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12 CFR Par

[Regulation BB; Docket No. R-1723]

RIN 7100-AF94

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is publishing for public comment an advance notice of proposed rulemaking (ANPR) to solicit public input regarding modernizing the Board's Community Reinvestment Act regulatory and supervisory framework. The Board is seeking comment on all aspects of the ANPR from all interested parties and also requests commenters to identify other issues that the Board should consider.

DATES: Comments on this ANPR must be received on or before **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket No. R-1723 and RIN 7100-AF94, by any of the following methods:

- **Agency Website:** http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- **E-mail:** regs.comments@federalreserve.gov. Include docket and RIN numbers in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

Instructions: All public comments are available from the Board's website at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue, NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: S. Caroline (Carrie) Johnson, Manager, Division of Consumer and Community Affairs, (202) 452-2762; Catherine M. J. Gates, Senior Project Manager, Division of Consumer and Community Affairs, (202) 452-2099; Amal S. Patel, Counsel, Division of Consumer and Community Affairs, (202) 912-7879, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunication Device for Deaf (TDD) only, (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Introduction: Request for Feedback, Objectives, and Overview

In this ANPR, the Board requests feedback on different approaches to modernizing the regulatory and supervisory framework for the Community Reinvestment Act (CRA)[1] in order to more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in credit access. This includes seeking 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 regarding CRA-eligible activities. The Board is also mindful of the economic impact of the COVID-19 pandemic, particularly on LMI

[1] 12 U.S.C. 2901 *et seq.* The Board implements the CRA through Regulation BB. 12 CFR part 228.

communities and households, and seeks feedback on how it should consider these impacts in CRA modernization.

In addition to requesting comment on all topics raised below, this ANPR also includes specific questions that are numbered consecutively. Commenters are requested to refer to these question numbers in their submitted comments, which will assist the Board in its efforts as well as members of the public that review comments online.

The contemplated changes to Regulation BB are guided by the following objectives:

- More effectively meet the needs of LMI communities and address inequities in credit access, in furtherance of the CRA statute and its core purpose.
- Increase the clarity, consistency, and transparency of supervisory expectations and of standards regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed, while seeking to minimize the associated data burden and to tailor collection and reporting requirements.
- Tailor CRA supervision of financial institutions (banks)[2] to reflect:
  - Differences in bank sizes and business models;
  - Differences in local markets, needs, and opportunities, including with respect to small banks serving rural markets; and
  - Expectations across business cycles.
- Update standards in light of changes to banking over time, particularly the increased use of mobile and internet delivery channels.
- Promote community engagement.

[2] "Regulated financial institution'' means an ''insured depository institution'' as defined in 12 U.S.C. 1813. *See* 12 U.S.C. 2902(2). "Insured depository institution'' means any bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation. *See* 12 U.S.C. 1813(c)(2).

- Strengthen the special treatment of minority depository institutions (MDIs).
- Recognize that CRA and fair lending responsibilities are mutually reinforcing.

The Board seeks public input on different policy options to carry out the above objectives in several key areas and looks forward to assessing this input to advance the goal of strengthening the CRA regulation. The ANPR includes the below sections.

Background. Section II discusses the CRA's statutory history and purpose, including a discussion of the historical practice of redlining on the basis of race and the enactment of the CRA and other complementary federal civil rights laws to address systemic inequities in access to credit and other financial services. The background section also provides an overview of the Board's existing Regulation BB and stakeholder feedback on CRA modernization.

Assessment Areas and Defining Local Communities for CRA Evaluations. Section III addresses the issue of how to define a bank's local communities, which impacts where banks' CRA performance is evaluated and is critical for ensuring that the CRA fulfills its purpose of encouraging banks to meet the credit needs of their local communities. The Board seeks to more predictably delineate assessment areas around physical locations, such as bank branches, and to ensure that assessment areas are contiguous, do not reflect illegal discrimination, do not arbitrarily exclude LMI census tracts, and are tailored to bank size and performance context. For large banks that conduct a significant amount of lending and deposit-based collection far from their branches, the Board seeks comment on deposit-based and lending-based alternative approaches to delineating assessment areas. For internet banks, the Board is also considering whether nationwide assessment areas could more holistically capture their banking activities.

Overview of Evaluation Framework. Section IV provides an overview of the Board's proposed framework for evaluating banks' CRA performance with a Retail Test and a Community Development Test. The Retail Test would include two subtests: a Retail Lending Subtest and a Retail Services Subtest. The Community Development Test would also include two subtests: a Community Development Financing Subtest and a Community Development

Services Subtest. This section proposes tailoring these tests based on differences in bank asset size and business models. The Board proposes an asset-size threshold of $750 million or $1 billion to distinguish between small and large retail banks. Small retail banks could continue to be evaluated under the current CRA framework, but would have the option to be evaluated under the Retail Lending Subtest alone and could also elect to have their retail services and community development activities evaluated. Large retail banks would be evaluated under all four subtests. Wholesale and limited purpose banks would be evaluated under the two community development subtests. Alternatively, any bank would have the option to be evaluated pursuant to an approved strategic plan.

Retail Test. Section V describes the two subtests of the proposed Retail Test. For the Retail Lending Subtest, the Board proposes a metrics-based approach that is tailored based on a bank's major product lines and on the credit needs and opportunities within its assessment area(s). For the Retail Services Subtest, the Board proposes a qualitative approach that is intended to provide greater predictability and transparency for evaluating important aspects of retail banking services, including branches, other delivery systems, and deposit products. Section VI discusses updating and clarifying certain aspects of Retail Test qualifying activities, including the designation of major product lines, the evaluation of consumer loan products, the definitions of small business and small farm loans, and the consideration of retail activities conducted in Indian Country.

Community Development Test. Section VII describes the two subtests of the proposed Community Development Test: a Community Development Financing Subtest and a Community Development Services Subtest. The Board proposes a metrics-based approach to evaluating community development financing activities that is transparent, predictable, and tailored to the community development needs and opportunities within an assessment area. For the Community Development Services Subtest, the Board proposes evaluating community development services in a way that better recognizes the value of qualifying volunteer activities, especially in rural communities.

Section VIII discusses proposals for clarifying and updating Community Development Test qualifying activities pertaining to affordable housing, community services, economic development, and revitalization and stabilization, and discusses updating how activities outside of a bank's assessment areas would be considered. The Board seeks to emphasize qualifying activities that support MDIs and Community Development Financial Institutions (CDFIs). In addition, the Board is considering how to treat community development activities outside of assessment areas to help address discrepancies between so-called CRA "hot spots"[3] and "deserts."[4] The Board seeks feedback on defining designated areas of need – for example, in Indian Country or in areas that meet an "economically distressed" definition – where banks could conduct community development activity outside of an assessment area. The Board also seeks feedback on approaches to increase the upfront certainty about what activities qualify for CRA credit, including a process for banks and other stakeholders to obtain pre-approval that a particular activity qualifies for consideration and publication of illustrative lists of qualifying activities.

Strategic Plans. In Section IX, the Board seeks feedback on proposed revisions to the strategic plan option for CRA performance evaluations to provide more clarity and flexibility about establishing strategic plans and the standards used to assess activities.

Ratings. In Section X, the Board discusses updating the way in which state, multistate metropolitan statistical area (MSA), and institution ratings are reached, basing these ratings in local assessment area conclusions for the different subtests, as applicable. For example, the

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[3] CRA hot spots are areas where large numbers of banks concentrate CRA and other banking activities in the same, relatively small number of localities.

[4] CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.

Board proposes assigning a bank's overall rating on the Retail Test by using a weighted average of each of the bank's assessment area-level conclusions. The Board believes it is appropriate to anchor a bank's overall rating in its performance in all of its local communities, and therefore proposes to eliminate the designation of full- and limited-scope assessment areas in the evaluation process. Certain activities outside of a bank's assessment area(s) would also be considered in determining overall ratings, such as a partnership with an MDI, which could be considered as part of a pathway to an "outstanding" rating. The Board also seeks to update the consideration of discrimination and other illegal credit practices in determining CRA ratings by adding violations of new laws and regulations that are related to meeting community credit needs.

Data Collection and Reporting. In Section XI, the Board solicits feedback on potential revisions to data collection and reporting requirements. The Board is mindful of the potential tradeoff between the expanded use of metrics to provide greater certainty and consistency and the expanded need for data collection and reporting, and has prioritized using existing data wherever possible. The Board has also prioritized approaches that would exempt small banks from new data collection requirements. In addition, the Board seeks feedback on deposits data options for large banks, and in particular for large banks with extensive deposit activity outside of the areas served by their physical branches. The Board seeks feedback on how to balance the certainty provided through the use of metrics in CRA performance evaluations with the potential data burden implications.

Request for Feedback:

Question 1. Does the Board capture the most important CRA modernization objectives? Are there additional objectives that should be considered?

II. CRA Background

The Board implements the CRA through Regulation BB. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of their entire communities, including LMI neighborhoods, in which they are chartered. Under Regulation BB, the Board applies different evaluation standards to banks of different asset sizes and types.

Together with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), the Board has also published Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers)[5] to provide guidance on the interpretation and application of the agencies' CRA regulations.

A. CRA Statutory Purpose and History

The CRA invests the Board, the FDIC, and the OCC with broad authority and responsibility for implementing the statute, which provides the agencies with a crucial mechanism for addressing persistent systemic inequity in the financial system for LMI and minority individuals and communities. In particular, the statute and its implementing regulations provide the agencies, regulated banks, and community organizations with the necessary framework to facilitate and support a vital financial ecosystem that supports LMI and minority access to credit and community development.[6]

Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment

[5] *See* 81 FR 48506 (July 25, 2016). "Interagency Questions and Answers" refers to the "Interagency Questions and Answers Regarding Community Reinvestment" in its entirety. "Q&A" refers to an individual question and answer within the Interagency Questions and Answers.

[6] *See, e.g.,* Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System, "The Community Reinvestment Act: Its Evolution and New Challenges" (March 30, 2007), https://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm ("After years of experimentation, the managers of financial institutions found that these loan portfolios, if properly underwritten and managed, could be profitable. . . . Moreover, community groups and nonprofit organizations began to take a more businesslike, market-oriented approach to local economic development, leading them to establish more-formalized and more-productive partnerships with banks. Community groups provided information to financial institutions on the needs of lower-income communities for credit and services, offered financial education and counseling services to community members, and referred 'bankable' customers to partner banks. Specialized community development banks and financial institutions with the mission of providing financial services and credit to lower-income communities and families emerged and grew.").

and other inequities.[7] Many believed that systemic inequities in credit access – due in large part to a practice known as "redlining" – along with a lack of public and private investment, was at the root of these communities' economic distress.[8] Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods comprised largely of African-American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside of those neighborhoods. The term is widely associated with the former federal Home Owners' Loan Corporation (HOLC), which employed color-coded maps[9] to designate its perception of the relative risk of lending in a range of neighborhoods, with "hazardous" (the highest risk) areas coded in red. Redlined neighborhoods typically had a high percentage of minority residents, were overwhelmingly poor, and had less desirable housing.[10] As Senator William Proxmire, who authored the CRA legislation, testified when discussing its purpose:

> By redlining let me make it clear what I am talking about. I am talking about the fact that banks and savings and loans will take their deposits from a community and instead of reinvesting them in that community, they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older

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[7] *See* Bernanke, "The Community Reinvestment Act: Its Evolution and New Challenges" ("Public and congressional concerns about the deteriorating condition of America's cities, particularly lower-income and minority neighborhoods, led to the enactment of the Community Reinvestment Act. . . . Several social and economic factors help explain why credit to lower-income neighborhoods was limited at that time. First, racial discrimination in lending undoubtedly adversely affected local communities. Discriminatory lending practices had deep historical roots.").

[8] *See, e.g.,* Michael Berry, Federal Reserve Bank of Chicago, and Jessie Romero, Federal Reserve Bank of Richmond, "Federal Reserve History: Community Reinvestment Act of 1977," https://www.federalreservehistory.org/essays/community_reinvestment_act (also explaining that other federal and state policies likewise contributed to redlining and additional discriminatory practices).

[9] *See* "Mapping Inequality: Redlining in New Deal America," https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58 (archive of HOLC maps).

[10] *See, e.g.,* Daniel Aaronson, Daniel Hartley, and Bhashkar Mazumder, Federal Reserve Bank of Chicago, "The Effects of the 1930s HOLC 'Redlining' Map" (Feb. 2019), https://www.chicagofed.org/publications/working-papers/2017/wp2017-12, p.1 ("Neighborhoods were classified based on detailed risk-based characteristics, including housing age, quality, occupancy, and prices. However, non-housing attributes such as race, ethnicity, and immigration status were influential factors as well. Since the lowest rated neighborhoods were drawn in red and often had the vast majority of African American residents, these maps have been associated with the so-called practice of 'redlining' in which borrowers are denied access to credit due to the demographic composition of their neighborhood.").

> neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.[11]

Against this backdrop, Congress passed the CRA, along with other complementary federal civil rights laws during the late 1960s and 1970s, to address systemic inequities in access to credit and other financial services that contributed to often dramatic differences in economic access and overall financial well-being.[12] In particular, the Equal Credit Opportunity Act (ECOA)[13] and the Fair Housing Act (FHA)[14] fair lending laws each include an explicit focus on discrimination on prohibited bases such as race, and the Home Mortgage Disclosure Act (HMDA)[15] is intended to bring greater transparency to mortgage lending practices. Even with the implementation of the CRA and the other complementary laws, the harmful legacy of redlining and other discriminatory practices too often continues to be felt. In 2016, the "wealth gap [was] roughly the same as it was in 1962, two years before the passage of the Civil Rights Act of 1964[.]"[16]

In enacting the CRA, the Congress found that: (1) banks and savings associations (collectively, banks) are required by law to demonstrate that their deposit facilities serve the

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[11] 123 Cong. Rec. 17630 (June 6, 1977).

[12] *See, e.g.,* Governor Lael Brainard, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose" (Jan. 8, 2020), https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm ("The CRA was one of several landmark pieces of legislation enacted in the wake of the civil rights movement intended to address inequities in the credit markets.").

[13] 15 U.S.C. 1691 *et seq*.

[14] 42 U.S.C. 3601 *et seq*.

[15] 12 U.S.C. 2801 *et seq*.

[16] Dionissi Aliprantis and Daniel Carroll, Federal Reserve Bank of Cleveland, "What is Behind the Persistence of the Racial Wealth Gap" (Feb. 28, 2019), https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx. *See also, e.g.,* The New York Times, "How Redlining's Racist Effects Lasted for Decades" (Aug. 24, 2017), https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasted-for-decades.html (citing William J. Collins and Robert A. Margo, "Race and Home Ownership from the End of the Civil War to the Present" (Nov. 2010) in stating, "The black-white gap in homeownership in America has in fact changed little over the last century . . . . That pattern helps explain why, as the income gap between the two groups has persisted, the wealth gap has widened by much more.").

convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[17] The statute directed the relevant federal financial supervisory agencies to: encourage the financial institutions they supervise to safely and soundly meet the credit needs of the communities they serve, including LMI neighborhoods;[18] assess their record of doing so and take this record into account when evaluating banking applications for a deposit facility;[19] and report to Congress the actions they have taken to carry out their CRA responsibilities.[20] The CRA also directed each agency to publish regulations to carry out the statute's purposes.[21]

Since its enactment, Congress has amended the CRA several times, including through the Financial Institutions Reform, Recovery, and Enforcement Act of 1989[22] (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991[23] (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Housing and Community Development Act of 1992[24] (which included assessment of the record of nonminority-owned and nonwomen-owned banks in cooperating with minority-owned and women-owned banks and low-income credit unions); the Riegle-Neal Interstate Banking and Branching Efficiency Act of

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[17] 12 U.S.C. 2901(a).

[18] 12 U.S.C. 2901(b).

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

[20] 12 U.S.C. 2904.

[21] 12 U.S.C. 2905.

[22] Pub. L. 101–73, 103 Stat. 183 (Aug. 9, 1989).

[23] Pub. L. 102–242, 105 Stat. 2236 (Dec. 19, 1991).

[24] Pub. L. 102-550, 106 Stat. 3874 (Oct. 28, 1992).

1994[25] (which (1) required an agency to consider an out-of-state national bank's or state bank's CRA rating when determining whether to allow interstate branches, and (2) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999[26] (which, among other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

In 1978, consistent with Congress's statutory directive, the agencies promulgated the first CRA regulations, which included evidence of prohibited discriminatory or other illegal credit practices as a performance factor.[27] The agencies have since significantly amended these regulations twice, in 1995 and 2005.[28] In addition, the agencies have periodically published interpretations of the CRA regulations in the form of the Interagency Questions and Answers.

The Federal Reserve has also developed significant supervisory and other infrastructure to support the CRA and its objectives. Starting in 1984, the Federal Reserve System, through the community development function at each Federal Reserve Bank, has engaged in outreach, educational, and technical assistance to help banks, community organizations, government entities, and the public understand and address financial services issues affecting LMI individuals and communities and to assist banks in meeting their affirmative obligations under the CRA.[29]

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[25] Pub. L. 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[26] Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[27] 43 FR 47144 (Oct. 12, 1978). *See also* Governor Lael Brainard, "Strengthening the Community Reinvestment Act: What are We Learning?" (Feb. 1, 2019), https://www.federalreserve.gov/newsevents/speech/brainard20190201a.htm ("The central thrust of the CRA is to encourage banks to ensure that all creditworthy borrowers have fair access to credit, and, to do so successfully, it has long been recognized that they must guard against discriminatory or unfair and deceptive lending practices.").

[28] 60 FR 22156 (May 4, 1995); 70 FR 44256 (Aug. 2, 2005). The CRA regulations have typically been adopted individually by each agency, but drafted on an interagency basis and released jointly.

[29] *See, e.g.,* Chairman Jerome H. Powell, Board of Governors of the Federal Reserve System, "Celebrating Excellence in Community Development" (Dec. 3, 2018), https://www.federalreserve.gov/newsevents/speech/powell20181203a.htm ("The Fed's community development function . . . advances our Community Reinvestment Act responsibilities by analyzing and disseminating information related to local financial needs and successful approaches for attracting and

The CRA requires each agency to prepare a written evaluation of a bank's record of meeting the credit needs of its entire community, including LMI neighborhoods, at the conclusion of its CRA examination.[30] This report, known as a performance evaluation, is required to be a public document that presents an agency's conclusions regarding a bank's overall performance for each "assessment factor" identified in the CRA regulations.[31] A performance evaluation must also present facts and data supporting the agency's conclusions and contain both the bank's CRA rating and a description of the basis for the rating.[32] A bank's CRA rating is considered, for example, in applications to merge with or acquire another bank, open a branch, or relocate a main office or branch.[33] A bank with a CRA rating below "satisfactory" may be restricted from certain activities until its next CRA examination.

Request for Feedback:

Question 2. In considering how the CRA's history and purpose relate to the nation's current challenges, what modifications and approaches would strengthen CRA regulatory implementation in addressing ongoing systemic inequity in credit access for minority individuals and communities?

B. Regulation BB and Guidance for Performance Evaluations

1. CRA Performance Evaluations

Regulation BB provides different methods to evaluate a bank's CRA performance depending on its asset size and business strategy.[34] Under the current framework:

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deploying capital. These efforts strengthen the capacity of both financial institutions and community organizations to meet the needs of the communities they serve.").

[30] 12 U.S.C. 2906.

[31] 12 U.S.C. 2906(b)(1)(A)(i).

[32] 12 U.S.C. 2906(b)(1)(A)(ii) and (iii). There are four statutory rating categories: "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance." 12 U.S.C. 2906(b)(2).

[33] 12 CFR 228.29.

[34] *See generally* 12 CFR 228.21-.27. The Board, the FDIC, and the OCC annually adjust the CRA asset-size thresholds based on inflation.

- Small banks – currently, those with assets of less than $326 million as of December 31 of either of the prior two calendar years – are evaluated under a retail lending test that may also consider community development lending. Community development investments and services may be considered for an "outstanding" rating at a bank's option, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- Intermediate small banks – currently, those with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years – are evaluated under the retail lending test for small banks and a community development test. The intermediate small bank community development test evaluates all community development activities together.
- Large banks – currently, those with assets of more than $1.305 billion as of December 31 of both of the prior two calendar years – are evaluated under separate lending, investment, and service tests. The lending and service tests consider both retail and community development activities, and the investment test focuses on qualified community development investments. To facilitate the agencies' CRA analysis, large banks are required to report annually certain data on community development, small business, and small farm loans (small banks and intermediate small banks are not required to report these data).
- Designated wholesale banks (those engaged in only incidental retail lending) and limited purpose banks (those offering a narrow product line to a regional or broader market) are evaluated under a standalone community development test.
- Banks may elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service activities in order to achieve a "satisfactory" or

an "outstanding" rating. A strategic plan must be developed with community input and approved by the bank's primary regulator.

The Board also considers applicable performance context information to inform its analysis and conclusions when conducting CRA examinations. Performance context comprises a broad range of economic, demographic, and institution- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities, including:

- Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant assessment area-related data.
- Any information about lending, investment, and service opportunities in the bank's assessment area(s).
- The bank's product offerings and business strategy.
- Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate, safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s).
- The bank's past performance and the performance of similarly situated lenders.
- The bank's public file and any written comments about the bank's CRA performance submitted to the bank or to the Board, and any other information deemed relevant by the Board.[35]

2. Assessment Areas

Regulation BB requires a bank to delineate one or more assessment area(s) in which its record of meeting its CRA obligations will be evaluated.[36] The regulation requires a bank to delineate assessment areas consisting of metropolitan areas (MSAs or metropolitan divisions) or

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[35] 12 CFR 228.21(b).

[36] 12 CFR 228.41.

political subdivisions[37] in which its main office, branches, and deposit-taking automated teller machines (ATMs) are located, as well as the surrounding geographies (*i.e.*, census tracts)[38] where a substantial portion of its loans are originated or purchased.

The assessment area definition's emphasis on branches reflects the prevailing business model for financial service delivery when the CRA was enacted. The statute instructs the agencies to assess a bank's record of meeting the credit needs of its "entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and to take such record into account in its evaluation of an application for a deposit facility by such institution."[39] The statute does not prescribe the delineation of assessment areas, but they are an important aspect of the regulation because they define "community" for purposes of the evaluation of a bank's CRA performance.

3. Eligible Activities

Regulation BB and the Interagency Questions and Answers provides detailed information, including applicable definitions, regarding activities that are eligible for CRA consideration in an assessment of a bank's CRA performance. Banks that are subject to a performance test that includes a review of their retail activities are assessed in connection with retail lending activity (as applicable, home mortgage loans, small business loans, small farm loans, and consumer loans[40]) and, where applicable, retail banking service activities (*e.g.*, the current distribution of a bank's branches in geographies of different income levels, and the availability and effectiveness

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

[38] 12 CFR 228.12(k).

[39] 12 U.S.C. 2903(a).

[40] 12 CFR 228.12(j), (l), (u), and (w).

of the bank's alternative systems for delivering banking services to LMI geographies and individuals).[41]

Banks subject to a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services, which by definition must have a primary purpose of community development.[42]

4. Guidance for Performance Evaluations

In addition to information included in their CRA regulations, the Board and the other agencies also provide information to the public regarding how CRA performance tests are applied, where CRA activities are considered, and what activities are eligible through publicly available CRA performance evaluations,[43] the Interagency Questions and Answers, interagency CRA examination procedures,[44] and interagency instructions for writing performance evaluations.[45]

C. Stakeholder Feedback and Recent Rulemaking

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

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[41] *See generally,* 12 CFR 228.21-.27; 12 CFR 228.24(d).

[42] *See generally,* 12 CFR 228.21-.27; 12 CFR 228.12(g), (h), (i), and (t).

[43] *See, e.g.,* Board of Governors of the Federal Reserve System, "Community Reinvestment Act (CRA), Search: Evaluations and Ratings (Federal Reserve Supervised Banks)," https://www.federalreserve.gov/apps/CRAPubWeb/CRA/BankRating.

