] Factors considered in evaluating the impact and responsiveness of a bank's qualifying activities include, among other factors, activities that serve geographic areas with high community development needs, such as in high poverty areas, and activities that benefit very low-income individuals and families.

iv. Community Development Services Test

The Community Development Services Test would evaluate a bank's community development services in FBAAs, eligible states, multistate MSAs, and nationwide areas. The evaluation would include a standard metric[28] for large banks with assets over $10 billion. These banks would collect community development services data in a standardized format, which would include hours for each community development service activity. Other large banks would continue to be evaluated for community development services on a qualitative basis. In addition, the agencies would evaluate the impact and responsiveness of a bank's community development services, including a series of specific qualitative factors, for all large banks.[29]

v. Community Development Financing Test for Wholesale and Limited Purpose Banks

The proposed rule would evaluate wholesale and limited purpose banks under a Community Development Financing Test, with modifications from the proposed Community Development Financing Test that would apply to other banks. This test, termed the Community Development Financing Test for Wholesale or Limited Purpose Banks, would employ qualitative and quantitative factors similar to current examination procedures at the assessment area, multistate MSA, and state levels. At the institution level, the evaluation would also employ a Wholesale and Limited Purpose Bank Community Development Financing Metric as a standard measurement of a bank's volume of activities relative to its capacity.[30]

vi. Strategic Plan

The proposed rule would retain the strategic plan option for any bank, with some changes. For example, under the proposal, the bank's plan would be assessed by the same performance standards that would otherwise be applied, unless the bank substantially engages in activities outside the scope of the tests under the proposal. Banks evaluated under the strategic plan would also be required to delineate assessment areas in the same manner as traditional banks. In addition, with respect to community input, the proposal would require that a proposed plan be shared more broadly, such as on the bank's website and on the relevant banking agency website, and to provide additional information concerning community engagement.

(3) <u>Clarification and Expansion of Community Development Qualifying Activities</u>

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[28] The Bank Assessment Area Community Development Service Hours Metric would measure the total hours for all community development services performed by a bank in an FBAA divided by the total number of the bank's full-time equivalent employees, to obtain the average number of community service hours per employee.

[29] For example, the use of community development services by LMI individuals, the extent to which the services benefit LMI individuals, and the proportion of services that relate to and provide additional support for the bank's community development financing activities.

[30] One key difference between the proposed Community Development Financing Test metric for large banks and the Community Development Financing Test for Wholesale or Limited Purpose Banks is that the test for large banks would use deposits to construct its metric and the test for Wholesale or Limited Purpose Banks would use assets to construct its metric. This difference is intended to account for the unique business models of wholesale and limited purpose banks, which may not collect retail deposits. This approach was also informed by stakeholder feedback that assets are a better measure of the capacity of wholesale and limited purpose banks to make community development loans and investments.

Currently, under the CRA regulations, a bank's activities that qualify for community development consideration fall into four general categories: (1) affordable housing; (2) community development services; (3) economic development; and (4) revitalization and stabilization. To qualify for consideration, an activity must have a primary purpose of community development.

Generally, activities with a primary purpose of community development would continue to receive full CRA credit[31] under the Community Development Financing and Community Development Services Tests. The proposed rule also would create more descriptive and expansive criteria for the type of activities that qualify for CRA credit, and would add additional definitions to reflect an emphasis on activities that are responsive to community needs, especially the needs of LMI individuals and communities, rural, and Native Land areas, as well as the needs of small businesses and small farms.