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

[45] *Id*.

From 2013 to 2016, the agencies solicited feedback on the CRA as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) review.[46] Commenters raised issues related to assessment area definitions; incentives for banks to serve LMI, unbanked, underbanked, and rural communities; recordkeeping and reporting requirements; need for clarity regarding performance measures and better examiner training to ensure consistency in examinations; and refinement of CRA ratings.

1. *OCC CRA Advance Notice of Proposed Rulemaking and Federal Reserve Outreach Sessions*

On September 5, 2018, the OCC published an advance notice of proposed rulemaking to solicit ideas for a new CRA regulatory framework (OCC CRA advance notice of proposed rulemaking).[47] More than 1,500 comment letters were submitted in response. To augment that input, the Federal Reserve System held about 30 outreach meetings with representatives of banks, community organizations, and the other agencies.[48]

Although commenters agreed that the regulations needed to be modernized to reflect the evolution of the banking industry, they expressed strong support for some elements of the current approach to CRA and noted the significant volume of loans and investments directed toward LMI consumers and communities that it has generated. There was substantial support for retaining CRA's focus on LMI consumers and communities, and many commenters urged the agencies to proceed with caution so as not to disturb the important collaborative environment that CRA has fostered among banks and community stakeholders in support of community development.

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

[47] 83 FR 45053 (Sept. 5, 2018).

[48] For a summary of the Federal Reserve outreach session feedback see: https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf.

Although there was general openness to considering a more quantitative CRA framework, commenters raised concerns about a "single metric" approach, noting that setting a threshold for the ratio of CRA activity relative to deposits associated with each performance rating could incentivize banks to focus on high-value markets or activities without assessing their impact.

Many stakeholders suggested that deposit-taking physical facility-based ("branch-based") assessment areas serve many banks well, but additional or different assessment areas may be appropriate for other banks, such as internet banks.

2. *OCC-FDIC CRA Notice of Proposed Rulemaking and OCC CRA Final Rule*

On December 12, 2019, the FDIC and the OCC issued a joint notice of proposed rulemaking (FDIC-OCC CRA notice of proposed rulemaking).[49] In response, the agencies received over 7,500 comment letters.[50]

On May 20, 2020, the OCC issued a CRA final rule (OCC CRA final rule), retaining the most fundamental elements of the proposal but also making adjustments to reflect stakeholder input.[51] The agency deferred establishing metrics-based thresholds for evaluating banks' CRA performance until it is able to assess additional data,[52] with the final rule having an October 1, 2020 effective date and January 1, 2023 and January 1, 2024 compliance dates.[53] Additionally, the final rule retains the proposal's approach of allowing smaller banks (including renaming and adjusting the current intermediate small bank category as "intermediate banks")[54] to continue to

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[49] 85 FR 1204 (Jan. 9, 2020).

[50] 85 FR 34734, 34734 and 34737 (June 5, 2020).

[51] 85 FR 34734 (June 5, 2020).

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

[53] 85 FR at 34784.

[54] The OCC CRA final rule defines small banks as those with total assets of $600 million or less and intermediate banks as those with total assets of over $600 million but less than $2.5 billion.

have their CRA performance evaluated in a manner comparable to the current CRA framework.[55] The OCC CRA final rule also provides that wholesale and limited purpose banks will be reviewed in a manner similar to the current approach.[56] The final rule's revised qualifying activities criteria are applicable to all bank types.[57]

III. Assessment Areas

In the current regulation, the definition of assessment areas reflects a time when banks delivered products and services almost exclusively through physical facilities, primarily branches. Banks now increasingly deliver financial products and services to consumers through online or mobile banking, which results in a broader geographic reach for some banks, especially large banks. Although the CRA statute does not expressly define "communities" or "local communities," the statute provides the Board with broad authority to define these terms by regulation. This authority includes amending Regulation BB to incorporate, in the consideration of a bank's "community," assessment areas that are not geographically local to its main office, branches, or deposit-taking ATMs, as currently defined.

The Board is considering how best to define the local communities where banks' CRA activities are assessed to both reflect changes in the banking industry and to retain CRA's nexus with fair lending requirements. This includes evaluating changes to a bank's facility-based assessment areas, as well as different approaches for defining assessment areas for certain large banks based on concentrations of deposits or lending that are geographically distant from the banks' facilities or that are primarily provided through non-branch means.

A. Current Approach for Designating Assessment Areas

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[55] *See*, *e.g.*, 85 FR at 34780.

[56] *See*, *e.g.*, *id*.

[57] *See, e.g., id*. at 34764, 34780.

Pursuant to the CRA statute, banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.[58] In their CRA regulations, the agencies have interpreted local communities to include the areas surrounding a bank's main office, branches, and deposit-taking ATMs. Accordingly, one of Regulation BB's core requirements is that each bank delineate areas representing the main geographic basis upon which their CRA performance is assessed – referred to as assessment areas – in keeping with this interpretation of local communities.

As noted previously, the CRA was one of several groundbreaking pieces of legislation enacted to address economic and financial inequity with respect to LMI individuals and communities and systemic disinvestment in LMI areas. Among other things, Regulation BB requires that assessment areas not reflect illegal discrimination and not arbitrarily exclude LMI geographies; these elements represent links to ECOA and the FHA, which work congruently with the CRA to combat redlining.[59] Consequently, it is crucial that banks appropriately delineate their assessment areas.

Regulation BB currently defines assessment areas for banks (other than wholesale and limited purpose banks) in connection with a bank's deposit-taking physical locations and the surrounding areas in which it has originated or purchased a substantial portion of its loans.[60] Assessment areas for wholesale and limited purpose banks consist generally of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions, such as counties, cities, or towns in which the bank has its main office, branches, and deposit-taking

[58] 12 U.S.C. 2901.

[59] Importantly, a redlining violation under ECOA or the FHA may be based on a number of factors, including inappropriate delineation of an assessment area, lending disparities, and branching patterns or marketing practices that have the effect of providing unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the residents of the area in which the credit seeker resides or will reside or in which the property will be located. *See* FFIEC Interagency Fair Lending Examination Procedures (Aug. 2009), https://www.ffiec.gov/PDF/fairlend.pdf.

[60] 12 CFR 228.41(c).

ATMs.[61] Banks whose business models predominantly focus upon serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate their entire deposit customer base as their assessment area.[62]

B. Stakeholder Feedback on Assessment Areas

Stakeholder input has generally indicated that branch-based assessment areas should be retained. Community groups and research organizations have also indicated that, for banks without branch-centric business models, deposit or lending data, or both, should be used to delineate additional assessment areas for banks with considerable deposits or lending volumes outside of their assessment areas. Industry stakeholders have expressed some reservations about deposit-based assessment areas, citing concerns that the associated data collection and reporting for many large banks would be costly and burdensome. Relatedly, community groups and research organizations have advised against comprehensive changes to assessment area delineation without data-driven analysis regarding their potential impact. And both industry and community group stakeholders have expressed concern that deposit-based assessment areas could result in additional assessment areas in wealthier and metropolitan areas, exacerbating the CRA hot spot dynamic.

Industry stakeholders have also expressed concern about being required to delineate large assessment areas (*e.g.,* whole counties) when a bank serves only a portion of an area and/or when other banks already serve that area. These stakeholders have also noted uncertainty whether their lending in a geography would constitute a substantial portion and, as a result, would trigger an expectation to include that geography as part of their assessment area.

Some industry stakeholders have also noted that internet banks lacking a physical presence in any market should have nationwide assessment areas. For example, some stakeholders have

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[61] 12 CFR 228.41(b).

[62] 12 U.S.C. 2902(4); 12 CFR 228.41(f).

suggested that internet banks could be defined as those deriving no more than 20 percent of their deposits from branch-based assessment areas.

C. Facility-Based Assessment Area Delineation Options

To continue encouraging banks to meet the credit and community development needs of their local communities, the Board proposes continuing to delineate assessment areas where banks have a physical presence and seeks feedback on options to better tailor assessment areas around branches, loan production offices, and deposit-taking ATMs based on bank size, business model, and capacity.

1. *Branch-Based Assessment Areas*

Branches have traditionally been the primary means through which banks connect with and serve their communities. In addition to providing a channel for delivering banking products and services, branches are frequently the places where individuals develop personal banking relationships and obtain financial education. Branches are particularly important in this regard to LMI consumers and small business owners.[63] Because of these ancillary activities, branches are also essential to low-income communities, including many rural communities[64] and low-income metropolitan neighborhoods where there is often a shortage of bank branches.[65]

Branch-based assessment areas can raise fair lending risk and uncertainty when they are not composed of whole political subdivisions, *e.g.*, whole counties. For assessment areas composed of portions of political subdivisions, examiners conduct a more rigorous review that includes a bank's geographic lending patterns to ensure that LMI census tracts are not arbitrarily excluded.

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[63] *See*, Lei Ding, Federal Reserve Bank of Philadelphia, and Carolina K. Reid, University of California, Berkeley, "The Community Reinvestment Act (CRA) and Bank Branching Patterns" (Sept. 2019), https://www.philadelphiafed.org/-/media/community-development/publications/discussion-papers/discussion-paper_cra-and-bank-branching-patterns.pdf?la=en.

[64] Board of Governors of the Federal Reserve System, "Perspectives from Main Street: Bank Branch Access in Rural Communities" (Nov. 2019), https://www.federalreserve.gov/publications/files/bank-branch-access-in-rural-communities.pdf.

[65] *See* Ding and Reid, "The Community Reinvestment Act (CRA) and Bank Branching Patterns."

Consistent with the longstanding public policy to prevent redlining, examiners also validate that an assessment area does not reflect illegal discrimination. An assessment area that appears to have been drawn to exclude areas with a majority number of minority residents represents a higher risk of discriminatory redlining, as set forth in the FFIEC Interagency Fair Lending Examination Procedures.[66] If LMI census tracts are found to be arbitrarily excluded or an assessment area reflects illegal discrimination, examiners work with a bank to delineate an assessment area that complies with the regulatory criteria, which in some cases could include the entire political subdivision. The revised assessment area is then used for the CRA evaluation. However, redrawing a bank's assessment area during a CRA evaluation can result in uncertainty and possibly a lower rating, since the bank may not have engaged in CRA activities inside the portions of the political subdivision that were previously excluded.

The Board is proposing to tailor the facility-based assessment area definition based on bank size. To address the uncertainty commenters noted when banks take assessment areas composed of partial political subdivisions, this approach would require facility-based assessment areas for large banks to consist of whole counties. Excluding partial county assessment areas for large banks would streamline the assessment area review process, add additional predictability and consistency to CRA examinations, and may provide incentives for large banks to lend in a broader area.

In contrast, for small banks, the Board believes that defining assessment areas based on whole counties may not be appropriate. Smaller banks may not have the capacity and resources to serve the needs of a geographically large county, especially when a bank is situated near a county border, is otherwise geographically remote from an area where it may have some lending activity but no branches, or faces substantial competition from other financial institutions within

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[66] *See* OCC, FDIC, Board, Office of Thrift Supervision, National Credit Union Association, "Interagency Fair Lending Examination Procedures" (Aug. 2009), www.ffiec.gov/PDF/fairlend.pdf.

the same geographies. Some small municipalities and community groups have also indicated that overly large assessment areas can mask poor performance in remote and underserved LMI areas. Therefore, small banks would continue to be allowed to define facility-based assessment areas that include partial counties or portions of smaller political subdivisions, including portions of cities or townships, as long as they are composed of at least whole census tracts.

The Board proposes to provide greater clarity that a small bank would not be required to expand the delineation of an assessment area to include parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances. Pursuant to this, it would clarify the limited circumstances under which a small bank would be asked to broaden the delineation of its assessment area beyond where it has branches, such as where an assessment area is drawn in a discriminatory manner or arbitrarily excludes LMI areas.

Under this tailored approach, both large and small banks would still be required to delineate assessment areas to include the geographies in which a bank has its main office and its branches, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans, and may not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. The Board proposes a technical update to Regulation BB to also include a combined statistical area, in addition to MSAs, as a limitation to branch-based assessment areas. Similarly, the regulatory requirements that assessment area delineations may not reflect illegal discrimination and may not arbitrarily exclude LMI geographies would continue to apply.

2. Loan Production Office-Based and Deposit-Taking ATM-Based Assessment Areas

The Board is considering whether assessment areas should be expanded to include loan production offices (LPOs). Certain banks source loans and other services through LPOs, which are non-depository lending facilities that extend retail lending products to the public and are frequently located outside of branch-based assessment areas. CRA performance associated with these facilities could be evaluated based on bank business models, capacities, and constraints, as well as community needs. For example, if a bank extends only small business or consumer loans from its LPOs and those products constitute a major product line as discussed in Section VI, only those types of loans would be subject to evaluation. Similarly, community development expectations could also be based on the bank's capacity to engage in community development financing and community development services. This approach could provide banks with CRA consideration for, and thereby incentivize, retail lending and community development activity potentially without some of the complexity associated with deposit- or lending-based assessment areas discussed below.

Additionally, the Board is proposing to give banks the option of delineating facility-based assessment areas around deposit-taking ATMs, but they would not be required to do so. Some stakeholders have expressed the view that the current requirement for banks to delineate an assessment area around a deposit-taking ATM is outdated now that customers can use smartphones and other technologies to make deposits. However, if deposits from deposit-taking ATMs generate considerable bank deposits or comprise a comparatively large market share within a community, it may still be appropriate to delineate assessment areas around them.

Request for Feedback:

Question 3. Given the CRA's purpose and its nexus with fair lending laws, what changes to Regulation BB would reaffirm the practice of ensuring that assessment areas do not reflect illegal discrimination and do not arbitrarily exclude LMI census tracts?

Question 4. How should the Board provide more clarity that a small bank would not be required to expand the delineation of assessment area(s) in parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances?

Question 5. Should facility-based assessment area delineation requirements be tailored based on bank size, with large banks being required to delineate facility-based assessment areas as, at least, one or more contiguous counties and smaller banks being able to delineate smaller political subdivisions, such as portions of cities or townships, as long as they consist of whole census tracts?

Question 6. Would delineating facility-based assessment areas that surround LPOs support the policy objective of assessing CRA performance where banks conduct their banking business?

Question 7. Should banks have the option of delineating assessment areas around deposit-taking ATMs or should this remain a requirement?

D. Deposit-Based or Lending-Based Assessment Areas for Certain Large Banks

For certain large banks that engage in considerable business beyond their branch-based assessment areas, the Board is exploring alternative deposit-based and lending-based ways to delineate additional assessment areas. In considering options for creating new assessment areas that are not facility-based, the Board is also considering the types of banks to which these additional assessment area requirements should apply. The Board would be inclined to require such an approach only for internet banks that do not have physical locations and banks that partner with online lenders that do not have physical loan-making locations. The Board is also considering which approaches should apply to hybrid banks that have traditional branch-based assessment areas but also conduct a substantial majority of lending and deposit-taking beyond their assessment areas. For these banks, the Board is considering whether there is a certain threshold of outside activity that would prompt new assessment areas.

1. Deposit-Based Assessment Areas

The Board is considering the option of establishing deposit-based assessment areas for large banks that provide all or a substantial majority of their products and services entirely via mobile and internet channels. There are currently deposits data gaps that make it difficult to understand how this option would affect banks with different business models and asset sizes and which communities it would impact. Additionally, deposit-based assessment areas also raise considerations of how much burden would be associated with deposits data collection, as discussed in Section XI. Subject to the deposits data limitations discussed above, one option for deposit-based assessment areas would be to trigger the delineation of additional assessment areas when a large bank exceeds a certain threshold of deposits outside of its facility-based assessment areas.[67] However, based on stakeholder feedback that deposit-based assessment areas could exacerbate CRA hot spots and deserts, it would be important to evaluate the impact of this approach on LMI and other underserved communities.

2. Lending-Based Assessment Areas

Given some of the data challenges with adding deposit-based assessment areas, an alternative approach could be to base additional assessment areas for large banks on concentrations of lending activity. One advantage of lending-based assessment areas is that it is possible to analyze their impact given the availability of HMDA and CRA reporter data, reflecting home mortgage, small business, and small farm lending activity. The Board conducted two separate analyses of possible approaches to delineating additional assessment areas based on concentrations of lending activity outside of branches.[68] The first used a business model approach based on banks having a substantial majority of lending outside of their branch-based assessment areas plus a concentration of lending at the county level. The second utilized the concentration of lending outside of banks' branch-based assessment areas.

a. Lending-Based Approach for Large Banks with a Substantial Majority of Lending Outside of Branches

The Board analyzed how lending-based assessment areas might work for large banks that conduct a substantial majority (75 percent or greater) of their lending outside of their facility-

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[67] A deposit-based approach was proposed in the FDIC-OCC CRA notice of proposed rulemaking and adopted in the OCC CRA final rule. The OCC CRA final rule provides, in relevant part, that if a majority of a bank's deposits come from depositors located outside of its branch-based assessment area(s) additional assessment areas would be delineated in areas where a certain percentage of deposits are located.

[68] The data used in the various analyses to support the Board's ANPR reflect information that was available at the time that the analyses were conducted.

based assessment areas. Such an approach would be intended to capture a subset of bank business models, including banks that do not rely principally on branches for extending loans.

The Board's analysis reviewed 2017 HMDA, small business, and small farm data from CRA-reporting banks. The analysis indicated that this approach for delineating lending-based assessment areas may not meet the Board's policy objectives for defining additional assessment areas. The analysis revealed that additional assessment areas would be required for only 33 banks across all three lending categories.[69] The small number of affected banks reflects two key findings of the analysis: (i) the vast majority of banks make less than a substantial majority of retail loans outside of their assessment areas, and (ii) for the banks that make more than a substantial majority of retail loans outside of their assessment areas, their lending is relatively dispersed rather than concentrated in particular geographic areas. Additionally, as with deposit-based assessment areas, this approach may exacerbate the discrepancies in CRA activity between CRA hot spots and deserts, because the new assessment areas identified under this approach tended to be located in high-density metropolitan areas with multiple active banks. Finally, the analysis indicates that this approach may not substantially increase banks' lending to LMI borrowers in the new assessment areas because the percentage of LMI borrowers is similar between banks that would add new lending-based assessment areas and banks that already have existing facility-based assessment areas.

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[69] The Board defined a minimum concentration of lending at the county level needed to delineate a new assessment area in the following way. First, the Board identified banks making 75 percent or more of their retail loans outside of their assessment areas in 2017, by product line. Next, the Board sought to delineate new assessment areas for these banks such that a substantial share of the lending currently outside of branch-based assessment areas would be newly included in lending-based assessment areas. To do so, by product line, the Board calculated a minimum concentration of loans at the county level that would capture approximately 50 percent of the loans outside of branch-based assessment areas that are not currently assessed for CRA within this group of banks. For home mortgage lending, this minimum concentration is 88 loans. Note that this calculation is based on lending of the group of banks making 75 percent or more of their loans outside of branch-based assessment areas and not all lending outside of branch-based assessment areas.

b. Lending-Based Approach for Large Banks with a Concentration of Lending Outside of Their Assessment Areas

The second lending-based approach analyzed by the Board would require a bank to delineate additional assessment areas in counties with sufficient concentrations of lending, regardless of how many loans it makes outside of its branch-based assessment areas. Using 2017 data, the Board examined all banks that are both HMDA reporters and included in FDIC Summary of Deposits (SOD) data.[70] The analysis examined HMDA mortgage lending only and used two illustrative thresholds of 100 and 250 home mortgage loans, respectively, within a county as a trigger to delineate additional assessment areas. This analysis revealed that of 3,160 banks analyzed, only 167 banks would be required to delineate at least one additional assessment area using a threshold of 100 mortgages loans and only 65 banks would be required to delineate at least one additional assessment area using a threshold of 250 mortgage loans. It is important to recognize that these numbers could increase over time as banks expand their reliance on mobile and online platforms.

Request for Feedback:

Question 8. Should delineation of new deposit- or lending-based assessment areas apply only to internet banks that do not have physical locations or should it also apply more broadly to other large banks with substantial activity beyond their branch-based assessment areas? Is there a certain threshold of such activity that should trigger additional assessment areas?

E. Nationwide Assessment Areas for Internet Banks

The Board is considering whether to allow internet banks to delineate nationwide assessment areas. Currently, these banks' assessment areas are based on the location of the bank's solitary

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[70] In this analysis, a proxy measure was used to determine banks' assessment areas using bank branch location data from the FDIC SOD. If a bank had a branch in a county in 2017, then that county was counted as part of the bank's assessment area(s).

main office. This results in assessment areas that are much smaller than the bank's actual business footprint. Additionally, the number of new assessment areas triggered for internet banks using the deposit-based or lending-based assessment area approach would vary and, for some of these banks, could be limited. The Board's above-referenced lending-based assessment area analysis indicated that many banks' dispersion of lending activity would make it challenging to delineate additional assessment areas in specific counties. In contrast, nationwide assessment areas would be based holistically on an internet bank's overall business activity.

The designation of a nationwide assessment area would require determining how to conduct performance evaluations for this approach, including for retail and community development activities. Such an approach would also require defining an internet bank for CRA purposes. In the extreme, the definition of internet bank could be limited to banks that exclusively use an online business model to deliver products and services. A hybrid definition might instead allow limited branch-related activity in combination with a substantial majority of activity conducted through online channels.

Request for Feedback:

Question 9. Should nationwide assessment areas apply only to internet banks? If so, should internet banks be defined as banks deriving no more than 20 percent of their deposits from branch-based assessment areas or by using some other threshold? Should wholesale and limited purpose banks, and industrial loan companies, also have the option to be evaluated under a nationwide assessment area approach?

Question 10. How should retail lending and community development activities in potential nationwide assessment areas be considered when evaluating an internet bank's overall CRA performance?

IV. Tailoring Evaluations Based on Bank Size and Business Model

The Board is proposing a revised CRA evaluation framework that would consist of two separate tests: a Retail Test and a Community Development Test. Within these tests would be the following four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest. Retail and community development activities are both fundamental to CRA and essential for meeting the core purpose of the statute. Separately evaluating these activities in a Retail Test and a Community Development Test helps ensure that these activities are appropriately taken into consideration. Having a separate Retail Test and Community Development Test also provides the ability to tailor which tests and subtests apply to banks based on asset size and other factors. Finally, separate tests facilitate using metrics and benchmarks that are customized to different activities, which allows the use of available data to the greatest extent possible and thereby minimizes burden.

Treatment of Small and Large Retail Banks. The Board proposes giving small retail banks the option to be evaluated solely under the Retail Lending Subtest, while applying all four subtests to larger retail banks. A bank would receive a conclusion for each applicable subtest in each of its assessment areas. Accordingly, a small bank that chooses to opt in would receive a Retail Lending Subtest conclusion in each assessment area, and a large bank would receive four subtest conclusions in each assessment area. These subtest conclusions in assessment areas would form the foundation for state, multistate MSA, and institution CRA ratings.

Defining Small and Large Banks for CRA Purposes. The approach described above would establish small bank and large bank categories of retail banks based on institution asset size, and would eliminate the current intermediate small bank category to reduce complexity and create more consistent evaluation standards. Currently, the asset threshold between small and intermediate small banks is $326 million, and the threshold between intermediate small and large banks is $1.305 billion. The Board is seeking feedback on whether to set the asset threshold differentiating between small and large banks at either $750 million or $1 billion, designating banks below this level as small banks and banks above this level as large banks.

Under the proposed test structure, increasing a small bank threshold above the existing $326 million limit would reduce the scope of activities evaluated under CRA for some banks compared to the approach used today. Currently, small banks with assets below $326 million are evaluated on retail lending performance alone, while intermediate small banks with assets between $326 million and $1.305 billion are also evaluated on their community development activities. Although increasing the small bank threshold above the existing limit might result in fewer banks' community development activities evaluated for purposes of CRA, it would also better tailor the compliance and data implications of the proposed Community Development Test only to banks with substantial community development activity.

Small Bank Considerations. The Board proposes that small retail banks under the Board's proposed threshold would, by default, have their retail lending activities evaluated under the qualitative approach used in the current examination procedures for small banks, rather than the metrics-based approach proposed in Section V. Small banks would also have the ability to opt in to the metrics-based approach at their choosing. The default approach of evaluation under the current qualitative framework would allow for continuity of examination procedures and would more fully account for qualitative performance context factors that may be especially relevant for smaller banks, such as capacity constraints. However, the default option would not deliver the consistency and predictability of the evaluation process desired by many banks and other stakeholders and would increase overall complexity because it requires multiple performance evaluation frameworks.

Another consideration is allowing small banks to have the option of requesting that retail services, community development activities, or both, be considered in addition to the Retail Lending Subtest conclusions when developing CRA ratings. Small banks could opt to have these activities evaluated on a qualitative basis to improve their overall ratings and would not be required to collect the data necessary to be evaluated under the Retail Services Subtest and the Community Development Test. The Board believes that a small retail bank should also continue to be able to achieve any rating, including an "outstanding," based on its retail lending performance alone, and should not be required to be evaluated on other activities. Section X discusses ratings for small banks in greater detail.

Wholesale and Limited Purpose Banks. The Board has also considered how to tailor evaluation standards to wholesale and limited purpose banks. Because these banks, by definition, do not conduct retail lending as a significant part of their business, the Board proposes evaluating these banks using only the Community Development Test. The Board anticipates that the evaluation approach used for the Community Development Test, however, would be applied differently to wholesale and limited purpose banks than retail banks. Specifically, although the Board is proposing a community development financing metric that incorporates deposits as a measure of a large retail bank's capacity within an assessment area, the Board is considering alternate measures of capacity for wholesale and limited purpose banks, such as total assets. In addition, as with any bank, wholesale and limited purpose banks would continue to have the option to be evaluated under an approved strategic plan, which allows for tailoring to their unique business models and strategies.

Request for Feedback:

Question 11. Is it preferable to make the default approach for small banks the current framework, with the ability to opt in to the metrics-based approach, as proposed, or instead the metrics-based approach, with the ability to opt out and remain in the current framework?

Question 12. Should small retail banks that opt in to the proposed framework be evaluated under only the Retail Lending Subtest? Should large retail banks be evaluated under all four subtests: Retail Lending Subtest, Retail Services Subtest, Community Development Financing Subtest, and Community Development Services Subtest?

Question 13. Is $750 million or $1 billion an appropriate asset threshold to distinguish between small and large retail banks? Or should this threshold be lower so that it is closer to the current small bank threshold of $326 million? Should the regulation contain an automatic mechanism for allowing that threshold to adjust with aggregate national inflation over time?

V. Retail Test: Evaluation of Retail Lending and Retail Services Performance

The Board proposes using a Retail Lending Subtest – utilizing a metrics-based approach – to evaluate retail lending performance for all large retail banks and small retail banks that opt into the new framework. This approach would result in a small retail bank receiving a Retail Lending Subtest conclusion in each of its assessment areas. The Board also seeks feedback on a Retail Services Subtest, which would apply only to large banks above a specified asset threshold. A large bank would receive separate Retail Lending Subtest and Retail Services Subtest conclusions in each of its assessment areas.

A. Retail Lending Subtest Evaluation Approach

This section proposes a metrics-based approach to a Retail Lending Subtest that leverages practices currently used in CRA examinations combined with more transparent performance expectations. At the heart of this analysis would be evaluating how well a bank serves LMI census tracts, LMI borrowers, small businesses, and small farms. This approach is intended to strengthen CRA's focus on how banks serve the retail credit needs of LMI communities, and to improve the clarity and consistency of CRA examinations.

First, the Board proposes using a retail lending screen that would determine whether a bank should be eligible for a metrics-based evaluation of retail lending that could result in a presumption of "satisfactory," or that should instead be evaluated subject to examiner discretion as a result of having relatively low levels of retail lending in an assessment area.

Second, for banks that pass the simple screen, the Board proposes using retail lending distribution metrics to determine whether a bank is eligible for a presumption of "satisfactory" on the Retail Lending Subtest in a specific assessment area. The retail lending distribution metrics comprises two metrics: (a) a *geographic distribution* metric that would evaluate how well a bank is serving LMI census tracts; and (b) a *borrower distribution* metric that would evaluate how well a bank is serving LMI borrowers, small businesses, and small farms in their assessment area overall, regardless of geography. To determine which banks are eligible for a presumption of "satisfactory," this approach would use tailored, dynamic thresholds that adjust across different communities and that reflect changes in the local business cycle. The Board believes that providing a dashboard – using data through the previous quarter or year, depending on the data source – to show the thresholds for specific assessment areas would facilitate ease of use and enable banks to track their performance over the course of an evaluation period.

To complement the presumption of "satisfactory" approach, the Board is also considering a third step using the same distribution metrics relative to performance ranges set for each Retail Lending Subtest conclusion: "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance." This would produce a *recommended* Retail Lending Subtest conclusion that an examiner would consider in addition to certain, targeted performance context and qualitative information to reach a *final* Retail Lending Subtest conclusion.

1. Current Structure for Evaluating Retail Lending Activity

In current CRA examinations, retail lending performance is examined under a lending test that differs based on a bank's asset size category (small, intermediate small, and large). The lending test includes quantitative and qualitative criteria, and does not specify what level of lending is needed to achieve "satisfactory" or "outstanding" performance.

Currently, the purpose of evaluating lending activity for both small and large banks is the same – to determine whether a bank has a sufficient aggregate value of lending in its assessment area(s) in light of a bank's performance context, including its capacity and the lending opportunities available in its assessment area(s). For small banks, examiners make a loan-to-deposit calculation based on the balance sheet dollar values at the institution level, and review the number of loans made inside and outside of assessment area(s). For large banks, examiners consider the number and dollar amount of loans in assessment area(s) and the number of loans inside and outside of assessment area(s). These approaches rely on examiner judgment to draw a conclusion about a bank's level of lending.

Pursuant to Regulation BB, CRA examinations today also include an evaluation of the geographic distribution and borrower distribution of a bank's retail lending.[71] This evaluation leverages a set of local data points referred to as comparators – both demographic comparators and aggregate comparators – that are tailored to each assessment area in which the bank operates.

For the geographic distribution analysis, examiners evaluate the distribution of a bank's retail loans in low-income, moderate-income, middle-income, and upper-income census tracts. Examiners review the geographic distribution of home mortgage loans by income category and compare the percentage distribution of lending to the percentage of owner-occupied housing units in the census tracts. Similarly, in each income category of census tract, examiners compare small business lending to the percentage distribution of small businesses; small farm lending to the percentage distribution of small farms; and consumer lending to the percentage distribution of households in each category of census tract, as applicable.

For the borrower distribution analysis, examiners evaluate the distribution of a bank's retail loans based on specified borrower characteristics, such as the income level of borrowers for home mortgage lending. The comparators used to inform the borrower distribution analysis are families by income level for home mortgage lending; businesses with gross annual revenues of $1 million or less for small business lending; farms with gross annual revenues of $1 million or less for small farm lending; and households by income level for consumer lending.

Examiners complement these distribution analyses by also reviewing the dispersion of a bank's loans throughout census tracts of different income levels in its assessment area(s) to determine if there are conspicuous lending gaps.

2. Stakeholder Feedback on Evaluating Retail Lending

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[71] *See* 12 CFR 228.22(b).

Although many stakeholders expressed support for the consideration of performance context and the qualitative aspects of CRA performance, they raised concerns about a lack of transparency and predictability regarding the amount and nature of retail lending activity required to achieve a particular rating. As explained above, Regulation BB and the related examination procedures require evaluations based on the number and dollar amount of loans, but without a formalized way of translating that analysis into performance expectations.

Stakeholders have also expressed the need for greater consistency across CRA performance standards. CRA evaluations are tailored based on bank size and business strategy; however, these differences can be confusing as banks cross asset thresholds and are subject to different examination procedures. For example, as noted, overall lending activity is evaluated using a loan-to-deposit ratio criterion for small banks and by reviewing the number and amount of loans in a bank's assessment area(s) for large banks.

3. Potential Retail Lending Screen

As a first step to evaluating a bank's retail lending, the Board proposes using a retail lending screen. The screen would measure a bank's retail lending relative to its capacity to lend in an assessment area to determine whether the bank is eligible for a presumption of "satisfactory" using the retail lending distribution metrics, or whether it should instead be more closely evaluated by an examiner.

Using the retail lending screen would ensure that a bank does not receive a presumption of "satisfactory" in assessment areas where it has overall low levels of retail lending relative to deposits, compared to other banks in the assessment area. Without such a screen, a bank with high levels of deposits that originated a very low number of retail loans during an evaluation period might otherwise appear to merit a "satisfactory" conclusion simply because, for example, those loans happened to be concentrated among LMI borrowers and LMI census tracts.

In each assessment area, the retail lending screen would measure the average annual dollar amount of a bank's originations and purchases of retail loans in the numerator – including home mortgage, small business, and small farm loans – relative to its deposits in the denominator. Both the numerator and denominator of the retail lending screen would be measured in dollars.

The retail lending screen would be measured against a market benchmark that reflects the level of retail lending by other banks in the same assessment area, indicating the aggregate dollar amount of lending a typical bank might be expected to engage in given its level of retail deposits. Specifically, the proposed market benchmark for the retail lending screen would be the percentage of retail lending (in dollars) by all HMDA and CRA reporter banks in an assessment area compared to the aggregate amount of deposits for those banks in that same assessment area. The use of HMDA and CRA reporter data would minimize the data reporting requirements for small banks. To ensure that banks' ability to pass this retail lending screen would not depend on their business strategy (*e.g.,* banks that hold their loans in portfolio rather than sell them into the secondary market), the threshold for this screen would be set at a low level, such as 30 percent of the market benchmark.[72] The intent would be to focus examiner attention on banks that are significantly underperforming relative to the market benchmark.

Under this approach, banks not meeting the retail lending screen threshold would not be eligible for a metrics-based presumption of "satisfactory" on the Retail Lending Subtest in an assessment area. Instead, examiners would review the bank's aggregate lending, geographic distribution, and borrower distribution in combination with performance context and qualitative aspects of performance.

Request for Feedback:

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[72] The analysis of performance evaluation data, using the Board's publicly available CRA Analytics Data Tables, showed that the frequency of ratings below "satisfactory" increased substantially relative to "high satisfactory" or "outstanding" ratings when a bank's average annual loan-to-deposit ratio fell below 30 percent of the market benchmark. In 2017, the median market benchmark loan-to-deposit ratio for entire MSAs and for non-MSA counties were both approximately 9 percent. The proposed loan-to-deposit ratio is based on the dollar amount of a bank's originations and purchases during the evaluation period. In contrast, the loan-to-deposit ratio used under current small bank examination procedures is based on the dollar amount of loans and purchases on a bank's balance sheet.

Question 14. Is the retail lending screen an appropriate metric for assessing the level of a bank's lending?

4. Retail Lending Distribution Metrics for a Presumption of "Satisfactory"

For banks that pass the retail lending screen, the Board proposes comparing a pair of retail lending distribution metrics against local quantitative thresholds to determine whether a bank is eligible for a presumption of "satisfactory" on the Retail Lending Subtest in an assessment area. For each product line evaluated under the Retail Lending Subtest, the Board proposes evaluating bank activity using *both* a geographic distribution metric and a borrower distribution metric, with each designed to evaluate different but complementary aspects of a bank's retail lending performance, similar to the focus of current examinations.

If a bank's geographic distribution metric and borrower distribution metric both met or exceeded the relevant thresholds, then a bank would receive a presumption of "satisfactory" performance and would be eligible for a "satisfactory" or an "outstanding" conclusion in a specific assessment area.

a. Calculation of Retail Lending Distribution Metrics

The geographic distribution metric would measure the number of a bank's loans in LMI census tracts within an assessment area. For each of the bank's major product lines, the geographic distribution metric would calculate the total number of the bank's originated or purchased loans in LMI census tracts (numerator) relative to the total number of the bank's originated or purchased loans in the assessment area overall (denominator). For mortgage and consumer loans, this would include loans to borrowers of any income level but located within an LMI census tract. For instance, assuming that a bank originated or purchased 25 home mortgage loans in one of its assessment areas during the evaluation period and that five of these were located in LMI census tracts, the geographic distribution metric for home mortgage loans would be: $\frac{Bank\ Loans\ in\ LMI\ Tracts\ (5)}{Bank\ Loans\ (25)} = Geographic\ Distribution\ Metric\ (0.2\ or\ 20\%)$

The borrower distribution metric would measure a bank's loans to LMI individuals (for home mortgages or consumer loans, respectively) or to small businesses (for small business loans) or small farms (for small farm loans) within an assessment area relative to the total number of the bank's corresponding loans in that category in the assessment area overall. For each of the bank's major product lines, the borrower distribution metric would be calculated separately. Options for revising the thresholds for small business lending and small farm lending are discussed in Section VI.

Assuming that a bank originated or purchased 100 home mortgage loans in one of its assessment areas during the evaluation period, and that 20 of these went to LMI borrowers, the borrower distribution metric would be:

$$\frac{Bank\ Loans\ to\ LMI\ Borrowers\ (20)}{Bank\ Loans\ (100)} = Borrower\ Distribution\ Metric\ (0.2,\ or\ 20\%)$$

To calculate the retail lending distribution metrics, the Board's proposed approach would use the number of a bank's loans, not the dollar amount of those loans, in order to treat different-sized loans equally within product categories. For example, using an approach based on the number of loans, a $250,000 mortgage to a moderate-income household would count the same as an $80,000 mortgage to a low-income household. This approach emphasizes the number of households, small businesses, and small farms served, and avoids weighting larger loans more heavily than smaller loans, as would occur when using dollar amounts. This better captures the importance and responsiveness of smaller dollar loans to the needs of lower-income borrowers and smaller businesses and farms, and does not provide an incentive to make larger loans to reach performance levels.

For each product line evaluated using the retail lending distribution metrics, the Board proposes aggregating the calculation of the retail lending distribution metrics in certain aspects for simplicity and clarity. This would be a change from current practice, whereby examiners separately evaluate a bank's performance in each income category (low-, moderate-, middle-, and upper-); each loan category within a product line (*e.g.,* home purchase loans, home refinance loans); and each year. The proposed approach would combine low- and moderate-income categories under a single metric calculation. The proposed approach would also aggregate all categories of home mortgage loans together when evaluating home mortgage lending, all categories of small business loans together when evaluating small business lending, and all types of small farm loans together when evaluating small farm lending. By comparison, the Board believes that there could be different considerations for evaluating consumer loan categories separately (*e.g.,* motor vehicle lending separately from credit card lending) rather than as one consumer product line. Lastly, the Board proposes to combine all years of the evaluation period together under a single metric calculation.

Calculating the retail lending distribution metrics on a more aggregated basis for each product line would simplify the number of calculations needed to determine whether a bank qualified for the presumption of "satisfactory." This approach would result in only one calculation needed for each distribution metric for each product line during an evaluation period. Another benefit of aggregating the metrics in this manner is that, for small banks and rural banks with relatively fewer retail loan originations, this approach would more likely capture a sufficient number of loans for use in the metrics.

The greater simplicity would also have some drawbacks. Combining low- and moderate-income categories together could potentially reduce the focus on lending in low-income census tracts and to low-income borrowers relative to lending to moderate-income tracts and moderate-income borrowers. A potential drawback to combining all home mortgage lending products into one category is that the evaluation of home purchase lending could be obscured when combined with home refinance loans, particularly when levels of home mortgage refinancing increase.[73]

[73] Complicating this decision further is that, for loans originated in 2018, HMDA reporting requirements for home mortgage loans changed and now include, for certain reporters, home equity lines of credit (HELOCs) that are secured by a dwelling, regardless of loan purpose (unless otherwise exempt). *See*,

b. Benchmarks for the Retail Lending Distribution Metrics

The Board proposes using two different kinds of benchmarks for each distribution metric as the building blocks for setting quantitative thresholds for the retail lending distribution metrics. First, a community benchmark would reflect the demographics of an assessment area, such as the number of owner-occupied units, the percentage of low-income families, or the percentage of small businesses or small farms. Second, a market benchmark would reflect the aggregate lending to targeted areas or targeted borrowers by all lenders operating in the same assessment area. Using these two kinds of benchmarks will help tailor the Retail Lending Subtest to the lending opportunities, needs, and overall lending taking place in an assessment area. Importantly, the Board believes that these benchmarks will focus CRA evaluations on the local communities being served by banks and will incorporate aspects of performance context directly into the metrics.

Benchmarks grounded in local data are used today in CRA examinations, and the Board's approach seeks to translate these comparators into performance expectations in a consistent and transparent way. As discussed above, in current CRA performance evaluations, the benchmarks are referred to as "comparators." The community benchmark is currently referred to as the demographic comparator. The market benchmark is currently referred to as the aggregate comparator.

Within each retail lending product line evaluated under the Retail Lending Subtest, the geographic distribution metric would be compared to a community benchmark and a market benchmark, and the borrower distribution metric would be compared to a community benchmark and a market benchmark. Table 1 provides an overview of the benchmarks under consideration by the Board and their respective data sources.

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e.g., 12 CFR 1003.2(e); 82 FR 43088 (Sept. 13, 2017); 85 FR 28364 (May 12, 2020). As such, HELOCs reported in HMDA data may include loans secured by a dwelling but not connected to a dwelling-related purpose (*i.e.*, home purchase, home refinance, or home improvement).

Table 1: List of Benchmarks for Retail Lending Distribution Metrics and Data Sources

Distribution Metric		Community Benchmark	Market Benchmark
Mortgage			
Geographic	**Data Point**	Percentage of owner-occupied residential units in LMI census tracts in assessment area	Percentage of home mortgages in LMI census tracts by all lender-reporters in assessment area
	Data Source	American Community Survey (Census)	HMDA Data
Borrower	**Data Point**	Percentage of LMI families in assessment area	Percentage of home mortgages to LMI borrowers by all lender-reporters in assessment area
	Data Source	American Community Survey (Census)	HMDA Data
Small Business			
Geographic	**Data Point**	Percentage of small businesses with gross annual revenue less than $1M in LMI census tracts in assessment area	Percentage of small business loans in LMI census tracts by all lender-reporters in assessment area
	Data Source	Dun & Bradstreet	CRA Data
Borrower	**Data Point**	Percentage of small businesses with gross annual revenue less than $1M in assessment area	Percentage of small business loans to small businesses with gross annual revenue less than $1M by all lender-reporters in assessment area
	Data Source	Dun & Bradstreet	CRA Data
Small Farm			
Geographic	**Data Point**	Percentage of small farms with gross annual revenue less than $1M in LMI census tracts in assessment area	Percentage of small farm loans in LMI census tracts by all lender-reporters in assessment area
	Data Source	Dun & Bradstreet	CRA Data
Borrower	**Data Point**	Percentage of small farms with gross annual revenue less than $1M in assessment area	Percentage of small farm loans to small farms with gross annual revenue less than $1M by all lender-reporters in assessment area
	Data Source	Dun & Bradstreet	CRA Data

Consumer			
Geographic	**Data Point**	Percentage of households in LMI census tracts in assessment area	Percentage of consumer loans in LMI census tracts by all lender-reporters in assessment area
	Data Source	American Community Survey (Census)	To be determined
Borrower	**Data Point**	Percentage of LMI households in assessment area	Percentage of consumer loans to LMI borrowers by all lender-reporters in assessment area
	Data Source	American Community Survey (Census)	To be determined

To limit data burden for small banks that opt in to the metrics-based approach, the Board proposes using HMDA and CRA reporter data to construct the market benchmark for mortgage, small business, and small farm product lines. In calculating the market benchmark for mortgage lending, the Board also proposes including all mortgage lenders, not just depository institutions. This is intended to capture the full breadth of lending to LMI borrowers in constructing the benchmark.

As noted in Table 1, the Board has not yet identified a data source for the market benchmark for consumer loans due to the lack of consistent data collection on consumer lending.[74] To use the same kind of benchmarks for consumer loans as for other product lines, market benchmarks would be needed that measure: (1) the percentage of consumer lending in LMI census tracts as a comparison point for the geographic distribution metric; and (2) the percentage of consumer lending to LMI borrowers as a comparison point for the borrower distribution metric.

The Board is considering the use of commercially available data from one or more of the nationwide credit reporting agencies to establish a market benchmark for the geographic

[74] Regulation BB provides large banks with the option to collect and maintain consumer loan data for one or more categories of consumer loans in the event that a bank opts to have its consumer lending evaluated. *See* 12 CFR 228.42(c)(1). Regulation BB does not require small banks or intermediate small banks to collect, maintain, or report loan data. Instead, examiners evaluate these banks using information maintained in a bank's internal operating systems or gathered from individual loan files.

distribution metric based on the rate of new account openings in LMI census tracts. This could facilitate a metrics-based approach to evaluate consumer lending without additional data reporting requirements. A downside of this approach is that it would not provide a measure of consumer lending to LMI borrowers that is necessary to create a market benchmark for the borrower distribution metric for consumer lending. However, it could be used to create a market benchmark for the geographic distribution metric for certain consumer lending products, such as motor vehicle loans and credit cards. Alternatively, consumer lending could continue to be evaluated under current examination procedures, which do not incorporate a standardized benchmark, or the Board could consider other data sources to develop benchmarks for consumer lending.

c. Establishing Quantitative Thresholds Based on Community and Market Benchmarks

The Board proposes using the community and market benchmarks to set the quantitative thresholds used for determining whether a bank receives the presumption of "satisfactory." Through this process, the Board believes that the quantitative thresholds in place for a presumption of "satisfactory" will directly incorporate aspects of performance context.

The approach for setting thresholds would involve first calibrating each benchmark to align with the Board's expectations for "satisfactory" performance sufficient to obtain the certainty of a presumption. This calibration would involve multiplying each benchmark by a fixed percentage. The Board would then refer to the calibrated benchmarks as the community threshold and market threshold, respectively. While the same fixed percentage would be used to calibrate each benchmark in each assessment area, the resulting thresholds would, in fact, be tailored for local community and market conditions because the benchmarks are based on local data specific to each assessment area.

For each distribution metric, the lower of the community threshold or market threshold would be selected as the binding threshold. For example, for the geographic distribution metric, if the community threshold was 30 percent and the market threshold was 35 percent, then the community threshold of 30 percent would be used as the binding threshold for this metric.

There are several benefits of the proposed approach to setting quantitative thresholds for a presumption of "satisfactory" on the Retail Lending Subtest as described above. One benefit would be providing a bank with greater certainty about CRA performance expectations in an assessment area because the thresholds would be tailored to the different conditions in different local communities across the country. Rather than setting a static threshold level across the country that might be too high or too low in certain areas, this customized approach would facilitate a bank's ability to rely on the thresholds in each of its assessment areas.

Another benefit is that the Board's approach would automatically adjust the threshold levels over time in a way that reflects changes in the business cycle because the market benchmarks reflect overall lending activity in each assessment area. This approach could reduce the instances in which the Board would need to adjust the threshold levels through a rulemaking or other regulatory action. If, for example, a market downturn affected an assessment area by making LMI lending more difficult, the downturn would likely have a similar effect on all lenders in an area, thereby causing the market benchmark to decline. Because the proposed approach would set a threshold by selecting the lower of the community threshold or market threshold, the decline in the market threshold itself during a downturn could have the effect of lowering the applicable threshold. Conversely, if overall LMI lending opportunities expanded, the threshold associated with the lower of the community threshold or market threshold may increase, creating greater expectations of local banks to make loans in LMI tracts, to LMI borrowers, and to small businesses and small farms.