The clearly defined criteria would better identify the types of activities that meet the community development definition, including eleven categories that establish specific eligibility standards for a broad range of community development activities. For example, one of the definitions clarifies what constitutes affordable housing for LMI individuals by proposing a definition for naturally occurring affordable housing. As part of the eligibility standards, the agencies also propose to include that certain activities be conducted in targeted census tracts, which would include LMI census tracts, as well as distressed or underserved nonmetropolitan middle-income census tracts. This would be particularly important for rural communities that may not have LMI census tracts, but may have acute credit and other community development needs. While retaining a focus on LMI communities, the NPR would include provisions specific to bank lending and services in rural communities. This would include more clarity and broader eligibility for bank volunteer activities in nonmetropolitan counties and expanding the types of community development activities considered in rural areas and Native Land Areas,[32] for revitalization; essential community infrastructure; essential community facilities; and disaster preparedness and climate resiliency. Because the agencies propose comprehensively evaluating large bank community development financing performance – both within a bank's branch facility-based assessment areas and outside these areas, as part of state and institution-level ratings – consideration for activities would expand and encourage activities in rural communities and Native Land Areas.

The proposal would also include a publicly available illustrative, non-exhaustive list of activities that meet the community development definitions and criteria, and therefore be eligible for CRA consideration. The current examples provided in the Interagency Questions and Answers would be a start for this illustrative list of examples of qualifying activities. The agencies also propose including a process for modifying the illustrative list of activities periodically, and a process under which banks can confirm that an activity is eligible for community development consideration under the CRA regulations. This is intended to provide more certainty and clarity on the types of activities eligible for community development consideration.

Finally, the proposal would expand eligible activities with minority depository institutions (MDIs); women's depository institutions (WDIs);Community Development Financial Institutions (CDFIs) that are certified by the

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[31] Under the proposal, affordable housing that is developed in conjunction with federal, state, local, or tribal government programs could receive partial CRA consideration if certain requirements are met.

[32] Under the proposal, "Native Land Areas" would generally be defined as including the following geographic areas: Indian country, state American Indian reservations, Alaska Native villages, Hawaiian Home Lands, Oklahoma Tribal Statistical Areas, American Indian Joint-Use Areas, state-designated Tribal Statistical Areas, and tribal-designated Tribal Statistical Areas.

U.S. Treasury; and low-income credit unions (LICUs), by considering investments, loan participations, and other ventures undertaken by any bank in cooperation with MDIs, WDIs, LICUs, and Treasury-certified CDFIs regardless of geographic area, as long as the activity helps to meet the credit needs of local communities in which the MDI, WDI, LICU, or Treasury-certified CDFI is chartered.

(4) Data Collection, Recordkeeping, and Reporting

Currently, the CRA regulations require banks, except small banks as currently defined, to collect and report a variety of data for CRA purposes. Large banks subject to CRA data reporting requirements must report the small business and small farm loan data as well as the aggregate number and amount of community development loans originated or purchased during the prior calendar year. There are currently no data collection or reporting requirements on other CRA qualified activities, for example, retail services, community development investments, or community development services. Deposit data is currently collected and reported for, among other things, safety and soundness purposes, but its use with respect to CRA evaluations is limited because banks currently record deposits by branch locations and not the address of the account holder.

The proposed rule would have data collection and reporting requirements generally applicable to large banks, with certain requirements for deposits data, the Retail Lending Test, Retail Services and Products Test, and Community Development Services Test tailored to only apply to large banks with assets over $10 billion. The data would be essential to construct the various metrics in the performance tests under the proposed framework. Data collection and reporting, as applicable, would be required for deposits, retail lending, community development loans and investments, community development services, retail services and products, and assessment areas.

Deposits Data. Under the proposal, large banks that with average assets of over $10 billion would be required annually to collect, maintain, and report deposits data based on the location of the depositor, instead of the bank branch as is done under the FDIC's Summary of Deposits (SOD). Deposits data would be used to construct the various metrics and benchmarks at the FBAA, state, multistate MSA, and institution levels for the Retail Lending and the Community Development Financing Tests. Deposit data is also used for weighting to form conclusions at the state, multi-state MSA, and institution levels. For large banks that with average assets of $10 billion or less, intermediate banks, and for small banks that opt into the Retail Lending Test, SOD data would be used.