On the other hand, thresholds could be set low in areas where credit markets as a whole are underserving LMI census tracts, LMI borrowers, or both, which could have the effect of providing the presumption of "satisfactory" too often in communities with significant unmet credit needs. An approach that set performance standards too low could fail to fulfill one of the core purposes of CRA, which is to encourage banks to serve LMI communities. Additionally, given CRA's nexus with fair lending laws and the broader context of CRA as one of several complementary laws that address inequities in credit access, the Board is also mindful of analyzing how the proposed approach to setting thresholds would impact majority-minority assessment areas relative to other assessment areas. As part of its ongoing analysis of threshold options, the Board intends to closely analyze these issues.

d. Meeting Quantitative Thresholds Across Retail Product Lines

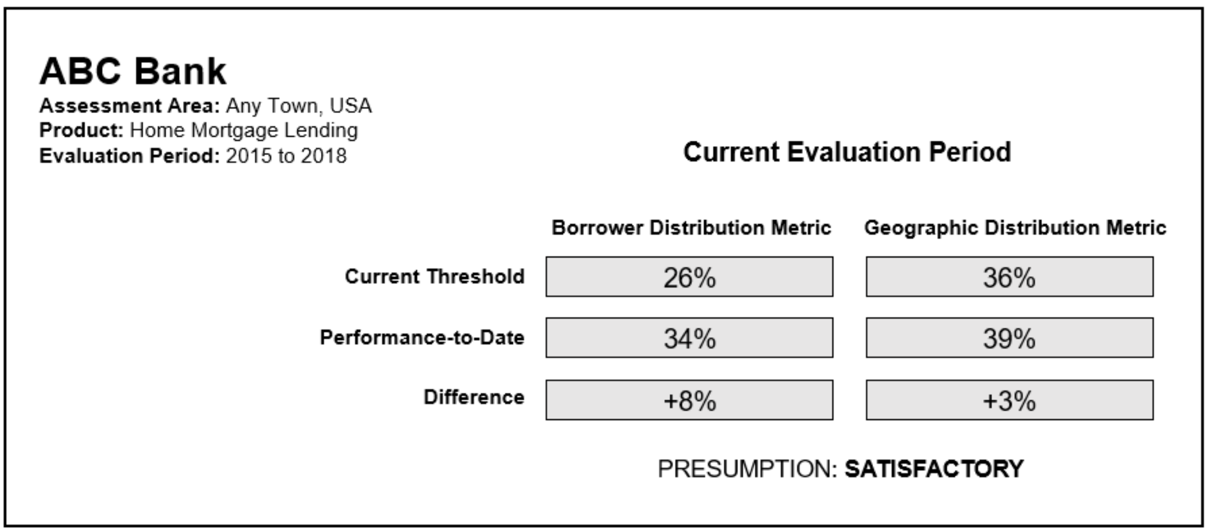
In addition to requiring that a bank meet the binding thresholds for both distribution metrics for a specific product line, the Board also proposes that banks should meet the binding thresholds across all retail lending product lines evaluated under the Retail Lending Subtest in order to receive a presumption of "satisfactory." For example, if a bank were evaluated based on its home mortgage and small business lending in an assessment area, the bank would need to meet or exceed both distribution metric thresholds for its mortgage lending *and* both distribution metric thresholds for its small business lending – overall, a set of four thresholds. An approach that allowed such a bank to receive the presumption based on only one of its retail lending product lines could result in overlooking major product lines where the bank failed to serve LMI communities or LMI borrowers.

Some stakeholders have expressed concern that requiring banks to pass a series of thresholds in an assessment area could be onerous and complex for banks evaluated under multiple retail lending product lines. The Board seeks to lessen this concern by only evaluating major product lines under the Retail Lending Subtest, which is discussed in more detail in Section VI. The Board also seeks to mitigate this concern by using the same metrics for the presumption of "satisfactory" approach and the performance ranges approach described in Section V, and by providing simple dashboards to reduce complexity and make the thresholds transparent.

e. Ease of Use: Providing Dashboards to Track Progress

The proposed approach is intended to help advance the objectives of certainty and transparency in setting CRA performance expectations for retail lending, and the Board is interested in ways to make the approach easy to adopt for banks and for the public. To this end, the Board is exploring providing banks with an online portal with dashboards, as shown in Figure 1, that would show thresholds for each major product line for a specific assessment area, with updates made on a quarterly or annual basis, as applicable. This would enable banks to track their own performance throughout an evaluation period against the relevant standards. For HMDA and/or CRA reporters, the dashboards could display a bank's metrics calculations to date in addition to the applicable thresholds.

Figure 1*: Example Retail Lending Dashboard*



f. Limited Circumstances to Rebut the Presumption

The Board believes that granting a presumption of "satisfactory" can provide banks with greater certainty about performance expectations and their results on the Retail Lending Subtest. To preserve this certainty, the Board is considering allowing examiners to rebut a "satisfactory" presumption in a specific assessment area only in cases of consumer compliance violations involving discrimination and other illegal credit practices, as specified in Section X. Discrimination and other illegal credit practices can be indicative of performance that is lower than the metrics and quantitative thresholds would otherwise indicate. The process for rebutting a presumption in an assessment area would not change the process for potentially downgrading a rating for an institution overall. Discrimination and other illegal credit practices would also be considered separately under the ratings provisions, as discussed in Section X.

Request for Feedback:

Question 15. Are the retail lending distribution metrics appropriate for all retail banks, or are there adjustments that should be made for small banks?

Question 16. Should the presumption of "satisfactory" approach combine low- and moderate-income categories when calculating the retail lending distribution metrics in order to reduce overall complexity, or should they be reviewed separately to emphasize performance within each category?

Question 17. Is it preferable to retain the current approach of evaluating consumer lending levels without the use of standardized community and market benchmarks, or to use credit bureau data or other sources to create benchmarks for consumer lending?

Question 18. How can the Board mitigate concerns that the threshold for a presumption of "satisfactory" could be set too low in communities underserved by all lenders?

5. *Threshold Levels for Presumption of "Satisfactory"*

A foundational part of the presumption of "satisfactory" approach is determining where to set the threshold level for this presumption. Threshold levels that are set too low could provide a presumption of "satisfactory" for too many banks and potentially erode CRA performance over time due to inadequate incentives. Threshold levels that are set too high could be seen as unachievable and provide few banks with the certainty of obtaining a presumption.

a. Overview of Proposed Threshold Levels

The Board has conducted an analysis of potential threshold levels for a presumption of "satisfactory," and this section suggests a threshold level for the retail lending distribution metrics. This threshold level would establish the fixed percentages for calibrating the community benchmarks and market benchmarks for purposes of identifying the level of performance necessary to obtain a presumption of "satisfactory."

Specifically, the threshold level would set the "satisfactory" presumption level at 65 percent of the community benchmark and 70 percent of the market benchmark. An example illustrates this approach using the borrower distribution metric for mortgage lending. If the community benchmark shows that 30 percent of families in an assessment area are LMI, then the community threshold would be 19.5 percent (30 percent times 65 percent). If the market benchmark shows that 35 percent of mortgage originations in the assessment area are to LMI borrowers, then the market threshold would be 24.5 percent (35 percent times 70 percent). Because the community threshold is lower than the market threshold, a bank's performance on the borrower distribution metric for mortgage lending (which measures the percentage of a bank's mortgage lending to LMI borrowers) would need to meet or exceed the binding threshold of 19.5 percent in order to earn the presumption of "satisfactory."

b. Analysis of Proposed Threshold Level Using CRA Analytics Data Tables

To understand the impact of different threshold levels for the retail lending distribution metrics using past CRA examinations, the Board used the CRA Analytics Data Tables. These data tables combine publicly available information, proprietary data, and data that the Board compiled from past CRA performance evaluations. In total, the CRA Data Analytics Tables include data from a stratified random sample of approximately 6,300 performance evaluations from 2004 to 2017, with the sampling designed to capture the range of bank sizes, regulatory agencies, stages of the business cycle, and performance ratings.

The Board used the CRA Analytics Data Tables to evaluate two related issues. First, the data were used to identify threshold options that would likely provide a presumption of "satisfactory" performance for banks that had received assessment area conclusions or ratings of "high satisfactory" or "outstanding" on the lending test in their past examinations. Second, the data were used to identify options that were not likely to provide a presumption for banks that had received assessment area conclusions or ratings of "needs to improve" or "substantial noncompliance" lending performance on past examinations. In this way, the Board's analysis sought to identify the level of performance on the proposed Retail Lending Subtest that would be strongly associated with a conclusion of "satisfactory" or better based on past performance evaluations.

Based on this analysis of past examinations using the CRA Analytics Data Tables, the Board identified the threshold level that separates "high satisfactory" or "outstanding" performance from "needs to improve" or "substantial noncompliance" performance on past examinations. The Board first analyzed how many individual assessment areas would have received the presumption of "satisfactory" using the threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark. This analysis showed a presumption of "satisfactory" performance being granted to over 70 percent of assessment areas with a "high satisfactory" or "outstanding" on a past examination and less than 15 percent of the assessment areas with a "needs to improve" or "substantial noncompliance" on a past examination.[75]

To understand instances where threshold levels would have provided a different result compared to past examinations, the Board also undertook a review of a sample of performance evaluations where the CRA examination conclusions on past examinations did not match the presumption approach using the retail lending distribution metrics. For banks that received a "needs to improve" in an assessment area on the existing lending test but would have passed the

[75] The sample used to conduct this analysis was limited to assessment areas for which the bank in question: (1) passed the retail lending screen (limiting the sample to large banks, for which the necessary data was available); and (2) had some amount of community development lending reported in its performance evaluation. These restrictions were imposed so that the sample would be limited to banks whose lending test performance conclusions were most tightly tied to the borrower income and geographic distribution of their loans. Banks with low levels of retail or community development lending could have received a "needs to improve" or "substantial noncompliance" conclusion or rating on the lending test despite a good distribution of retail lending due to this low level of lending, so these observations were dropped from this analysis, which was intended to focus solely on the distribution metrics.

distribution metric based on the threshold level described above, the review found that the most common reason given in the performance evaluation was a low absolute level of either retail or community development lending. Substantive fair lending or unfair or deceptive acts or practices violations also explained some of these outliers. The Board's proposals to use a retail lending screen and to allow discrimination or other illegal credit practices to rebut the presumption of "satisfactory" are intended to address these kinds of situations.

Conversely, where applying the distribution metrics would not have resulted in the bank receiving a presumption of "satisfactory" performance in an assessment area but the assessment area conclusion recorded in the past performance evaluation was "satisfactory" or better, the conclusion frequently was justified in the performance evaluation by a perceived compensating factor. For example, in some cases, a high percentage of loans in LMI geographies was viewed as making up for a low percentage of loans to LMI borrowers. Another common reason was the examiner making use of different comparators, or making adjustments to the comparators, relative to the presumption of "satisfactory" approach discussed above. The presumption of "satisfactory" proposal would increase rigor and consistency, and reduce uncertainty caused by examiner discretion. This analysis supports the conclusion that the proposed approach, in combination with the retail lending screen and the limited rebuttals of a presumption, would follow the same criteria and guidelines that banks would have been evaluated under in the past, but would do so with improved clarity, transparency and consistency.

To better understand the potential impact of a threshold level set at 65 percent of the community benchmark and 70 percent of the market benchmark, the Board also analyzed how the proposed threshold level would perform for banks of different sizes, locations, and market conditions. To this end, using a sample of 7,067 assessment areas from the CRA Analytics Data Tables, the Board determined how frequently banks would obtain a presumption of "satisfactory" performance in an assessment area at different points in the market cycle, in metropolitan and nonmetropolitan areas, and for different bank asset sizes.[76]

Results of these comparisons are shown in Table 2. Examination years from 2005 through 2009 are defined as falling in a boom period, from 2010 through 2013 are defined as falling in a downturn period, and from 2014 through 2017 are defined as falling in a recovery period. Performance evaluations generally cover lending over a period of years prior to the actual examination date, so performance evaluations even into 2009 were covering loans made prior to the financial crisis. Assessment areas were defined as metropolitan if they were located in a metropolitan statistical area and as nonmetropolitan if they were not. Finally, banks were divided into categories of less than $300 million in assets, between $300 million and $1 billion, between $1 billion and $50 billion, and greater than $50 billion.

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[76] For each assessment area in the publicly available merged data table, the analysis used the available data to calculate each component necessary to retroactively apply the retail lending distribution metrics to banks' home mortgage and small business lending activities in individual assessment areas for a given examination. To be included in this analysis, a loan product had to constitute a major product line, as described in Section VI, in that assessment area. Loan counts were used to approximate the major product line threshold to account for the lack of loan dollar amount data for small banks in the merged data table. The banks' geographic and borrower distribution metrics, as well as the community and market benchmarks, were calculated for each assessment area, using HMDA and CRA small business reported data or loan data extracted from performance evaluations for small banks where applicable. If all of the data necessary to calculate the retail distribution metrics and benchmarks were available then each major product line was tested using the thresholds of 65 percent for the community benchmark and 70 percent for the market benchmark. Some assessment areas were not scored due to lack of data or other data quality issues, but of the 7,069 assessment areas that were scored, 63 percent received the presumption.

Table 2: Percent of Assessment Areas Obtaining Presumption across Different Business Cycles, Locations, and Banks of Different Asset Sizes

Scenario	Category	Result	Number of Assessment Areas	Percent
Market Cycle	Boom	Pass	871	66%
		Not Pass	444	34%
	Downturn	Pass	1,755	64%
		Not Pass	970	36%
	Recovery	Pass	1,836	61%
		Not Pass	1,191	39%
Assessment Area Location	Nonmetropolitan	Pass	1,389	62%
		Not Pass	840	38%
	Metropolitan	Pass	3,073	64%
		Not Pass	1,765	36%
Asset Category	< $300 Million	Pass	423	59%
		Not Pass	288	41%
	$300 Million to $1 Billion	Pass	901	66%
		Not Pass	467	34%
	$1 to $50 Billion	Pass	2,118	62%
		Not Pass	1,324	38%
	> $50 Billion	Pass	1,020	66%
		Not Pass	526	34%

Under the proposed threshold levels, the retail lending distribution metrics grant the presumption of "satisfactory" to similar percentages of assessment areas across the three phases of the market cycle, metropolitan and nonmetropolitan areas, and bank asset sizes. The share of assessment areas meeting this potential presumption standard falls slightly over the course of the previous economic cycle from boom, to downturn, to recovery period, starting at 66 percent and falling to 61 percent. Metropolitan and nonmetropolitan bank assessment areas met the potential presumption standard in 64 and 62 percent of cases, respectively. Finally, there was some variation in the share of assessment areas meeting the standard across bank sizes, without a clear pattern by size. For banks with less than $300 million in assets, 59 percent of assessment areas would meet the presumption, compared to 66 percent of the largest bank assessment areas.[77] Overall, this analysis suggests that the proposed metrics-based approach appropriately tailors for different economic circumstances, geographies, and bank sizes.

Request for Feedback:

Question 19. Would the proposed presumption of "satisfactory" approach for the Retail Lending Subtest be an appropriate way to increase clarity, consistency, and transparency?

Question 20. Is the approach to setting the threshold levels and a potential threshold level set at 65 percent of the community benchmark and at 70 percent of the market benchmark appropriate?

Question 21. Will the approach for setting the presumption for "satisfactory" work for all categories of banks, including small banks and those in rural communities?

6. *Using "Performance Ranges" to Complement the Presumption of "Satisfactory"*

To provide additional certainty, the Board proposes using the retail lending distribution metrics and benchmarks to establish performance ranges for each recommended conclusion – "outstanding," "satisfactory," "needs to improve," and "substantial noncompliance."

a. Overview of Performance Ranges Approach

Performance ranges could be used to help reach Retail Lending Subtest conclusions in two ways. First, when a bank receives the presumption of "satisfactory," this approach would

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[77] Data constraints make it difficult to precisely estimate the figure for the smallest banks because the data are neither as complete nor as precise as the data for large banks. For example, although large banks report assessment area boundaries at the census tract level, small and intermediate small bank assessment areas (derived from extracting data from performance evaluations) are generally recorded only at the county level. In cases when a small or intermediate small bank took only part of a county in its assessment area, the Board was not able to identify which census tracts within that county were included. As a result, the Board's analysis calculated the presumption of "satisfactory" performance thresholds for specific assessment areas based on benchmarks for the full county, even when the bank took a partial county. The Board also analyzed how the retail lending screen would work in conjunction with the retail lending distribution metrics by comparing bank performances using *both* metrics approaches for large retail banks, because the data to assess the impact of the screen on small banks and intermediate small banks is not currently available. This analysis found that the retail lending screen slightly decreased the share of large bank assessment areas receiving the presumption, to about 58 percent for banks above $1 billion in asset size.

provide transparency and consistency about the level of performance that would merit upgrading to an "outstanding." Second, when a bank does not receive the presumption of "satisfactory," the performance ranges could help provide greater consistency and predictability on which of the four possible conclusions the bank receives on the Retail Lending Subtest. In these two situations, the *recommended* conclusions developed through the performance ranges approach could be combined with an examiner's review of specific performance context factors along with any details about the bank's specific activities to reach a *final* conclusion for the Retail Lending Subtest.

For each product line evaluated under the Retail Lending Subtest in an assessment area, the Board would derive performance ranges from community benchmarks and market benchmarks, similar to the approach to calculate the threshold for a presumption of "satisfactory." The Board would then compare how well a bank performed on the retail lending distribution metrics relative to these performance ranges. However, while the presumption test would combine low- and moderate-income groups for each distribution metric, the performance ranges would assess performance separately for low-income and moderate-income borrowers. This would focus more attention (that of banks, examiners, and interested members of the community) on how a bank is serving the low-income segment of the population, in addition to the broader LMI category.

The Board would compute a weighted average to determine how well the bank performed on different components of the retail lending distribution metrics relative to the performance ranges in order to reach an overall recommended assessment area conclusion on the Retail Lending Subtest.[78] Averaging the different components of the retail lending distribution metrics would

[78] The different components (geographic and borrower distribution metrics, low-income and moderate-income categories, and each major product line) could be weighted by the amount of business that the bank conducts in each product line, and, within each product line, by the value of the community benchmark. The proposed community benchmarks are the share of LMI households, small businesses or farms, or households or establishments in LMI neighborhoods, as applicable, in the assessment area. The weighting would be intended to ensure that the bank's recommended conclusion based on the

allow excellent performance in one part of a bank's retail lending to potentially offset lower performance in another aspect of that lending. This approach could address feedback from some stakeholders that raised concerns about the presumption of "satisfactory" approach reducing the retail lending evaluation to a pass-fail test.

Another benefit of using the performance ranges approach in addition to a presumption of "satisfactory" approach would be to encourage excellent performance by providing clear ranges for an "outstanding." This is intended to address concerns that banks currently outperforming the threshold for a presumption of "satisfactory" could reduce their levels of performance closer to the threshold level.

b. Incorporating Targeted Performance Context and Qualitative Aspects of Performance into the Performance Ranges Approach

In addition to seeking greater clarity in CRA performance evaluations, stakeholders have also expressed support for considering performance context and other qualitative aspects in CRA examinations. Although the approach to setting thresholds described in this section already incorporates key aspects of performance context information through the use of the quantitative benchmarks for each assessment area that are calibrated to local data, it is also important to consider the limited aspects of performance context not considered in the metrics, including qualitative information about performance. For example, a bank with capacity and constraint issues may deserve a "satisfactory" conclusion instead of "needs to improve" if additional lending would not be consistent with safety and soundness considerations. Further, performance context and qualitative aspects of lending could merit an increase from "satisfactory" to "outstanding" when considered cumulatively.

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performance ranges appropriately reflects both the bank's business model (giving more weight to products the bank specializes in for each assessment area) and the credit opportunities and needs in that assessment area.

Under the proposed approach, examiners would consider a combination of factors showing responsiveness, such as the margin by which a bank surpasses the thresholds applicable to the retail lending distribution metrics, flexible or innovative lending products and programs, activities undertaken in cooperation with MDIs, women-owned financial institutions, or low-income credit unions that help meet the credit needs of local communities in which these institutions are respectively chartered,[79] and the bank's record of taking action, if warranted, in response to written comments submitted to the bank about its performance in responding to the credit needs in its assessment area(s).

For example, a bank that falls within the "satisfactory" range of performance could be considered to have an "outstanding" retail lending record by forming lending consortiums with, or purchasing loans originated by, MDIs. Providing a list of these kinds of activities related to "outstanding" performance could provide additional transparency and consistency when considering performance context and qualitative information.

Unlike current examination procedures, this approach would specifically exclude using performance context based on economic or other conditions affecting the assessment area as a whole. Any such factors that would either limit or bolster lending in LMI tracts, or to LMI borrowers or small businesses or farms, would generally already be reflected in the benchmarks. As a result, examiners would be restricted to using bank-specific performance context factors that affect the bank being evaluated differently than its in-market peers.

Request for Feedback:

Question 22. Does the performance ranges approach complement the use of a presumption of "satisfactory"? How should the Board determine the performance range for a "satisfactory" in conjunction with the threshold for a presumption of "satisfactory"? How should the Board also

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[79] 12 U.S.C. 2903(b).

determine the performance ranges for "outstanding," "needs to improve," and "substantial noncompliance"?

Question 23. Should adjustments to the recommended conclusion under the performance ranges approach be incorporated based on examiner judgment, a predetermined list of performance context factors, specific activities, or other means to ensure qualitative aspects and performance context are taken into account in a limited manner? If specific kinds of activities are listed as being related to "outstanding" performance, what activities should be included?

B. Retail Services Subtest Evaluation Approach

The Board proposes a Retail Services Subtest that would use a predominately qualitative approach, while incorporating new quantitative measures, and that would apply only to large retail banks. In contemplating how to evaluate retail services, the Board seeks to encourage banks to offer important services in LMI communities; to increase transparency of evaluation criteria; and to account for changes in the way some customers interact with their banks, including the widespread use of mobile or online banking and the declining number of bank branches. As many banks nationwide closed their branch lobbies in response to the COVID-19 pandemic, consumers have relied more on self-service delivery channels such as ATMs, online banking, and mobile banking services. At the same time, branches remain a vital component of providing banking services to many LMI communities, as well as many rural communities.

1. Current Structure for Evaluating Retail Services Activity

Retail services are currently evaluated only for large retail banks under the large bank service test. The evaluation of retail services incorporates quantitative and qualitative criteria, but does not specify a level of retail services activity that is tied to certain performance conclusions.

Under Regulation BB, examiners review the following four factors when evaluating a bank's retail services activity: (1) the distribution of branches among low-, moderate-, middle-, and upper-income census tracts; (2) an institution's record of opening and closing branches and its effects, particularly regarding those branches located in LMI census tracts or primarily serving

LMI individuals; (3) the availability and effectiveness of alternative (subsequently to be referred to as non-branch) delivery systems[80] for delivering retail banking services in LMI census tracts and to LMI individuals; and (4) the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which the services are tailored to meet the needs of those census tracts.[81]

The primary emphasis for the large bank retail services test is on branches. Examiners evaluate the distribution of branches by comparing the percentage of branches and ATMs among low-, moderate-, middle-, and upper-income census tracts to the percentage of the population that resides in these tracts, particularly LMI tracts. Examiners also consider the reasonableness of business hours and services offered at branches and whether there is any notable difference between hours of operation and services offered at branches in LMI tracts compared to branches in middle- and upper-income tracts. Lastly, examiners analyze a bank's record of opening and closing branches relative to its current branch distribution and the impact of branch openings and closings, particularly on LMI census tracts or individuals.[82]

The evaluation of retail banking services relies on quantitative data from the bank's public file to assess the number of branches in an assessment area and the banking services provided, including the hours of operation and available products at each branch. Examiners have discretion to review these data in light of performance context, but there is little guidance on the factors that should be considered. Under current examination procedures, non-branch delivery channels are considered only to the extent that these channels are effective alternatives in providing services to LMI individuals and to LMI census tracts.[83]

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[80] Regulation BB provides a non-exhaustive list of "alternative (non-branch) delivery systems" which include: "ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs." 12 CFR 228.24(d)(3).

[81] *See* 12 CFR 228.24(d).

[82] *See* 12 CFR 228.24(d)(2); Q&A §__.24(d)—1.

[83] *See* Q&A §__.24(d)—1.

In addition to delivery systems, examiners consider any other information provided by a bank related to both retail products and services, such as the range of products and services generally offered at their branches, transaction fees, and the degree to which services are tailored to meet the needs of particular geographies.[84] Current guidance explains that examiners will consider products and services that improve access to financial services, or decrease costs, for LMI individuals. Examiners will also review data regarding the costs and features of deposit products, account usage and retention, geographic location of accountholders, and any other relevant information available demonstrating that a bank's services are tailored to meet the convenience and needs of its assessment area(s), particularly LMI geographies or LMI individuals.[85] However, there is no guidance on how products and services activities will be weighed in deriving retail test conclusions or the data used to evaluate performance. Additionally, banks typically collect this type of information on products and services at the institution level. As a result, examiners do not typically have the data needed to evaluate differences in products and services across assessment areas and this component receives minimal weight in determining assessment area conclusions for the service test.

2. Stakeholder Feedback on Retail Services

Some community group stakeholders expressed support for CRA's role in encouraging banks to maintain branches in LMI communities and for the current structure of the retail services evaluation. Community group and industry stakeholders expressed support for clearer standards for evaluating products and a more robust analysis of products, and advocated for an approach to evaluating retail services that relies on more data and standard measures of performance.

Community group stakeholders have expressed a range of opinions regarding the primary emphasis on branches in the current retail services evaluation based on their historic importance

[84] See Q&A §__.24(a)—1.

[85] *See* Q&A §__.24(d)(4)—1.

in providing consumers, particularly LMI individuals, with home mortgage loans and basic banking services and providing credit to small businesses.[86] Some community group stakeholders worry that removing the primary emphasis on the location of branches in the evaluation of retail services could hasten the pace of branch closures. This is supported by research findings that current CRA requirements are associated with a lower risk of branch closure, particularly in neighborhoods with fewer branches and in major metropolitan areas.[87]

Industry stakeholders have suggested that greater weight should be placed on the evaluation of non-branch delivery channels given ongoing trends in the banking industry. Although branches were still the most widely used bank channel prior to the COVID-19 pandemic, branch usage overall has declined in recent years. Community group stakeholders expressed support for giving a bank more credit for non-branch delivery channels if the bank maintains data demonstrating corresponding benefits to LMI consumers.

Community group stakeholders have also expressed concern that a reduced focus on retail services could result in banks offering fewer products and services to LMI individuals and in LMI census tracts. These stakeholders expressed support for an enhanced evaluation of banking products that places greater emphasis on assessing deposit account features and their usage, with a particular focus on products and services for LMI individuals. Some community group stakeholders also suggested that banks should be assessed on the impact of their products, not simply upon usage.

3. Proposed Retail Services Subtest Framework

The Board proposes a Retail Services Subtest for large banks that would evaluate retail services under two components: (1) delivery systems; and (2) deposit products. For the delivery systems component, the Board proposes evaluating the distribution of a bank's branches, branch-

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[86] *See* Ding and Reid, "The Community Reinvestment Act (CRA) and Bank Branching Patterns."
[87] *See id.*

based services (*e.g.*, hours of operation, bilingual services, disability accommodation, payroll and check cashing services, remittance services), and non-branch delivery channels. This approach is intended to recognize the importance of branches, particularly for LMI individuals and LMI communities, while also ensuring that CRA is flexible enough to give credit to other delivery channels and services that promote accessibility and usage.

For the deposit products component, the Board proposes evaluating a bank's deposit products, including checking and savings accounts, focusing on those tailored to meet the needs of LMI individuals. Compared to how evaluations are currently conducted, this proposed approach would elevate the focus on deposit products offered and the degree to which these products are available and responsive to the needs of LMI individuals and LMI communities. The Board is also exploring the option of requiring the very largest banks to provide a strategic statement in advance of their CRA examinations outlining their business strategy for offering deposit products that are responsive to the needs of LMI and other underserved communities.

The approach of dividing the Retail Services Subtest into delivery systems and deposit products would more clearly articulate the different components of the evaluation of retail services and how they relate to one another. Additionally, the proposed approach would leverage quantitative benchmarks to evaluate a bank's branch distribution. Lastly, the Board is considering what additional quantitative information could best facilitate transparent and meaningful evaluations of delivery systems and deposit products, while taking into account the objective of minimizing data burden for institutions where possible.

a. Delivery Systems

The Board proposes evaluating the full breadth of bank delivery systems by maintaining the emphasis on the importance of branches and increasing the focus on non-branch delivery channels. The proposed approach would evaluate all four current branch-related evaluation factors (branch distribution, the record of opening and closing branches, branch-related services, and non-branch delivery systems) under the delivery systems component of the retail services evaluation. The proposal also would leverage quantitative benchmarks to inform the branch distribution analysis. Additionally, the Board is exploring whether banks should receive additional consideration for operating branches in banking deserts. As part of modernizing the CRA framework, the Board also proposes more fully evaluating non-branch delivery systems to address the trend toward greater use of online and mobile banking.

i. Branch Distribution

Under the proposed Retail Services Subtest, analyzing the distribution of bank branches across census tracts of different income levels would continue to be a core part of evaluating delivery systems. The Board is considering incorporating several quantitative benchmarks that would complement a qualitative evaluation in order to provide greater transparency in evaluations and to provide a more comprehensive picture of the physical distribution of branches in assessment areas. The record of opening and closing branches would continue to rely on examiner judgment to determine whether changes in branch locations affected the accessibility of branch delivery channels, particularly in LMI areas or to LMI individuals.

Branch Distribution Benchmarks. The Board is proposing using data specific to individual assessment areas, referred to as benchmarks, as points of comparison for examiners when evaluating a bank's branch distribution. Building on current practice, three community benchmarks and one market benchmark would be used in conjunction with examiner judgment and performance context information to assess a bank's branch distribution.

Table 3 describes the proposed community benchmarks and their respective data sources. These benchmarks would allow examiners to compare a bank's branch distribution to local data to help determine whether branches are accessible in LMI communities, to individuals of different income levels, and to businesses in the assessment area, and would standardize examiner practice that is used today in some evaluations.

Table 3: *Community Benchmarks for Retail Services –Branch Distribution*

Table 3: Community Benchmarks for Retail Services –

Branch Distribution	
Benchmark(s)	**Data source**
Percentage of census tracts in an assessment area by tract income level	American Community Survey (Census)
Percentage of households in an assessment area by tract income level	American Community Survey (Census)
Percentage of total businesses in an assessment area by tract income level	Dun & Bradstreet

The Board is also considering a new aggregate measurement of branch distribution – referred to as a market benchmark – that would measure the distribution of all bank branches in the same assessment area by tract income. Table 4 provides an overview of the proposed market benchmark and the associated data source.

Table 4: *Market Benchmark for Retail Services –Branch Distribution*

Table 4: Market Benchmark for Retail Services – Branch Distribution	
Benchmark	**Data source**
Percentage of all bank branches[88] in an assessment area by tract income level	FDIC SOD Survey

The use of a market benchmark could improve the branch distribution analysis in several ways. First, making such a comparison could give examiners more context for determining how much opportunity exists for providing retail services in tracts of different income levels. Second, examiners may be able to identify assessment areas with a relatively low concentration of

[88] The aggregate number of branches in an assessment area figure includes full-service and limited-service branch types as defined in the FDIC SOD.

branches in LMI areas, which could be indicative of a banking desert. If a bank has a branch in a low-income or moderate-income census tract where few other lenders have branches, this could indicate particularly responsive or meaningful branch activity for the bank.

Table 5 provides an example of how the community and market benchmarks could be used in evaluating a bank's branch distribution.

Table 5: *Geographic Branch Distribution*

Geographic Branch Distrbution

	BRANCHES		**COMMUNITY BENCHMARKS**				**MARKET BENCHMARK**	
Tract Income Levels	Total Branches		Census Tracts		Households	Businesses	Total Branches from FDIC SOD as of 6/30/2018	
	Number	Percent	Number	Percent	Percent	Percent	Number	Percent
Low	**0**	**0.0%**	11	8.5%	7.9%	5.4%	**9**	**4.9%**
Moderate	**2**	**25.0%**	30	23.3%	25.7%	20.1%	**40**	**22.0%**
Middle	**4**	**50.0%**	53	41.1%	40.0%	43.1%	**91**	**50.0%**
Upper	**2**	**25.0%**	35	27.1%	26.3%	31.4%	**42**	**23.1%**
Unknown	**0**	**0.0%**	0	0.0%	0.0%	0.0%	**0**	**0.0%**
Totals	**8**	**100.0%**	129	100.0%	100.0%	100.0%	**182**	**100.0%**

In the example above, the bank has eight total branches in an assessment area, with none of those branches in low-income tracts and two in moderate-income tracts. An examiner could compare the fact that the bank has no branches in low-income tracts with the above community benchmarks. For example, as shown in the table above, 8.5 percent of all census tracts in the assessment area are low-income census tracts. The examiner could also compare the bank's lack of branches in low-income census tracts with the market benchmark showing that 4.9 percent of branches for all banks in the assessment area are in low-income census tracts.

Similarly, the examiner could also compare the fact that 25.0 percent of the bank's branches are located in moderate-income tracts in the assessment area with the above community benchmarks. For example, 25.7 percent of all households in the assessment area are moderate-income households. The examiner could also compare the bank's distribution of branches in moderate-income census tracts with the market benchmark showing that 22.0 percent of branches for all banks in the assessment area are in moderate-income census tracts.

An examiner could evaluate these data in different ways based on performance context. For example, examiners could give more weight to the bank's lack of branches in low-income census tracts combined with the fact that community benchmarks demonstrate there may be additional opportunity to provide banking services in these tracts. Alternatively, an examiner could consider performance context indicating that existing bank branches in low-income census tracts are adequately serving the needs of low-income households, particularly in light of the percentage of branches the bank has in moderate-income census tracts. As part of this performance context, an examiner might consider the proximity of the bank's branches in moderate-income census tracts to the low-income census tracts in the assessment area.

Formalizing the use of benchmarks would promote transparency in the evaluation process, but given the importance of the branch distribution analysis, the Board does not believe setting thresholds to inform recommendations is appropriate.

Minimum Number of Branches for Branch Distribution Analysis. When a bank has a limited number of branches in an assessment area, the Board is also considering whether the branch distribution analysis should be done qualitatively without the use of the community and market benchmarks described above. Currently, examiners review branch distribution for each assessment area, regardless of the bank's number of branches or the income distribution of census tracts in the assessment area. As a result, a branch distribution analysis is conducted even when a bank has only one branch in an assessment area. Instead, the Board is considering whether a minimum number of branches should be established in order to use the community and market benchmarks.

Assessing Branches in Banking Deserts. The Board is also exploring whether to give additional consideration if a bank operates a branch in a designated banking desert within its assessment area(s). Creating such a standard would involve determining how to define banking deserts, including the appropriate geographic standards and whether standards should be different for urban and rural areas. Examiners could consider any information an institution provides to determine the degree to which delivery systems are tailored to the convenience and needs of banking deserts in the assessment area.

ii. Branch-Related Services

As part of evaluating delivery systems, the Board proposes clarifying that the evaluation of branch-related services would assess services that are not covered in the branch distribution analysis and that could improve access to financial services, or decrease costs, for LMI individuals. Examples of such services include:

- Extended business hours, including weekends, evenings, or by appointment;
- Providing bilingual/translation services in specific geographies and disability accommodations;
- Free or low-cost government, payroll, or other check cashing services; and
- Reasonably priced international remittance services.

The Board is exploring how these services could be evaluated more consistently and what data could inform an analysis of how these services are meeting the needs of the assessment area, particularly in LMI areas.

Consideration of Branches in Middle-Income and Upper-Income Tracts. Some industry stakeholders have suggested that branches located in middle- and upper-income census tracts and adjacent to LMI tracts can provide needed financial services to residents in the LMI tracts. Some stakeholders have raised concerns about inconsistencies in the treatment and criteria that are currently used to evaluate these branches and have suggested that common guidelines should be developed to ensure a more consistent evaluation. The Board is considering whether and how these branches should be incorporated into the analysis of branch-related services. On one hand, incorporating these branches into the analysis could capture more of the banking services banks are providing to meet the needs of LMI areas. Additionally, providing standard guidelines would ensure that examiners are treating these branches consistently. On the other hand, including these branches could de-emphasize the importance of branches in LMI areas.

To balance these objectives, the Board believes that if a bank requests consideration of branches in middle- and upper-income census tracts as a means for delivering services to LMI individuals or areas, the Board would consider information provided by the bank demonstrating that LMI consumers use the branches. A review of this information would inform the qualitative review of branch-related services and would not be incorporated into the branch distribution analysis described above. The Board is exploring what type of data banks could provide to demonstrate that branches located in middle- and upper-income census tracts serve LMI individuals or areas.

iii. Non-branch delivery channels

In light of the growing use of online and mobile banking services, the proposed Retail Services Subtest would enhance the approach to evaluating the availability and effectiveness of non-branch delivery channels in helping to meet the needs of LMI census tracts and individuals. An important consideration in establishing a strengthened non-branch delivery channels evaluation is grounding this analysis in better and more consistent data, while also being mindful of the objective to minimize the burden for banks in providing additional data.

Under current guidance, examiners consider a variety of factors to determine whether a bank's non-branch delivery channels (ATMs, mobile, and internet) are an effective means of delivering retail banking services in LMI areas and to LMI individuals. For example, this includes the ease of access, cost to consumers, and rate of adoption and use of these delivery channels. However, the type of data that banks provide to examiners is inconsistent and, as a result, consideration of non-branch delivery channels is uneven. Furthermore, there are no clear standards on how data are to be used to determine what constitutes a specific level of performance.

Incorporating data on non-branch delivery channels would enhance the evaluation of non-branch delivery channels. However, there are questions about how to measure non-branch delivery channels consistently and what data points could be considered to demonstrate usage by LMI individuals. Possible data that could be considered include rates of usage of online and mobile services by customers (grouped by census tract) and rates of usage by customers (grouped by census tract) for the different types of ATMs offered by a bank. One challenge, however, is that usage data is proprietary and varies widely by bank. Due to proprietary business considerations, the data might be available only to examiners and may not enhance public insight.

Request for Feedback:

Question 24. In addition to the number of branches and the community and market quantitative benchmarks discussed above, how should examiners evaluate a bank's branch distribution?

Question 25. How should banking deserts be defined, and should the definition be different in urban and rural areas?

Question 26. What are the appropriate data points to determine accessibility of delivery systems, including non-branch delivery channel usage data? Should the Board require certain specified information in order for a bank to receive consideration for non-branch delivery channels?

Question 27. Should a bank receive consideration for delivering services to LMI consumers from branches located in middle- and upper-income census tracts? What types of data could banks provide to demonstrate that branches located in middle- and upper-income tracts primarily serve LMI individuals or areas?

Question 28. Would establishing quantitative benchmarks for evaluating non-branch delivery channels be beneficial? If so, what benchmarks would be appropriate?

b. Deposit Products

The Board is considering creating a second prong of the Retail Services Subtest that focuses specifically on the degree to which deposit products are responsive to the needs of LMI consumers. Given the number of LMI individuals who are unbanked or underbanked,[89] deposit products that are tailored to meet the needs of LMI consumers could be considered to be responsive under the Retail Services Subtest. Examples of such products include:

- Low-cost transaction accounts which are accessible through debit cards or general-purpose reloadable prepaid cards;
- Individual development accounts;
- Accounts with low or no monthly opening deposit or balance fees;
- Accounts with low or no overdraft and insufficient funds fees;
- Free or low-cost government, payroll, or other check cashing services; and
- Reasonably priced remittance services.

As noted, under current examination procedures, examiners review deposit products on a limited basis when considering the full range of services offered by a bank in census tracts of different income levels.[90] One key reason the review of deposit products is generally given minimal weight is that data provided by banks to examiners on deposit accounts are generally

[89] *See* Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2018 - May 2019," https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-banking-and-credit.htm.

[90] *See* Q&A §__.24(d)(3)—1.

limited and often provided only for the institution overall, rather than at the assessment area level.

The Board proposes to elevate and strengthen the evaluation of deposit products that are responsive to the needs of assessment areas, and particularly LMI communities and consumers. In addition to assessing the *availability* of deposit products and the degree to which these products are tailored to meet the needs of LMI consumers, the Board is also considering how to evaluate the *usage* and *impact* of such products. To accomplish these objectives, the Board is exploring whether it would be beneficial to have additional data to inform the analysis of deposit products, such as the types of deposit products offered, product costs, account features tailored for needs of LMI consumers, and product usage by LMI consumers versus usage by all consumers. Access to this type of data could help examiners determine whether the bank offers deposit products that are responsive to the needs of LMI consumers and the usage of such products by LMI consumers. Additionally, presenting relevant data on the availability and usage of deposit products in performance evaluations would increase transparency and provide more information to all stakeholders on the types of deposit products that are most responsive to the needs of LMI consumers.

The Board recognizes that evaluating deposit products presents challenges. First, expanding the focus on deposit products would require banks to provide new information for CRA evaluations, as well as the establishment of new supervisory standards for evaluating deposit products. Additionally, due to proprietary business considerations, data on deposit products and customer usage might be available only to examiners and may not enhance public insight.

Despite these challenges, the Board believes that the review of deposit products is an important component of CRA modernization given the critical role of these products in providing an entry point to the banking system for LMI consumers, as well as a pathway for these individuals to obtain access to credit.

Other Revisions to Retail Services Evaluation. The Board is also contemplating whether additional clarity and transparency could be gained by requiring a subset of the largest banks (*e.g.,* banks with assets over $10 billion or banks with assets over of $50 billion) subject to the Retail Services Subtest to provide a statement articulating their approach to offering retail banking products for serving LMI individuals and communities across their assessment area(s). Such statements would allow examiners and stakeholders to understand how the largest banks – which serve a unique role in providing financial services to a large percentage of the population – identify, monitor, track, and serve the needs of LMI communities and individuals through their product offerings. A consideration with this approach would be assessing the potential benefits of requiring these strategic statements relative to any burden associated with preparing them. Another consideration is whether this strategic statement would be appropriate to include in a bank's public file.

Request for Feedback:

Question 29. What types of data would be beneficial and readily available for determining whether deposit products are responsive to needs of LMI consumers and whether these products are used by LMI consumers?

Question 30. Are large banks able to provide deposit product and usage data at the assessment area level or should this be reviewed only at the institution level?

Question 31. Would it be beneficial to require the largest banks to provide a strategic statement articulating their approach to offering retail banking products? If so, what should be the appropriate asset-size cutoff for banks subject to providing a strategic statement?

4. Retail Services Subtest Conclusions

The Board proposes reaching a single Retail Services Subtest conclusion for large banks in each of their assessment areas. The Board proposes doing so in a qualitative manner that draws on the delivery systems and deposit products component assessments described above. In reaching an assessment area conclusion for the Retail Services Subtest, the Board is considering how examiners should weight the delivery systems component and the deposit products component, respectively. The Board recognizes the foundational and practical importance of delivery systems to creating and maintaining meaningful access to banking products and services for LMI consumers and communities. Therefore, the Board proposes that more weight be given to the delivery systems component than to the deposit products component when determining a single Retail Services Subtest conclusion. When deriving a conclusion for the delivery systems component, the weight given to branch distribution, branch-related services, and non-branch delivery channels would depend on a bank's profile and its capacity and constraints, as well as performance context. Relevant consumer compliance violations, including any unfair, deceptive or abusive acts or practices, would have a negative impact on the deposit products conclusion, and would be taken into account in determining a Retail Services Subtest conclusion.

Request for Feedback:

Question 32. How should the Board weight delivery systems relative to deposit products to provide a Retail Services Subtest conclusion for each assessment area? Should a large bank receive a separate conclusion for the delivery systems and deposit products components in determining the conclusion for the Retail Services Subtest?

VI. Retail Lending Subtest Definitions and Qualifying Activities

In contemplating revisions to Regulation BB, the Board has considered what qualifying retail lending activities should be considered in specific assessment areas, including what targeted updates should be made to retail lending definitions[91] and qualifying activities, as part of CRA modernization. The Board is considering the following proposals:

- To use a clear quantitative threshold, perhaps 15 percent, to determine whether a bank's home mortgage, small business, and small farm lending should be evaluated as major

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[91] *See* 12 CFR 228.12(l) (defining "home mortgage loan"); 12 CFR 228.12(v) (defining "small business loan"); 12 CFR 228.12(w) (defining "small farm loan"); and 12 CFR 228.12(j) (defining "consumer loan").

product lines at the assessment area level, given the availability of public data for these product lines;

- To establish a substantial majority threshold for the treatment of consumer loans using measures based on either the number, the dollar value, or a hybrid approach, and that accounts for different characteristics, purposes and sizes by evaluating loan categories separately;
- To update the thresholds for small business loans and small farm loans that were last set in 1995, while retaining the nexus with the *smallest* small businesses and small farms, which often have the greatest unmet credit needs;
- To give consideration for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate), in order to strike a balance between recognizing the importance of first-time purchases for originating banks that rely on other lenders to directly provide liquidity and addressing concerns about loan churning; and
- To expand eligibility for retail lending CRA activities in Indian Country where there are high poverty rates and a relative lack of bank activities.

A. Determining Which Loans are Evaluated Using Retail Lending Metrics

Currently, large banks are evaluated on all home mortgage, small business, and small farm lending products, regardless of lending volume. Additionally, a large bank's consumer loans are currently considered at its option or if these loans constitute a substantial majority of the bank's business. There is not an established threshold for this standard, and examiner judgment is used to determine whether consumer loans constitute a substantial majority of a bank's business, which can be a source of confusion among stakeholders.[92]

[92] Current interagency guidance on when to consider consumer lending at large banks states, "[t]he Agencies interpret 'substantial majority' to be so significant a portion of the institution's lending activity by number and dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded." *See* Q&A §__.22(a)(1)—2.

In contrast, small banks are evaluated on only those retail lending categories that are considered major product lines. Currently, there is no Regulation BB definition of a major product line. Instead, examiners select major product lines for evaluation at small banks based on a review of information, including the bank's business strategy and its areas of expertise. Examiners may evaluate all of a small bank's consumer loans taken together or select a category of consumer lending (*e.g.,* credit card, motor vehicle) if those consumer loans are deemed to constitute a major product line.

1. Treatment of Home Mortgage, Small Business, and Small Farm Loans

The Board proposes to use metrics to evaluate CRA performance on home mortgage, small business, and small farm lending, given the availability of appropriate public data for these product lines. Under such an approach, major product line designations for a bank could vary across its assessment areas. For example, a bank that is primarily a home mortgage and small business lender overall but specializes in small farm lending in certain rural assessment areas would have small farm lending considered in those specific assessment areas, but not in assessment areas where the bank makes few or no small farm loans.

For large banks, reviewing major product lines at the assessment area level for home mortgage, small business, and small farm lending would constitute a change compared to the current approach that automatically includes reviews of these product lines in all of their assessment areas. Adopting a major product line approach for large banks would focus CRA evaluations on their actual retail lending, but would also eliminate consideration of some lending that the Board currently considers in large bank examinations. For small banks, adopting a major product line approach to home mortgage, small business, and small farm lending would be similar to the standards in place today, although the standards for determining major product lines would be quantitatively defined to ensure transparency and promote certainty.

A benefit of evaluating all banks on their major product lines is that this approach could streamline evaluations and focus on the retail lending activity that has the biggest impact at each bank. Although some may be concerned about no longer including a review of home mortgage or small business loans in particular assessment areas where loan volume is low, a large bank's lower volume lending is currently already given less weight when evaluating a bank's retail lending performance. The Board is considering a threshold of 15 percent of the dollar value of a bank's retail lending in individual assessment areas for a major product line designation for home mortgage, small business, and small farm lending. Specifically, retail product lines would be evaluated using the metrics discussed in Section V if they constituted 15 percent or more of a of the dollar value of a bank's retail lending in a particular assessment area over the evaluation period.