Retail Lending Data. Under the proposed rule, large banks would be required to collect, maintain, and report, retail lending data in a prescribed format for loans to small businesses and small farms,[33] as well as automobile loans. With respect to data on home mortgage loans,[34] the proposal would add the requirement that, if the bank is not a HMDA reporter, the bank must collect, maintain, and report certain data in a

[33] In the short term, data collection and reporting requirements and processes for small business loans and small farm loans would remain the same as they are under the current rule. However, in the longer term, the agencies intend to replace the current requirements with the CFPB's data collection and reporting requirements under its Section 1071 rule, when that rule becomes effective.
[34] Under the proposal, banks would collect, maintain, and report home mortgage data similar to current regulatory requirements. If a HMDA reporter, the bank is required to report the location of each home mortgage loan outside of the MSAs in which the bank has home or branch office.

standardized form. Small and intermediate banks would not be required to collect, maintain, or report retail lending data. Instead, as is done under the current rule, examiners would continue to use the data provided by these banks maintained in their own format or reported for other regulations, e.g., HMDA.

Community Development Loans and Investments Data. Currently, banks collect and maintain data on community development loans and investments in the normal course of business and present this information to examiners at the time of evaluation. Under the proposal, large banks would be required to collect, maintain, and report community development financing data in a standardized format for each community development loan or investment. Collection of this data would be required to construct the community development financing metrics and benchmarks. Small banks would not have data collection and reporting requirements for community development loans or investments; however, a small bank would need to present sufficient information if consideration for these activities is requested. An intermediate bank that opts in to the Community Development Financing Test, would be required to collect and maintain the same data as a large bank, but could do so in a format of their choosing. Intermediate banks would have the option to report this data, but would not be required to do so.

Community Development Services Data. Under the proposed rule, large banks with average assets of over $10 billion would be required to collect, maintain, and report in a prescribed format relevant community development services information.[35] All other banks would not be required to collect, maintain, or report data on community development services.

Retail Services and Products Data. Under the proposal, large banks would be required to collect and report relevant information on a bank's branch delivery systems. Regarding digital and other delivery systems, only a large bank with assets of over $10 billion, and a large bank with assets of $10 billion or less that requests additional consideration for digital and other delivery systems, must collect and maintain the required data. The proposal would require large banks to use a standardized template for this data to facilitate examinations.

Assessment Areas Data. Under the proposed rule, large banks would have data collection and reporting requirements for assessment area delineations. All other banks would be required to collect and maintain data as required for inclusion in their CRA public files.

(5) <u>Conclusions and Ratings</u>

The proposed rule would assign performance test conclusions for a bank based upon the criteria included in the Retail Lending, Retail Services and Products, Community Development Financing, and Community Development Services Tests that would be combined to arrive at the bank's overall rating. Specifically, except for a small bank, conclusion scores would be assigned at the assessment area level, as well as the state, multistate MSA, and institution levels using the following corresponding point values: "Outstanding" (10 points); "High Satisfactory" (7 points); "Low Satisfactory" (6 points); "Needs to Improve" (3 points); "Substantial

[35] Under proposed § 228.42(a)(ii), if a wholesale or limited purpose bank opts to be evaluated under the Community Development Services Test, the bank must collect and maintain in machine readable form, as prescribed by the FDIC, until the completion of the bank's next CRA examination, certain community development services data.

Noncompliance" (0 points). Those conclusions would be rolled into a final rating, using the statutory ratings of "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance."

IV. COMMENT PERIOD

Comments on this NPR must be received on or before August 5, 2022.

V. STAFF CONTACTS

Richard M. Schwartz, Counsel, Legal Division (202) 898-7424
Sherry A. Betancourt, Counsel, Legal Division (202) 898-6560
Patience R. Singleton, Senior Policy Analyst, DCP) (202) 898-6859
Pamela A. Freeman, Chief Fair Lending and CRA Examination, DCP (202) 898-3656