Many stakeholders have supported designating a major product line standard for purposes of using metrics to evaluate retail lending. Some stakeholders have provided feedback that a threshold of 15 percent of an institution-level (not assessment area) dollar volume of total retail loan originations during the evaluation period could be too high for large banks. Some of these stakeholders have suggested choosing major product lines considering contextual information about the bank, or the bank's assessment area(s), such as its market share within the community. The approach discussed above would select major product lines at the assessment area level, and would likewise take into account this kind of local performance context information.

Request for Feedback:

Question 33. Should the Board establish a major product line approach with a 15 percent threshold in individual assessment areas for home mortgage, small business, and small farm loans?

Question 34. Would it be more appropriate to set a threshold for a major product line determination based on the lesser of: (1) the product line's share of the bank's retail lending activity; or (2) an absolute threshold?

2. Treatment of Consumer Loans

Consumer loan categories, as currently defined in Regulation BB, include motor vehicle, credit card, other secured consumer loans, and other unsecured consumer loans (*e.g.,* education loans).[93] Consumer lending is an important credit vehicle, and can fulfill key needs for LMI borrowers; however, it raises different considerations in determining when a bank is evaluated for CRA purposes based on its consumer lending. If households with urgent liquidity needs are unable to access a credit card or other consumer loan at a reasonable rate, they may turn to more costly and less sustainable forms of short-term credit. For example, motor vehicle loans can be especially important in areas where public transportation is not readily available and where jobs are distant from where people live.

a. *When to Evaluate Consumer Loans under CRA*

Some stakeholders note the importance of small dollar loans and consumer lending to LMI borrowers, while others argue against mandatory inclusion of consumer lending, citing the burden of originating and reporting these loans. The Board proposes setting clear quantitative standards to determine whether to evaluate consumer lending for purposes of CRA. Specifically, the Board is considering establishing a substantial majority threshold, using measures based on the number of consumer loans, the dollar value of consumer loans, or a hybrid approach combining both loan counts and dollar values of consumer loans. A benefit of using a loan count standard is that it would be the clearest indicator of how many consumers receive consumer loans from a specific bank or how many consumers use particular consumer lending products.

Alternatively, using the dollar value of lending to designate a major product line threshold for consumer loans would ensure that consumer products are selected for evaluation in a manner that is consistent across retail products, as well as across examinations. Using the dollar amount of loans to determine major product line designations would include consumer loans only when quantitative standards defined in the regulation are met. For example, consumer lending could

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[93] 12 CFR 228.12(j).

be evaluated if the dollar amount of consumer loans accounted for 25 percent of a bank's overall activity in an assessment area or, alternatively, 15 percent of a bank's lending in a particular consumer loan category.

b. *Evaluating Consumer Loans as an Entire Product Line or at the Category Level*

The Board proposes applying the metrics-based approach to the entire product line of home mortgage loans, small business loans, and small farm loans, while evaluating consumer loans at the level of separate consumer loan categories (*e.g.*, motor vehicle, credit card, other secured consumer loans, and other unsecured consumer loans). Evaluating separate consumer loan categories would recognize the different characteristics, purposes, average loan amounts, and uses of motor vehicle loans, credit cards, and other secured and unsecured consumer loans.

Request for Feedback:

Question 35. What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?

Question 36. Should consumer loans be evaluated as a single aggregate product line or do the different characteristics, purposes, average loan amounts, and uses of the consumer loan categories (*e.g.*, motor vehicle loans, credit cards) merit a separate evaluation for each?

B. *Small Business and Small Farm Thresholds*

The Board recognizes the importance of small business and small farm loans as essential financial services, particularly in underserved communities. Smaller revenue firms (with gross annual revenues of $1 million or less) frequently have small dollar financing needs and typically have distinct credit challenges, but may not meet traditional bank underwriting criteria. Additionally, when applying for credit, small firms in general seek smaller loan amounts. According to the Federal Reserve's 2020 Small Business Credit Survey, nearly 60 percent of businesses that sought credit were seeking $100,000 or less in financing, and one in five sought less than $25,000.[94]

The Board is considering whether the existing CRA small business and small farm loan definitions are appropriate. The Board also seeks comment on whether the asset-size thresholds for determining whether these loans are helping to meet the needs of smaller revenue businesses and smaller revenue farms should be updated to reflect changes to the industry since the thresholds were set in 1995.[95] In considering updates to the thresholds, the Board seeks to retain the nexus of the small business and small farm definition with *smaller* small businesses and small farms that often have the greatest unmet credit needs.

Currently, in order to qualify as a small business or small farm loan, the loan amount must not exceed a specified dollar threshold. Specifically, based on the instructions for the Reports of Condition and Income (Call Reports), loans to small businesses are defined as loans with origination amounts of $1 million or less and loans to small farms are defined as loans with origination amounts of $500,000 or less.[96] Regarding the gross annual revenues standards, Regulation BB's borrower characteristics criteria, as reflected in the large bank lending test, consider small business loans or small farm loans that have gross annual revenues of $1 million or less.[97]

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[94] Federal Reserve Banks, "Small Business Credit Survey: 2020 Report on Employer Firms" (Aug. 2020) https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.

[95] See 12 CFR 228.22(b)(3)(ii).

[96] The Call Report defines "loans to small businesses" as loans with original amounts of $1 million or less that have been reported as "Loans secured by nonfarm nonresidential properties." It defines "loans to small farms" as: (1) Loans with original amounts of $500,000 or less that have been reported as "Loans secured by farmland (including farm residential and other improvements)"; or (2) Loans with original amounts of $500,000 or less that have been reported as "Loans to finance agricultural production and other loans to farmers." *See* "Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031, 032, 033, and 034), RC-C-Small Business and Small Farm Loans, RC-C-37, https://www.ffiec.gov/PDF/FFIEC_forms/FFIEC031_034inst_200006.pdf.

[97] 12 CFR 228.22(b)(3).

The Board is considering updating the thresholds for both loan size and gross annual revenue. First, the Board requests feedback on adjusting the loan size thresholds based on inflation, which would equal approximately $1.65 million dollars for small business loans and approximately $800,000 dollars for small farm loans.[98] Updating these thresholds for inflation would adjust eligibility so that the small business and small farm loan thresholds would reflect the current value of the dollar relative to the last update. Another option would be to maintain the loan thresholds at their current levels as an incentive for banks to meet smaller dollar financing needs.

Input received from industry stakeholders generally supports raising the thresholds from the current levels, with some suggesting an adjustment to the loan thresholds to reflect inflation or raising them to $2 million. Community organizations generally support either maintaining the current loan thresholds or adjusting them only to reflect inflation.

A challenge to determining the appropriate updated loan size thresholds, if any, is a lack of available data on business and farm loans. As noted above, currently the CRA small business and small farm loan thresholds correlate with Call Report requirements.[99] Constraints on data availability raise the question of whether the small business and small farm loan thresholds should be raised without an ability to capture new information related to revised standards. The Board is considering whether to continue to define CRA small business and small farm loans based on the Call Report definitions or, alternatively, whether Regulation BB should define small business and small farm loan amount thresholds independently. Defining loan amount thresholds independently for CRA purposes may allow for greater flexibility and precision in

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[98] Threshold inflation adjustments are based on 2018 numbers from Bureau of Labor Statistics Consumer Price Index conversion table and recalibrated to December 1995=100 (Source: https://www.bls.gov/cpi/research-series/home.htm).

[99] Updating the small business loan and small farm loan thresholds for inflation would decouple them from Call Report data. Current Call Report data collection would not capture any revisions to these CRA loan thresholds.

determining threshold levels, but could require that Regulation BB incorporate a new mechanism for collecting related data.

The Board is also considering updating the gross annual revenue thresholds used for the borrower distribution analysis of small businesses and small farms. Similar to the loan size thresholds, one option would be to increase these thresholds to reflect inflation. Adjusting the $1 million gross annual revenue thresholds based on inflation would result in revised thresholds today of approximately $1.65 million.[100]

A related question is whether adjusted small business and small farm loan size and gross annual revenue thresholds should also be regularly adjusted for inflation moving forward, such as at three-year or five-year intervals. A benefit of regularly adjusting thresholds is ensuring that similar ranges of activities would continue to qualify over time. However, one possible drawback to regular adjustments is additional burden and complexity for stakeholders.

Request for Feedback:

Question 37. Should the Board continue to define small business and small farm loans based on the Call Report definitions, or should Regulation BB define the small business and small farm loan thresholds independently? Should the Board likewise adjust the small business and small farm gross annual revenues thresholds? Should any or all of these thresholds be regularly revised to account for inflation? If so, at what intervals?

C. Treatment of Purchased Loans

The Board is reviewing whether to treat non-securitized home mortgage loan purchases equivalently with home mortgage originations, particularly in conjunction with a metrics-based

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[100] Threshold inflation adjustments are based on 2018 numbers from Bureau of Labor Statistics Consumer Price Index conversion table and recalibrated to December 1995=100, https://www.bls.gov/cpi/research-series/home.htm.

approach in the Retail Lending Subtest.[101] Currently, purchased loans receive the same CRA consideration as loan originations, consistent with their treatment on the Call Report. The market for purchased loans is more concentrated than that for loan originations, with 15 banks accounting for approximately 90 percent of total loan purchases reported in both HMDA and CRA data. Although the market for purchased loans is concentrated, these loans can be viewed as providing liquidity by freeing up capital so that retail banks and other lenders, such as CDFIs, can originate additional loans to LMI individuals and in LMI areas.

Some stakeholders support continuing to provide equivalent consideration for purchases of home mortgage loans, noting that such purchases extend the capacity of lenders, including CDFIs, to make needed LMI loans. Some stakeholders have additionally noted that loan purchases are an important tool for banks that do not have the on-the-ground capabilities to originate loans in certain markets in which they seek business opportunities. However, other stakeholders have expressed that purchased loans and originations should not receive equal consideration because of the lower level of effort required for loan purchases relative to loan originations, which require marketing, outreach, and business development resources that are not necessary for purchased loans.

Moreover, other stakeholders have indicated that some banks solely purchase loans from other institutions that have previously purchased those loans, in order to garner CRA credit – a practice often described as "loan churning."[102] These stakeholders note that such banks are not using the liquidity generated to benefit either the originating or purchasing bank's community.

Although there are multiple reasons for banks to purchase loans, Board analysis indicates some CRA-motivated repeat purchases of home mortgage loans may be occurring. A review of

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[101] In 2017, over 75 percent of HMDA loans purchased by commercial banks were securitized or sold to the government-sponsored enterprises within the same calendar year.

[102] In this practice, loans to LMI borrowers are purchased and sold repeatedly by different banks, with the possibility of each bank receiving CRA credit at an equivalent level to the banks that originated the loans.

2017 HMDA data found that LMI loans are over five times as likely to be purchased within a year as other home mortgage loans. This analysis finds that 0.6 percent of home mortgage loans to non-LMI borrowers purchased by commercial banks were sold to another commercial bank within the same year, whereas the share was 3.3 percent for LMI borrower loans. At the same time, this analysis indicates that including purchased home mortgage loans in CRA evaluations may not have a significant impact on performance outcomes.

The Board is considering including only home mortgage loans purchased directly from an originating lender (or affiliate) in CRA evaluations. This approach strikes a balance between recognizing the importance of first-time purchases to banks that rely on other lenders to directly provide liquidity in order to originate new loans and addressing the concern about loan churning.

An alternative option the Board is considering would be an additional review to help exclude loan churning from the above-referenced retail lending screen and distribution metrics. Although, generally, home mortgage loan purchases would remain eligible on par with originations, purchased loans added solely for purpose of inflating CRA lending performance would not. This option would minimize burden on banks by allowing them to continue their current data collection and reporting processes, but introduce a deterrent to prevent the repeat selling and purchasing of loans solely for the purposes of garnering consideration in CRA evaluations.

Request for Feedback:

Question 38. Should the Board provide CRA credit only for non-securitized home mortgage loans purchased directly from an originating lender (or affiliate) in CRA examinations? Alternatively, should the Board continue to value home mortgage loan purchases on par with loan originations but impose an additional level of review to discourage loan churning?

Question 39. Are there other alternatives that would promote liquidity by freeing up capital so that banks and other lenders, such as CDFIs, can make additional home mortgage loans to LMI individuals?

D. Broadening Consideration for Retail Activities in Indian Country

The Board is proposing broadening consideration for retail lending activities conducted in Indian Country.[103] These activities would be reviewed qualitatively and in conjunction with the proposed Retail Lending Subtest performance ranges approach described previously. Public feedback received from both community organizations and industry is generally supportive of expanding eligibility for retail CRA activities in Indian Country due to high poverty rates and relative lack of banking services. The Board believes that expanding eligibility may encourage greater retail lending activity in areas long identified as having unmet credit needs.

Currently, a retail activity located within Indian Country must also satisfy additional eligibility criteria under Regulation BB to qualify for consideration. For example, such loans must be within a bank's assessment area. Under the proposed approach, the qualitative aspects of a bank's performance would include a review of any retail activity conducted in Indian Country, including loans to low-, moderate- and middle-income borrowers. The Board's proposed approach would make retail activities in Indian Country located both inside and outside of a bank's assessment area eligible for CRA consideration, as long as a bank satisfies the needs of its own assessment area(s). Activities outside of a bank's assessment area(s) would be evaluated qualitatively, and could be considered as a possible enhancement to a bank's Retail Test institution rating, as discussed in Section X.

Request for Feedback:

Question 40. Should CRA consideration be given for retail lending activities conducted within Indian Country regardless of whether those activities are located in the bank's assessment area(s)?

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[103] *See* 18 U.S.C. 1151. Indian Country would be defined as federal Native Areas including Federally Designated Indian Reservations, Off Reservation Trust Lands, Alaskan Native Village Statistical Areas, and Hawaiian Home Lands.

Question 41. Should all retail lending activities in Indian Country be eligible for consideration in the Retail Lending Subtest or should there be limitations or exclusions for certain retail activities?

VII. Community Development Test: Evaluation of Community Development Financing and Community Development Services Performance

The Board is proposing a new Community Development Test that would include a Community Development Financing Subtest and a Community Development Services Subtest. The Board proposes that the Community Development Test would apply only to large retail banks and wholesale and limited purpose banks in order to tailor performance expectations by bank size and business model. Banks evaluated under the Community Development Test would receive separate Community Development Financing Subtest and Community Development Services Subtest conclusions in each assessment area.

A. Community Development Financing Subtest Evaluation Approach

In order to provide clear and consistent incentives for effective community development financing, the Board is considering a quantitative assessment of community development financing activities. The Board is proposing using a "community development financing metric" that measures the ratio of the dollar amount of a bank's qualifying community development financing activities compared to its deposits[104] within each assessment area. The Board is also considering how to use local and national data to establish benchmarks for the community development financing metric at the assessment area level. Wholesale and limited purpose banks, whose business models generally do not involve retail deposit accounts, would be evaluated under separate procedures that would not involve retail deposits.

1. Current Approach for Evaluating Community Development Loans and Qualified Investments

[104] Options for defining deposits, as well as potential data sources, are discussed in Section XI.B.

Under current CRA standards, community development financing activities are considered differently based on the asset size and business model of a bank. For small retail banks, community development investments and services are reviewed only at a bank's option for consideration for an "outstanding" rating for the institution overall.[105] For intermediate small retail banks and wholesale and limited purpose banks, community development loans, qualified investments, and community development services are considered together under one community development test.[106]

For large retail banks, community development loans are considered as part of the lending test together with retail loans, while qualified investments are considered separately in the investment test.[107] A large retail bank receives consideration for both the number and dollar amount of community development loans originated and qualified investments made during the review period, as well as the remaining book value of qualified investments made during a prior review period, but not of community development loans made during a prior review period. Examiners also consider qualitative factors including the innovativeness or complexity of these activities, how responsive the bank has been to opportunities in its assessment area(s), and the degree of leadership a bank exhibits through its activities. The evaluation of qualitative factors is currently based on any information that a bank provides on the impact of its activities, along with an examiner review of performance context, which includes community needs and opportunities.

Under current guidance, a bank receives consideration for loans and investments that serve the bank's assessment area(s) when evaluating assessment area performance.[108] Activities in

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[105] *See* Q&A §__.26(d).

[106] 12 CFR 228.25(c) and 12 CFR 228.26(c).

[107] 12 CFR 228.22 and 12 CFR 228.23.

[108] *See* CA 14-2 ("Revised Interagency Large Institution CRA Examination Procedures and Consolidation of Interagency CRA Examination Procedures and Supporting Materials"), p. 21 (Apr. 18, 2014), https://www.federalreserve.gov/supervisionreg/caletters/CA_14-2_attachment_1_Revised_Large_Institution_CRA_Examination_Procedures.pdf. *See also* Q&A §__.12(h)—6. ("The institution's assessment area(s) need not receive an immediate or direct benefit from

broader statewide or regional areas that include the bank's assessment area(s) may be considered in evaluating performance for an assessment area, state, multistate MSA, or the institution overall, depending on the scope of the activities and whether they are shown to benefit or be targeted to the bank's assessment area(s). Broader statewide and regional activities that do not serve a bank's assessment area(s) are considered at the state or institution level only if the bank is first determined to have been responsive to the credit and community development needs within its assessment areas.

The current geographic treatment of community development activities recognizes that many activities have a geographic scope that extends beyond a single assessment area, such as a statewide or regional fund for affordable housing. Broader regional and statewide activities are an important source of community development capital in many communities, especially in places where strictly local community development organizations may lack the capacity to absorb large loans and investments.

2. Stakeholder Feedback on Evaluating Community Development Financing

Stakeholders believe that evaluations of community development loans and investments could be improved by encouraging patient capital; increasing the clarity, consistency, and transparency of performance expectations; and by providing stronger incentives to serve underserved areas. Some stakeholders have noted that the current approach of considering community development loans and qualified investments under separate tests may inadvertently distort the choice of whether to make a loan or investment as well as the choice of term of a loan. A large bank seeking to improve its investment test performance may prefer to structure a community development financing activity as an investment for the purpose of receiving CRA credit, even if a loan would otherwise be preferable for the bank and the project. In addition, the

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the institution's participation in the organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).").

current practice of counting community development loans originated during the review period, but not those held on balance sheet from prior review periods, is inconsistent with the treatment of qualifying investments, and could discourage patient longer-term loans that often yield the most enduring benefits for communities.

Stakeholders have also pointed to a lack of consistency and transparency in the quantitative evaluation of community development financing activities. Current examination procedures consider the number and dollar amount of community development loans and qualified investments, but do not provide guidance on suitable benchmarks or thresholds against which to evaluate this performance.[109] As a result, examiners may measure the volume of community development loans and investments differently, and it can be challenging to know what level of a bank's activities corresponds to a certain conclusion. In addition, both industry and community stakeholders have noted community development activities may benefit larger statewide or regional areas that do not align with a bank's assessment area(s), and stakeholders have expressed concerns that these activities are not always treated consistently in the evaluation process.

Stakeholders have also emphasized that CRA should encourage more community development activities in areas with significant unmet credit needs, such as rural communities, communities that lack institutional capacity for community development, and areas with few bank branches. Stakeholders have noted that there is limited publicly available data on the location and type of community development financing activities. Currently, only community development lending data are reported, and only at an aggregate level for a bank. Data on qualifying investments are included inconsistently in performance evaluations, and with varying levels of detail. The lack of available data makes it difficult to know which activities banks are

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[109] CA Letter 14-2, p. 9.

conducting to meet needs in different communities. Finally, some stakeholders have noted that the qualitative aspects of community development activities are not considered consistently.

Existing guidance states that examiners can weigh community development activities differently based on the responsiveness, innovativeness, and complexity of the activities.[110] There are no established standards for what should be considered to determine the responsiveness of activities, or clear examination procedures for how community development activities should be reviewed relative to performance context. Information regarding the impact of activities on LMI communities, such as the number of housing units built, is not routinely available to examiners.

3. Combined Consideration of Community Development Loans and Investments

The Board proposes evaluating community development loans and qualified investments together under a new Community Development Financing Subtest. The subtest would evaluate new loans and investments made or originated during each year of an evaluation period, as well as loans and investments made or originated in a prior year and held on balance sheet. Evaluating these activities under one subtest would give banks more flexibility to provide the type of financing – loans or investments – most appropriate to support their local communities without concern about meeting different evaluation criteria. Additionally, capturing the book value of qualifying community development loans that remain on the balance sheet from prior evaluation periods, as currently happens with qualifying investments, would more effectively encourage patient capital. These changes would allow banks to receive CRA credit for extending and maintaining long-term financing activities, regardless of whether they are financed by debt or equity. However, some stakeholders worry that combining loans and investments could reduce direct incentives to make Low-Income Housing Tax Credit (LIHTC) investments.

Request for Feedback:

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[110] *See* Q&A §__.21(a)—2.

Question 42. Should the Board combine community development loans and investments under one subtest? Would the proposed approach provide incentives for stronger and more effective community development financing?

4. Community Development Financing Metric

The Board is proposing a community development financing metric that would form the core of assessment area Community Development Financing Subtest conclusions. Only qualifying activities and deposits that are within an assessment area would be included in calculating a bank's community development financing metric for that assessment area, in order to precisely measure how banks are meeting the needs of their local communities. At the same time, to emphasize the importance of community development activities in broader statewide and regional areas, the Board would consider all qualifying activities that are contained within an eligible state, territory, or region in which a bank has an assessment area, as discussed in Section VIII, and would factor these activities into the state, multistate MSA, or institution conclusion or rating, respectively, as discussed in Section X. While the treatment of these broader activities in state, multistate MSA, and institution ratings would no longer depend on a bank's performance within an assessment area, the community development financing metric creates a strong incentive for banks to maintain a focus on serving local communities because it includes only those activities within a bank's assessment area(s).

The metric would be the ratio of a retail bank's community development financing dollars (the numerator) relative to deposits (the denominator) within an assessment area.[111] For

[111] The Board would calculate the assessment area average annual value of new loan originations, investments, and purchases by adding together the initial origination or purchase value of all qualifying activities during the examination period and dividing that result by the number of years in the examination period. The Board would also calculate the assessment area average annual value of qualifying activities remaining on the bank's balance sheet from a prior year by adding together the remaining balance sheet value of qualifying activities that were originated or purchased in a prior year at the end of each calendar year of the examination period and dividing that result by the number of years in the examination period. The numerator is the sum of these two annual averages. The denominator is the average annual value of a bank's deposit holdings within its assessment area.

example, if a bank has drawn $1 million in deposits from an assessment area and has conducted $20,000 in qualifying community development financing activities in that assessment area, its community development financing metric would be 2.0 percent.

$$\frac{CD\ loans + CD\ investments\ (\$20{,}000)}{deposits\ (\$1{,}000{,}000)} = \text{Community development financing metric (2.0 percent)}$$

The numerator of the community development financing metric would be a bank's average annual dollars of community development financing activity loaned or invested in a given assessment area. This would include the value of community development loans and qualifying investments originated or purchased in each year of the evaluation period, as well as the value of community development loans and qualifying investments originated or purchased in a prior year and remaining on a bank's balance sheet. For the denominator, the Board proposes that a bank's annual average dollar amount of deposits within a given assessment area could be the most appropriate measure for a bank's financial capacity, and it aligns with the intent of CRA that a bank meet the credit needs in the communities where it conducts business. The Board is considering two options for how to construct this denominator for large retail banks. The first option would use FDIC SOD data to measure the dollar amount of deposits assigned to branches within a bank's assessment area.[112] The second option would use the dollar amount of retail domestic deposits held on behalf of depositors residing within each assessment area.

Some stakeholders have expressed concerns that a dollar-based metric would not adequately measure impact and responsiveness, and that it may provide incentives for banks to seek larger dollar activities that may not be as responsive to community needs as smaller transactions that may require the same amount, or more, of due diligence and preparation on the part of the bank.

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[112] FDIC SOD data includes deposits pertaining to: 1. Individuals, partnerships, and corporations. 2. The U.S. Government. 3. States and political subdivisions in the United States. 4. Commercial banks and other depository institutions in the United States. 5. Banks in foreign countries. 6. Foreign governments and official institutions (including foreign central banks). *See* FFIEC, "Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031," Schedule RC-E, Deposit Liabilities, p. 34, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202006_f.pdf.

The Board has evaluated different options for metrics in order to maintain an emphasis on LMI individuals and communities, such as using the number of community development financing activities rather than the associated dollar amount. However, the Board determined that the overall dollar amount would more appropriately reflect the potential impact and scale of a bank's community development activities. This also would be more consistent with the current evaluation approach. Additionally, the Board proposes to complement the use of the community development financing metric with a qualitative review of responsiveness and impact, which would help give greater consideration to highly impactful, small dollar activities than the metric alone would reflect.

The Board is considering how to use metrics to evaluate wholesale and limited purpose banks under the Community Development Financing Subtest. The deposit-based denominator of the community development financing metric that the Board is considering for large retail banks would not be appropriate for wholesale and limited purpose banks, which generally do not offer deposit accounts as part of their business model. There are two alternatives that the Board has considered: the community development financing metric could be modified to use assets as the denominator instead of deposits or the metric could be based on the amount of qualifying loans and investments without scaling to deposits or assets. Under either approach, examiners would also consider the impact and responsiveness of activities and other performance context factors.

Request for Feedback:

Question 43. For large retail banks, should the Board use the ratio of dollars of community development financing activities to deposits to measure its level of community development financing activity relative to its capacity to lend and invest within an assessment area? Are there readily available alternative data sources that could measure a bank's capacity to finance community development?

Question 44. For wholesale and limited purpose banks, is there an appropriate measure of financial capacity for these banks, as an alternative to using deposits?

5. *Benchmarks for the Community Development Financing Metric*

The Board is proposing to establish one local and one national benchmark tailored to each assessment area that would serve as appropriate comparators for the community development financing metric. Both of these benchmarks would be based on the dollar amount of community development financing and the dollar amount of deposits provided by all large retail banks at the corresponding geographic level. These benchmarks would be used by examiners to inform a Community Development Financing Subtest conclusion for large retail banks in each assessment area.

Local Benchmark. The numerator for the *local* benchmark would be the annual average of the total dollar amount of all large banks' qualifying community development financing activities in the assessment area. The denominator for the *local* benchmark would be the annual average of the total dollar amount of all deposits held by large banks in the assessment area.

$$\text{Local Benchmark} = \frac{\textit{Local total CD loans} + \textit{CD investments}}{\textit{Local total deposits}}$$

Given the high level of variation in community development financing activities across different communities, the Board believes that the local benchmark would enable the community development financing metric to be tailored to local conditions. This would control for factors such as economic and demographic differences, the availability and capacity of community development financing partners, the stage of the local business cycle, and the presence of other financial institutions, which contribute to differences in the level of community development activity across communities and within a community across time.

National Benchmark. The Board is considering developing benchmarks for, respectively, all metropolitan areas and all nonmetropolitan areas nationally.[113] One of these national

[113] The Board would define "metropolitan areas" as any county or county equivalent that is part of an MSA, and "nonmetropolitan areas" as any county or county equivalent that is either part of a micropolitan statistical area or falls outside of an MSA or a micropolitan statistical area, based on U.S. Census designations.

benchmarks would be applied to each assessment area, depending on whether the assessment area was located in a metropolitan area or a nonmetropolitan area. Based on a Board analysis of performance evaluations from the Board's CRA Analytics Data Tables and existing FDIC SOD information, the ratio of banks' community development loans and qualifying investments to deposits is significantly higher for metropolitan assessment areas relative to nonmetropolitan assessment areas.[114] Setting the national benchmark separately for metropolitan and nonmetropolitan areas would help examiners account for this difference.

The numerator for the national benchmarks would be the annual average of the total dollar amount of all large retail banks' qualifying community development financing activities (in either metropolitan or nonmetropolitan areas, depending on the assessment area), and the denominator would be the dollar amount of all deposits (again, either in metropolitan or nonmetropolitan areas).

$$\text{National Benchmark-metropolitan} = \frac{\mathit{National\ total\ metropolitan\ CD\ loans} + \mathit{CD\ investments}}{\mathit{National\ metropolitan\ total\ deposits}}$$

$$\text{National Benchmark-nonmetropolitan} = \frac{\mathit{National\ total\ nonmetropolitan\ CD\ loans} + \mathit{CD\ investments}}{\mathit{National\ nonmetropolitan\ total\ deposits}}$$

In addition to accounting for differences across assessment areas, the use of separate benchmarks calibrated to local and national conditions could help account for factors that vary over time, including local and national business cycles. For example, a negative shock to a local

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[114] The analysis used a sample of 5,735 assessment areas from large retail bank performance evaluation records from 2005 to 2017, which note the dollar amount of current period community development loan originations as well as current period and prior period qualifying investments in each assessment area. The total dollar amount of activities was divided by the length in years of each examination review period, to produce an annual average for each assessment area evaluation. FDIC SOD data was used to identify the dollar amount of deposits associated with the corresponding bank's branches in the assessment area. The aggregate ratio of annualized dollars of community development activities to dollars of deposits was computed separately for all metropolitan assessment areas and all nonmetropolitan assessment areas in the sample, respectively. Under this analysis, the metropolitan ratio was 1.4 percent, and the nonmetropolitan ratio was 0.9 percent, based on examinations from 2014 to 2017. The metropolitan ratio remained significantly larger than the nonmetropolitan ratio when limiting the sample to only full-scope examinations, across different periods of the sample, and when computing the median ratio of all examinations, rather than a mean.

economy could adversely affect the capacity of banks to lend and invest within an assessment area, such that the local benchmark would adjust downward. Similarly, a change in economic conditions that impacts the amount of large bank community development activities nationally would be reflected in the national benchmarks.

Additionally, the formulae, data sources, and historic data for calculating the benchmarks could be made publicly available in simple dashboards and updated regularly, in order to provide the most transparency and clarity to banks to allow them, and the public, to track their performance.

The Board recognizes the use of local and national benchmarks could require enhanced data collection and reporting procedures, discussed further in Section XI. In addition, the typical level of community development financing varies widely across assessment areas, which means that the local benchmark may vary widely as well. Although this variation would reflect past community development financing patterns, it could result in performance standards that are very low in some assessment areas and very high in others, depending on how standards are calibrated. In contrast, national benchmarks based on metropolitan and nonmetropolitan areas would be equal for all metropolitan and nonmetropolitan assessment areas, respectively. The national benchmarks could be much higher than the typical level of activity in some areas and much lower than the typical level of activity in other areas.

Request for Feedback:

Question 45. Should the Board use local and national benchmarks in evaluating large bank community development financing performance to account for differences in community development needs and opportunities across assessment areas and over time?

6. Establishing Thresholds for the Community Development Financing Metric

This section discusses potential ways of setting thresholds for the community development financing metric that are derived from the local and national benchmarks, but it does not offer specific threshold levels based on the local and national benchmarks. The Board believes that enhanced data would be important for evaluating where to set the thresholds. This section also discusses two different options that could leverage thresholds based on the local and national benchmarks.

a. Setting Thresholds Using Local and National Benchmarks

Establishing thresholds for the community development financing metric would have several advantages. First, the formulae, data sources, and thresholds themselves could be shared publicly and updated on an annual basis for each assessment area so that the expected level of community development financing activity is transparent and predictable. Second, such thresholds would create a more consistent and predictable evaluation process. Third, the quantitative thresholds could be set dynamically, using the local and national benchmarks, to account for varying market conditions across assessment areas, in a way that makes them adjust automatically to differences in local community development activity and economic cycles.

The Board proposes establishing a threshold for each assessment area that would be the value of the community development financing metric consistent with at least a "satisfactory" conclusion. For example, if a bank had a community development financing metric of 3.0 percent in an assessment area, and the threshold for "satisfactory" performance was 1.5 percent, then examiners could interpret the value of the bank's metric as indicative of at least a "satisfactory" conclusion on the Community Development Financing Subtest in this assessment area.

The Board has considered whether this threshold should be based solely on the local benchmark, the greater of the local benchmark and the relevant national benchmark, or another method of combining the two benchmarks. More precise and comprehensive data would aid in analyzing these and other options. While the Board's CRA Analytics Data Tables provide information from a sample of performance evaluations, they include little or no information on prior period community development loans, on financing activities in broader statewide and regional areas, or on activities in many smaller cities and rural areas. Calibrating the thresholds appropriately based on thorough data and analysis is essential to developing an approach that neither sets performance standards too low relative to current levels of activities in some assessment areas nor unrealistically high in others.

b. Using Thresholds to Evaluate Community Development Financing Performance

The Board is considering how to use the national and local community development financing thresholds for purposes of granting a presumptive conclusion of "satisfactory" performance, similar to the Retail Lending Subtest proposed in Section V. Under a presumption approach, if a bank's community development financing metric surpasses a certain threshold, the bank could be presumed to have achieved at least "satisfactory" performance. Examiners would evaluate qualitative factors to help determine whether a bank that surpasses the threshold should receive a "satisfactory" or "outstanding" conclusion, or to help determine the appropriate conclusion for a bank that does not meet the threshold, which could be any conclusion. This approach would provide banks and communities with greater clarity and certainty regarding the evaluation criteria and expectations, and would decrease the role of examiner discretion. However, in light of initial data limitations, it might be necessary at least initially to treat the thresholds as a general guideline to help evaluate a bank's community development financing metric rather than creating a presumption of "satisfactory." Under this gradated approach, surpassing a threshold would be taken into consideration, but would not initially grant a presumption of a specific conclusion. This gradated approach would start with a more incremental change from the current evaluation approach until more data permitted a presumption approach. The addition of a quantitative benchmark may provide banks and communities with somewhat more certainty regarding performance expectations relative to the current approach, which does not have any consistent quantitative thresholds. At the same time, stopping short of using the thresholds to grant a presumption of satisfactory could be beneficial in cases where the dollar amount of a bank's activities is large, but the activities are not determined to be particularly responsive or impactful. In such cases, examiners may determine that a bank may not merit a conclusion of "satisfactory" performance on the Community Development Financing Subtest, even if it has surpassed a quantitative threshold.

Under either approach, a bank that does not surpass a quantitative threshold reflecting "satisfactory" performance may still be assigned a "satisfactory" or even "outstanding" conclusion based on an examiner's review of performance context factors and a detailed review of the banks activities.[115] This framework could help examiners account for variations in the types of community development activities that banks engage in.

Request for Feedback:

Question 46. How should thresholds for the community development financing metric be calibrated to local conditions? What additional analysis should the Board conduct to set thresholds for the community development financing metric using the local and national benchmarks? How should those thresholds be used in determining conclusions for the Community Development Financing Subtest?

7. *Qualitative Considerations within the Community Development Financing Subtest Framework*

The Board believes that a revised evaluation framework for community development loans and qualified investments should incorporate performance context and other qualitative factors into the evaluation process, in a way that is transparent and consistent. Banks, examiners, and the public should have clarity regarding how especially impactful activities, such as a significant capital investment in an MDI, are factored in to a bank's performance conclusion on the Community Development Financing Subtest. In addition, impactful smaller dollar activities, including qualifying contributions, may have little impact on a bank's community development financing metric and would need qualitative consideration in order to be adequately reflected in a

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[115] The use of local and national benchmarks would reflect the level of community development financing opportunities in each assessment area, while the examiners' review of performance context factors would emphasize a bank's capacity and constraints.

bank's performance conclusions and ratings. Performance context factors would continue to play an important role in identifying the unique community development needs of each assessment area, which would help inform examiners' evaluation of the impact and responsiveness of a bank's activities.

Activity-based Multipliers. The Board has considered the use of multipliers to weight certain categories of lending and investment activities differentially in calculating the community development financing metric, to help give greater weight to activities that are considered by many stakeholders as especially impactful and responsive. However, the impact and responsiveness of particular community development financing activities can vary considerably, which could not be captured using uniform weights. Moreover, the calibration of appropriate weights would require developing robust empirical measurements of the community development impact associated with different types of activities.

Impact Scores. Instead, the Board is proposing the use of "impact scores." Examiners would assign an impact score to each bank community development financing activity based on their assessment of its impact locally that could range from 1-3, with 3 being the highest. This approach would build on the current evaluation approach, in which banks submit data to demonstrate that their activities have a primary purpose consistent with the definition of community development and have the option to provide information to describe the qualitative aspects of activities, such as the number of housing units developed or the number of jobs created. Examiners could use bank-provided information along with a review of performance context to determine an impact score for a bank's community development activities in an assessment area. All Community Development Financing Subtest conclusions could include a statement about both the community development financing metric and the impact score, which could be used to adjust the bank's performance conclusion relative to the quantitative assessment. This approach would increase the transparency of the CRA evaluation process by making more information available to banks and communities regarding the consideration of qualitative factors in determining assessment area conclusions.

Supplementary Metrics. The Board is also considering the use of supplementary metrics to provide greater transparency and consistency. For instance, the Board could provide examiners with a series of data points, including the percentage and dollar amount of the bank's total qualifying community development financing activities that are loans, investments, and contributions, respectively, which would help to illustrate the composition of the bank's activities and how different financing vehicles were used to respond to community needs. These supplementary metrics would be consistent with the current approach of considering investment types differently and evaluating contributions separately from other qualifying investments. The supplementary metrics could be included in performance evaluations for purposes of providing more transparency to help stakeholders better understand how well banks are leveraging their resources to meet the needs of local communities. However, the Board is mindful of potential data burden that supplementary metrics could entail for banks, and would seek to minimize the need for enhanced data collection or reporting to create these metrics.

Request for Feedback:

Question 47. Should the Board use impact scores for qualitative considerations in the Community Development Financing Subtest? What supplementary metrics would help examiners evaluate the impact and responsiveness of community development financing activities?

B. Community Development Services Subtest Evaluation Approach

The Board is proposing a new Community Development Services Subtest within the Community Development Test. Separately assessing and assigning a Community Development Services Subtest conclusion would focus a bank's attention on these services and underscore their critical importance for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development, including in rural areas. In developing a revised framework, the Board anticipates that the evaluation of community development services would be primarily qualitative, but the Board is also exploring several options for quantitative measures that could supplement a qualitative approach.

1. Current Structure for Evaluating Community Development Services and Stakeholder Feedback

Community development services generally include activities such as service on boards of directors for community development organizations or on loan committees for CDFIs, financial literacy activities targeting LMI individuals, and technical assistance for small businesses.[116] Current guidance advises that community development services should be tied to either financial services or to a bank employee's professional expertise (*e.g.*, human resources, legal).[117] Under the current regulation, community development services are evaluated for large banks as part of the service test, along with retail services. For small retail banks, community development services are reviewed at a bank's option for consideration for an "outstanding" rating for the institution overall. For intermediate small retail banks and wholesale and limited purpose banks, community development services are considered along with community development loans and qualified investments under one community development test.[118]

Examiners consider the extent to which a bank provides community development services, as well as the innovativeness and responsiveness of the activities.[119] Examiners may consider a variety of measures, such as the number of LMI participants; the number of organizations served; the number of sessions sponsored; or the bank staff hours dedicated. Additionally, the Interagency Questions and Answers provides some guidance on the qualitative evaluation of community development services, including whether the service activity required special

[116] *See* Q&A §__.12(i)—3.

[117] *See* Q&A §__.12(i)—1.

[118] 12 CFR 228.25(c), 12 CFR 228.26(c); Q&A § __.26(d).

[119] *See* 12 CFR 228.24(e).

expertise and effort on the part of the bank, the impact of a particular activity on community needs, and the benefits received by a community.[120]

Both industry and community stakeholders recognize the value of community development services in establishing the partnerships needed to build capacity and foster the growth of the community development ecosystem. Stakeholders have noted the high value of bank staff serving on local nonprofit boards and providing technical expertise to local organizations, particularly in rural or underserved areas. Stakeholders have also suggested improving the consistency and transparency of the evaluation of community development services, which is heavily reliant on examiner judgment. Many stakeholders have stated that a qualitative review of community development services and consideration of performance context would be more effective than an approach that tried to quantify the value of community development services. These stakeholders have expressed support for efforts to standardize the qualitative evaluation of the impact of community development services. Additionally, some stakeholders have argued that community development services should be weighted more heavily in a revised framework compared to current procedures.

2. Potential Community Development Services Subtest Framework

The Board is proposing a Community Development Services Subtest that is primarily qualitative and would focus on the impact and responsiveness of these activities in each of a bank's assessment area(s). The Board is exploring whether there are quantitative measures that banks could submit on their activities, such as the number and hours of community development services, the community development purpose, and the geographies impacted by the activity. A standardized data format provided by the Board could streamline the process for banks and examiners and produce a more consistent and transparent evaluation methodology.

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[120] Q&A §__.24(e)—2.

The Board is also interested in whether other standardized metrics could improve the consistency of the evaluation, such as the ratio of community development services hours to the number of bank employees. Both industry and community stakeholders have expressed concerns that monetizing community development services based on an hourly wage for all employees would result in measuring inputs rather than impact.

Impact Score for Community Development Services. In addition to quantitative measures, the Board is contemplating the use of an "impact score" to establish more consistent and transparent standards for the qualitative review of community development services. This concept is similar to the one described above for the Community Development Financing Subtest, and would measure the impact of a bank's community development services activities on community needs. A bank could submit information, such as the number of clients in financial education classes who opened a bank account or a description of how a banker's service on the board of directors of a local organization supported the creation of a new small business lending program. Examiners would assign an impact score to community development service activities based on the information provided by the bank and other performance context information, with more responsive activities receiving a higher score. The overall impact score for the assessment area could be used in conjunction with some of the quantitative measures described above. This use of the impact score could make the qualitative review more transparent and would provide greater clarity on the types of activities that are considered responsive to community needs.

Request for Feedback:

Question 48. Should the Board develop quantitative metrics for evaluating community development services? If so, what metrics should it consider?

Question 49. Would an impact score approach for the Community Development Services Subtest be helpful? What types of information on a bank's activities would be beneficial for evaluating the impact of community development services?

3. Community Development Services and Volunteer Activities

The Board is considering several options for revising the definition of community development services to include a wider range of volunteer activities that help to support local communities and address important community needs. Currently, community development services are defined as activities that: (1) have a primary purpose of community development; (2) are related to the provision of financial services; and (3) have not been considered in the evaluation of a bank's retail banking services.[121] A primary community development purpose is generally determined by assessing whether a majority of those served by the activity are LMI individuals or communities, small businesses or small farms, and/or certain distressed or underserved rural geographies, or based on the express, bona fide intent of the activity.[122] Additionally, guidance advises that community development services should be generally tied to either financial services or a bank employee's professional expertise in order to receive CRA consideration.[123] Community development services currently qualify under one of the four prongs of the existing definition of community development, as discussed in Section VIII: affordable housing; community services; economic development; and revitalization and stabilization.[124]

Volunteer Activities in Rural Areas Unrelated to the Provision of Financial Services. The Board is proposing to broaden the range of qualifying community development services for banks in rural assessment areas to include volunteer activities that have a primary purpose of community development, but do not use the employee's technical or financial expertise. Under

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[121] 12 CFR 228.12(i).

[122] *See* Q&A §__.12(h)—8.

[123] *See* Q&A §__.12(i). "Providing financial services means providing services of the type generally provided by the financial services industry." Q&A §__.12(i)—1. Examples include "providing services reflecting a financial institution's employees' areas of expertise at the institution, such as human resources, information technology, and legal services." Q&A §__.12(i)—3.

[124] *See* 12 CFR 228.12(g).

this option, activities such as volunteering at a homeless shelter or serving food at a soup kitchen could become eligible. Some stakeholders have argued that this expansion would allow for increased bank employee participation in community development activities in rural areas, where community development capacity is limited.

Other Volunteer Activities in Rural Areas. The Board is proposing to expand consideration of activities in rural communities to include activities that address local community needs generally, without having to demonstrate a primary purpose of community development. In these communities, bank employees often provide needed leadership for nonprofit and civic organizations that are addressing community needs and serve as a catalyst for local economic development, even though some of these organizations do not necessarily have a primary purpose of community development as defined in the regulation.

For example, serving on a board of a local chamber of commerce focused on economic development in a rural area could qualify, even if the organization was engaged in activities that did not typically qualify as economic development under the definition of community development. This approach is intended to provide incentives for additional civic and nonprofit volunteer activity in places with limited community development capacity, and it could encourage banks to take a leadership role in developing solutions to address unmet community needs in rural communities.

Financial Literacy and Housing Counseling Without Regard to Income Level. Finally, the Board is contemplating whether financial education and literacy activities should be considered without regard to the income level of the beneficiaries. Under current guidance, eligible financial education and literacy activities must be targeted toward LMI beneficiaries, such as a housing counseling program in a low-income neighborhood.[125] Broadening eligibility for financial literacy and housing counseling activities to all income levels would expand the range

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[125] *See*, *e.g.*, Q&A § __.12(h)—8.

of eligible activities. For example, a financial planning seminar with senior citizens or a financial education program for children in an upper-income school district could qualify for consideration.

Some stakeholders were supportive of expanding consideration of some of these activities to include activities that benefit all income levels, due to the presumed benefit to the financial well-being of the entire community. However, many community organization stakeholders expressed concern that expanding financial education and literacy activities to recipients of all income levels could result in a reduction in programs directly benefiting LMI people and places.

Request for Feedback:

Question 50. Should volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for banks in rural assessment areas? If so, should consideration be expanded to include all banks?

Question 51. Should financial literacy and housing counseling activities without regard to income levels be eligible for CRA credit?

VIII. Community Development Test Qualifying Activities and Geographies

The Board is proposing ways to clarify what activities would be considered under the Community Development Test, as well as clarifying where a bank could receive credit for community development activities outside of assessment areas. First, the Board presents approaches to establish more consistent standards for the existing community development definition subcomponents. Second, this section discusses available options to encourage more community development activity through mission-oriented banks and financial intermediaries, including MDIs, women-owned financial institutions, low-income credit unions, and CDFIs. Third, the section discusses options to increase certainty about how qualifying activities in broader statewide and regional areas outside of a bank's assessment areas will be considered. Finally, the Board proposes increasing *ex ante* clarity regarding qualifying activities by publishing an illustrative list of example activities and providing a pre-approval process.

A. *Definitions for Community Development Subcomponents*

This section describes potential changes to clarify eligibility criteria for the affordable housing, community services, economic development, and revitalization and stabilization subcomponents of the definition of community development to give banks and communities greater certainty about what activities will be considered, and to continue to emphasize activities that are impactful and responsive to community needs.

1. Affordable Housing

Regulation BB defines "community development" to include "affordable housing (including multifamily rental housing) for low- or moderate-income individuals."[126] Stakeholders have emphasized the critical importance of CRA-motivated capital as a source of funding for affordable housing around the country and promoting homeownership among LMI populations. Therefore, as the Board contemplates revisions to Regulation BB, an important goal is to ensure strong incentives for banks to provide community development loans and investments for the creation and preservation of affordable housing, both rental and owner-occupied.

Broadly, the term "affordable housing" refers to housing that is targeted to LMI individuals. The concept of "affordable housing" for LMI individuals hinges on whether LMI individuals benefit, or are likely to benefit, from the housing. Affordable housing currently could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal, or community action plan, is community development.[127]

Current CRA guidance does not expressly clarify that unsubsidized affordable housing (often referred to as naturally occurring affordable housing) is eligible. Many stakeholders have noted the importance of preserving unsubsidized housing that is affordable to LMI households. These stakeholders have suggested that financing the renovation of unsubsidized affordable units, in

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[126] 12 CFR 228.12(g)(1).

[127] Q&A §__.12(g)(1)—1.

addition to constructing new affordable units, be considered as a CRA-eligible activity. However, stakeholders had different views about whether and how to ensure that the financing supports unsubsidized affordable housing units that will remain affordable to LMI households over a meaningful period of time.

a. Subsidized Affordable Housing

The Board is contemplating new regulatory language that would specify that a housing unit would be considered affordable if it is purchased, developed, rehabilitated, or preserved in conjunction with a federal, state, local, or tribal government affordable housing program or subsidy, with the bona fide intent of providing affordable housing. This definition is intended to capture a wide variety of subsidies, including tax credit programs (such as the LIHTC), federal government direct subsidies (such as U.S. Departments of Housing and Urban Development (HUD) and Agriculture programs), and state and local government direct subsidies for the production or preservation of affordable housing. These programs could be for rental (such as HUD Section 8 vouchers) or homeownership (such as down-payment assistance programs for LMI borrowers). The suggested language could also cover programs that are not monetary subsidies, but that have the express intent of producing or preserving affordable housing, such as a loan in support of a land bank program.

b. Unsubsidized Affordable Rental Housing

The Board is considering several options to clarify that the affordable housing prong of the community development definition includes the financing of certain unsubsidized affordable housing units and projects – both the preservation of existing units and the production of new unsubsidized affordable housing.

The Board is considering a definition for eligible unsubsidized affordable housing requiring that: (1) the rent be affordable (potential definitions of “affordable” are discussed below); *and* (2) the unit(s) be located in either an LMI geography or a geography where the median renter is LMI. These two criteria are intended to be a proxy for tenant income certification to determine that the housing benefits LMI households; as many owners and managers of buildings with unsubsidized, yet affordable units, do not certify tenant income on an ongoing basis, that information might not be available to examiners. To ensure that CRA acts as an incentive for affordable housing preservation and development in all communities, the Board is also considering alternatives to define unsubsidized affordable housing.

Finally, in commenting on expanding the affordable housing definition to include unsubsidized affordable housing, many stakeholders have noted the danger of providing CRA credit for initially affordable units that later increase rents to an unaffordable level in gentrifying areas. The Board is considering options to ensure that community development financing activities ensure long-term affordability and limit displacement, while also being mindful of additional burden associated with supplementary documentation requirements.

c. Determining Affordability

In considering which data sources and calculations should be used to determine rental affordability in lieu of verifying tenant income for unsubsidized units, "affordable" rents could be calculated based on area median income (AMI) using the standard that families should pay no more than 30 percent of their income toward housing. Other options include using HUD Fair Market Rents (FMR) or LIHTC rents to determine rental affordability.

Similarly, the Board is contemplating what documentation should be requested to determine affordability of single-family developments by for-profit entities. Under current guidance, construction and other temporary financing of the construction-only portion of a construction-to-permanent loan to a for-profit entity secured by residential real estate is considered *if* it can be demonstrated that the activity has a primary purpose consistent with the definition of community development. However, examiners have not consistently evaluated these activities partly due to lack of documentation reflecting that the activity has a primary purpose of community development and is intended for households earning 80 percent or less of AMI.

d. Responsiveness of Affordable Housing Activities

The Board is also considering specifying certain activities that could be viewed as particularly responsive to affordable housing needs. Such activities could include, but would not be limited to, the financing of new or rehabilitated affordable housing units that include renewable energy facilities, energy-efficiency upgrades, or water conservation upgrades. The Board is also considering whether financing of housing that is close to public transportation, often referred to as "transit-oriented development," [128] should be designated as particularly responsive. Finally, housing for very low-income, homeless or other harder to serve populations would be considered particularly responsive.

e. Pro Rata Credit in Mixed-Income Projects

For mixed-income developments, an important issue is how to provide credit for buildings where a portion of units – but not all units – is affordable to families meeting LMI definitions. There are negative effects of concentrating poverty to a geographic area or building, and one way to counteract this is the development of mixed-income housing projects in areas with lower poverty rates. However, providing credit for mixed-income housing requires considering how credit is calculated in the community development financing metric both for buildings where over 50 percent of units are affordable and buildings where this level falls below 50 percent.

Under the current "primary purpose" guidance, a bank can receive full credit for a loan or investment if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes. For mixed-income housing where less than a majority of the dollars benefit LMI families or less than a majority of the beneficiaries are LMI, a bank can receive a *pro rata* share.[129]

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[128] Transit-oriented development, or TOD, includes a mix of commercial, residential, office, and entertainment real estate centered around or located near a transit station, https://www.transit.dot.gov/TOD.

[129] *See* Q&A §__.12(h)—8.

One option would be continuing to provide the same *pro rata* consideration where 50 percent or fewer of the units are affordable. Another option would be to provide 50 percent consideration for buildings or projects that meet a minimum percentage of affordable units, such as 20 percent, which could serve as a greater incentive for mixed-income housing. Another consideration is whether *pro rata* treatment should be the same for unsubsidized affordable housing, compared to subsidized affordable housing or buildings subject to affordable housing set-asides required by federal, state, or local governments.

f. Mortgage-Backed Securities Related to Affordable Housing

The Board is contemplating the appropriate CRA treatment of mortgage-backed securities (MBS).[130] Currently, bank purchases of MBS receive CRA credit if they are backed by loans that finance subsidized multifamily rental housing, loans for mixed-income housing that includes affordable housing for LMI families, or loans to LMI borrowers.[131] Issuance of qualifying MBS can improve liquidity for lenders that make home mortgage loans to LMI borrowers, increasing the capacity of these lenders to make more loans that are needed in the community. Some stakeholders, however, are concerned that some banks rely heavily on purchases of qualifying MBS for CRA purposes instead of pursuing more impactful and responsive community development activities, which often involve deeper engagement with communities and entail a greater level of complexity for the bank. Other stakeholders voiced concern that some banks purchase large amounts of MBS just prior to their CRA examinations and then sell them shortly afterwards to another bank, which has little positive impact in their community.

Request for Feedback:

[130] MBS generally are "debt obligations that represent claims to the cash flows from pools of mortgage loans, most commonly on residential property." *See* U.S. Securities and Exchange Commission, "Mortgage-Backed Securities," https://www.sec.gov/fast-answers/answersmortgagesecuritieshtm.html.

[131] *See* Q&A §__.23(b)—2.

Question 52. Should the Board include for CRA consideration subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing? How should unsubsidized affordable housing be defined?

Question 53. What data and calculations should the Board use to determine rental affordability? How should the Board determine affordability for single-family developments by for-profit entities?

Question 54. Should the Board specify certain activities that could be viewed as particularly responsive to affordable housing needs? If so, which activities?

Question 55. Should the Board change how it currently provides *pro rata* consideration for unsubsidized and subsidized affordable housing? Should standards be different for subsidized versus unsubsidized affordable housing?

2. Community Services

Regulation BB also defines community development to include “community services targeted to low- or moderate-income individuals,” but does not further define community services.[132] The Interagency Questions and Answers includes examples of what counts as community services, such as programs for LMI youth, homeless centers, soup kitchens, healthcare facilities, battered women’s centers, and alcohol and drug recovery programs serving LMI individuals.[133]

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[132] 12 CFR 228.12(g)(2). Among possible changes to update Regulation BB, the Board is examining ways to alleviate possible confusion between the definition for “community development services” and the definition for “community services.” Although there is some overlap, these activities are generally considered under different components of CRA examinations and under different standards. Among differences, community development services generally include a broader set of service activities and can be defined using any of the four primary community development definitions. The Board is considering ways of alleviating any existing confusion, including changing the similar names of these definitions.

[133] *See* Q&A §____.12(t)—4.

The Board believes that it is important to maintain the focus of this community development subcomponent on community services "targeted to low- or moderate-income individuals," and is considering how to build on existing guidance to define this standard. One option is to define more specifically the different categories of eligible community services activities, such as childcare, education, healthcare, financial education, job training, and social services.

The Board is also considering several ways to standardize how a bank can determine whether an activity meets the "targeted to low- or moderate-income individuals" standard. One option under consideration would be to clarify the use of a geographic proxy to determine eligibility: if the activity or relevant organization were located in an LMI census tract, the activity would meet the "targeted to low- or moderate-income individuals" standard. A second option would also build on current guidance by both clarifying, and expanding upon, the proxies that banks can use to demonstrate that 50 percent of participants served by a program or organization are LMI individuals. Examples from current guidance include, but are not limited to, services that are provided to students or their families from a school at which the majority of students qualify for free or reduced-price meals under the U.S. Department of Agriculture's National School Lunch Program or are targeted to individuals who receive or are eligible to receive Medicaid.[134] The Board is considering expanding this list to include activities targeted to recipients of federal disability programs and recipients of federal Pell Grants.

Request for Feedback:

Question 56. How should the Board determine whether a community services activity is targeted to low- or moderate- income individuals? Should a geographic proxy be considered for all community services or should there be additional criteria? Could other proxies be used?

3. Economic Development

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[134] Q&A §__.12(g)(2)—1.

The Board believes that activities qualified through the economic development prong of Regulation BB provide key support for small businesses and small farms, as well as incentives for other types of important assistance for business development efforts. Research indicates that the smallest segment of small businesses often have more difficulty obtaining credit and are more challenging for banks to serve, [135] and the COVID-19 pandemic has raised significant new challenges for small businesses. The Board is therefore considering ways to revise the economic development definition to better encourage activities most supportive of small businesses and farms, while also improving the overall transparency of the definition.

Current Economic Development Standards and Guidance. The Regulation BB definition of community development includes "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs[136] or have gross annual revenues of $1 million or less."[137] Thus, to qualify for CRA consideration under this provision, a bank's financing activity must be for small businesses and small farms that fall beneath a regulatory "size" ceiling, and the financing must "promote economic development."

The Interagency Questions and Answers identifies several types of activities to satisfy the requirement that an activity "promote economic development":

- Activities that support permanent job creation, retention, and/or improvement:
    - for persons who are currently LMI or in LMI geographies or areas targeted for redevelopment by federal, state, local or tribal government; or

[135] *See*, *e.g.*, Karen G. Mills, *Fintech, Small Business & the American Dream*, Ch. 4 (2018); Federal Reserve Banks, "Small Business Credit Survey: 2020 Report on Employer Firms" (Aug. 2020), https://www.fedsmallbusiness.org/medialibrary/FedSmallBusiness/files/2020/2020-sbcs-employer-firms-report.

[136] 13 CFR 121.301.

[137] 12 CFR 228.12(g)(3).

- by financing intermediaries that lend to, invest in, or provide technical assistance to start-ups or recently formed small businesses or small farms, or through technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance;[138] and

- Federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs or to job training or workforce development.[139]

Stakeholders have noted various challenges with the current definition of economic development. Some observe that while guidance includes a variety of economic development activities, the smallest segment of businesses and farms may still face specific unmet financing needs. Industry stakeholders also indicate that it can be difficult to demonstrate that an activity meets both the “size test” and “purpose test.” Specifically, industry stakeholders have indicated that it can be difficult to demonstrate that small business or small farm activity has created, retained, and/or improved LMI employment.

Encouraging Activities Supporting Small Businesses and Farms and Minority-Owned Small Businesses. The Board is considering ways to provide incentives for economic development activity with the smallest businesses and farms, as well as minority-owned small businesses. One approach would be specifying that economic development activity focused on the smallest businesses, smallest farms, and minority-owned small businesses would be considered responsive and impactful in developing a Community Development Test conclusion or rating. In recent years, the number of minority-owned businesses has grown rapidly; however, research reports small businesses owned by minorities as having more difficulty than white-owned firms

[138] *See* Q&A §__.12(g)(3)—1. Under current guidance, the Board presumes any loan or service to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or CDFI that finances small businesses or small farms promotes economic development. *Id.*

[139] *See id*.

gaining approval for loans from banks.[140] Access to financing for these businesses is vital in fostering continued growth and broader economic opportunity in their communities.

This approach, focused on responsiveness, would have the benefit of encouraging activity with smaller businesses and minority-owned small businesses without changing the business size standards for the definition overall. However, this approach might provide insufficient incentives for engaging in activities with smaller businesses and minority-owned businesses given that loans to other businesses might have larger loan amounts and, therefore, more of an impact on the community development financing metric.

Another option would be to qualify economic development activities using only a revised gross annual revenue threshold, and not SBIC or SBDC size standards. This approach could help focus economic development activities on smaller businesses and farms and might also reduce confusion about multiple size standard options by establishing a single, transparent threshold. The Board recognizes that a possible drawback to using only a revised gross annual revenue threshold is that certain currently eligible activities that qualify under the economic development definition might no longer qualify for consideration.

Relatedly, the Board is also considering the appropriate gross annual revenue standards for defining a small business or farm, and for making these standards uniform under both the Retail Test and the Community Development Test. Revisions to the gross annual revenue thresholds for small businesses and small farms are discussed in Section VI.[141]

Demonstrating an Economic Development Purpose through Job Creation. Another area of focus is how to provide more clarity on the standard that financing activities for small businesses

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[140] *See*, *e.g.*, Federal Reserve Banks, "Small Business Credit Survey: 2019 Report on Minority-Owned Firms" (Dec. 2019), https://www.fedsmallbusiness.org/medialibrary/fedsmallbusiness/files/2019/20191211-ced-minority-owned-firms-report.pdf.

[141] As discussed in Section VI, the Board is also currently considering adjusting the small business and small farm loan size thresholds based on inflation and whether to update these thresholds for inflation at regular intervals.

demonstrate LMI job creation, retention, or improvement. Meeting this economic development purpose standard by documenting the number of jobs created, retained or improved can be challenging. In addition, activities supporting small businesses and small farms may serve important purposes beyond employment, including by covering start-up or working capital costs. The COVID-19 pandemic has further underlined the need for a broad range of financing activities to help sustain small businesses and farms overall. The Board is considering what standards could be established to demonstrate that an activity led to job creation, retention and improvement or whether the smallest businesses below a specified threshold could be exempted from the standard to demonstrate LMI job creation, retention, or improvement.

Workforce Development and Job Training Programs. The Board is also considering whether workforce development activities should be included as a separate prong of the economic development definition, regardless of whether these activities also support small businesses and farms. This approach would include federal, state, local, or tribal economic development initiatives that include provisions for creating or improving access by LMI persons to jobs, job training, or workforce development.

Request for Feedback:

Question 57. What other options should the Board consider for revising the economic development definition to provide incentives for engaging in activity with smaller businesses and farms and/or minority-owned businesses?

Question 58. How could the Board establish clearer standards for economic development activities to "demonstrate LMI job creation, retention, or improvement"?

Question 59. Should the Board consider workforce development that meets the definition of "promoting economic development" without a direct connection to the "size" test?

4. Revitalization and Stabilization

The Board is considering how to update and clarify the revitalization and stabilization subcomponent of the community development definition, which currently encompasses activities that revitalize or stabilize three targeted geography categories: LMI census tracts, designated disaster areas, and distressed or underserved nonmetropolitan middle income census tracts.[142] Since its inception, the revitalization and stabilization prong of community development has included eligible activities in LMI geographies, defined as census tracts where the majority of households have incomes at or below 80 percent of area median income. Originally, these tracts often overlapped with federally designated Empowerment Zones and Enterprise Communities, marked by high poverty rates and elevated levels of emigration. In 2005, the agencies broadened eligible geographies to include federally designated disaster areas and distressed or underserved middle-income nonmetropolitan areas.[143]

The Interagency Questions and Answers provides examples of a broad range of qualifying revitalization and stabilization activities for each targeted geography category. Some of these activities span across each targeted geography category and some activities are unique to a specific geography category. Based on the regulation and accompanying guidance,[144] CRA consideration could extend to activities that range from attracting an industrial park for businesses whose employees include LMI individuals, to financing new broadband internet infrastructure in poorer rural communities. Other examples include providing financing to attract a major new employer that will create long-term job opportunities, including for LMI

[142] 12 CFR 228.12(g)(4).

[143] Designated disaster areas are geographic areas covered by a major federal disaster declaration by the President pursuant to the declaration process specified by the Federal Emergency Management Agency. *See* 44 CFR part 206, subpart B. A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average; (2) a poverty rate of 20 percent or more; or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five year period preceding the most recent census. A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. Q&A §__.12(g)(4)(iii)—1.

[144] *See* Q&A §__.12(g)(4).

individuals, or activities that provide financing or other assistance for essential infrastructure in distressed or underserved nonmetropolitan middle-income census tracts.[145]

Considering activities under the existing revitalization and stabilization prong of the community development definition often involves a fact-specific review by examiners. To determine whether activities revitalize or stabilize a qualified geography, examiners evaluate an activity's actual impact on the targeted geography. The Interagency Questions and Answers also instructs examiners to give greater weight to activities most responsive to community needs and that primarily benefit LMI individuals.[146]

Given the complexity of the existing definition and guidance on the revitalization and stabilization category, in addition to the particularly fact-specific nature of eligibility and responsiveness determinations, the Board is considering how to both provide more detail in the regulation on which activities qualify in which targeted geographies *and* simplify the definition overall. Some of the key issues that would need resolution are described below.

Activities that Attract New, or Retain Existing, Residents and Businesses. The Interagency Questions and Answers states that eligible activities in each of the targeted geography categories include activities that attract new, or retain existing, residents and businesses, with greater weight given to activities that are most responsive to community needs.[147] The Board is considering whether to codify the treatment of these activities across each of the targeted geography categories. This approach would provide greater consistency in defining eligible activities that help to attract or retain businesses or residents, which in turn could provide greater certainty regarding which activities qualify and could also help support greater investment in targeted geographies. The Board is interested in ensuring that, in addition to serving a revitalization and

[145] *See* Q&As §__.12(g)(4)(i)—1, §__.12(g)(4)(ii)—2, and §__.12(g)(4)(iii)—4.
[146] *See* Q&As §__.12(g)(4)—2, § __.12(g)(4)(ii)—2, and § __.12(g)(4)(iii)—3.
[147] *See* Q&As §__.12(g)(4)—2, §__.12(g)(4)(i)—1, §__.12(g)(4)(ii)—2, and §__.12(g)(4)(iii)—3.

stabilization purpose, these activities include benefits to LMI communities and individuals, or other underserved communities. For example, some community group stakeholders have noted that existing guidance qualifies new housing for middle- or upper-income individuals as an activity that revitalizes or stabilizes an LMI geography, as long as the housing attracts new residents to the community. The concern raised by these stakeholders is that, in some LMI communities, this new housing may in fact contribute to the displacement of existing LMI residents in the community.

Definitions for Infrastructure, Community Facilities, and Other Large-Scale Projects. The Board recognizes that investments in large-scale projects, infrastructure, and community facilities can be essential for revitalizing and stabilizing targeted geographies and is interested in how to define the eligibility of these activities in a way that retains a strong connection between these projects and meeting the needs of these communities.

Currently, this issue is addressed differently across targeted geography categories. For example, for underserved nonmetropolitan middle-income census tracts, current guidance describes activities that help meet essential community needs as including financing the construction, expansion, improvement, maintenance, or operation of essential infrastructure or community facilities. Community facilities noted in current guidance include facilities for health services, education, public safety, public services, industrial parks, affordable housing, or communication services.[148] The Interagency Questions and Answers does not explicitly discuss infrastructure and community facilities in other targeted geographies.

Stakeholders have indicated that these inconsistencies leave some banks uncertain about what qualifies, and that the use of different standards across the geographies is a significant source of confusion for banks and communities alike. Community stakeholders have also commented that large-scale development and infrastructure projects may sometimes have limited

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[148] *See* Q&A § __.12(g)(4)(iii)—4.

benefit for targeted geographies. Given the large size of these projects, with a dollar-based metric approach for evaluating community development financing, stakeholders worry that resources may be directed to these activities instead of smaller and more impactful activities.

Activities Specific to Designated Disaster Areas. The Interagency Questions and Answers includes examples of certain qualifying activities specific to designated disaster areas. For example, current guidance includes eligibility for activities that provide financial assistance for rebuilding needs, or for services to individuals who have been displaced from designated disaster areas.[149] The Board is considering whether codifying the treatment of qualifying activities specific to designated disaster areas would help provide stakeholders with additional certainty. Additionally, the Board is considering whether the list of relevant activities related to disaster recovery should be expanded to include disaster preparedness and climate resilience in certain targeted geographies.

Treatment of a Government Plan. According to existing guidance, examiners will presume an activity revitalizes or stabilizes a geography if the activity is consistent with a government plan for the revitalization or stabilization of the area. However, the types of government plans and the required degree of formality of the plan differ across the three qualified geography categories. The Interagency Questions and Answers indicates that activities in LMI areas are presumed to qualify if the activities receive official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization of the low- or moderate-income geography.[150] In other qualified geographies, however, guidance indicates that an activity need only be consistent with a government plan and does not need an

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[149] *See* Q&A §__.12(g)(4)(ii)—2.

[150] *See* Q&A §__.12(g)(4)(i)—1. In certain situations, guidance instructs examiners to determine whether an activity is consistent with a community's informal plans for the revitalization and stabilization of the LMI geography without standards for determining consistency. *Id.*

official designation to be eligible for consideration.[151] To clarify when this standard applies, the Board proposes to specify in Regulation BB which activities require association with a federal, state, local, or tribal government revitalization plan and the standards for the type of plan required for eligibility. The Board is also exploring the alternative standards necessary for demonstrating that an activity revitalizes or stabilizes a targeted geography in the absence of a government plan.

Request for Feedback:

Question 60. Should the Board codify the types of activities that will be considered to help attract and retain existing and new residents and businesses? How should the Board ensure that these activities benefit LMI individuals and communities, as well as other underserved communities?

Question 61. What standards should the Board consider to define "essential community needs" and "essential community infrastructure," and should these standards be the same across all targeted geographies?

Question 62. Should the Board include disaster preparedness and climate resilience as qualifying activities in certain targeted geographies?

Question 63. What types of activities should require association with a federal, state, local, or tribal government plan to demonstrate eligibility for the revitalization or stabilization of an area? What standards should apply for activities not requiring association with a federal, state, local, or tribal government plan?

B. Minority Depository Institutions and other Mission-Oriented Financial Institutions

Recognizing the importance of mission-oriented financial intermediaries in helping retail and community development financing reach LMI and minority individuals and communities, the

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[151] *See* Q&As §__.12(g)(4)(ii)—2, and §__.12(g)(4)(iii)—3.

Board is proposing ways to encourage more activities that support MDIs, CDFIs, and other mission-oriented financial institutions.

1. Minority Depository Institutions, Women-Owned Financial Institutions, and Low-Income Credit Unions

The Board recognizes the importance of MDIs in providing equitable financial access to LMI and minority consumers and communities. MDIs are banks that are owned by, or that predominately serve and have a board composed of a majority of, African Americans, Native Americans, Hispanic Americans, or Asian Americans.[152] Most MDIs are small community banks that specialize in serving a minority, and often LMI, customer base. Congress has recognized these institutions in the CRA statute, including special consideration for MDIs as well as for women-owned financial institutions and low-income credit unions.[153] Specifically, majority-owned institutions receive CRA credit for capital investment, loan participation, training, technical assistance, and other ventures undertaken by the bank in cooperation with MDIs, women-owned institutions, and low-income credit unions.[154]

Majority-owned institutions are also eligible for CRA credit for donating or selling on favorable terms a branch located in a predominately minority neighborhood to an MDI or women-owned depository institution.[155] These activities must help meet the credit needs of local communities in which the MDIs, women-owned institutions, and low-income credit unions are chartered.[156] Unlike other provisions of CRA, these activities need not also benefit a bank's

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[152] *See*, *e.g.*, SR Letter 13-15/CA Letter 13-11 ("Federal Reserve Resources for Minority Depository Institutions"), (Aug. 5, 2013), p.1, note 1, https://www.federalreserve.gov/supervisionreg/srletters/sr1315.pdf.

[153] 12 U.S.C. 2903, 2907.

[154] 12 U.S.C. 2903(b). Majority-owned institution is defined as a "nonminority-owned and nonwomen-owned financial institution." *Id.*

[155] 12 U.S.C. 2907(a).

[156] 12 U.S.C. 2903(b).

assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).[157]

The Board has focused on ways to provide better incentives to majority-owned institutions to partner with MDIs and other mission-oriented financial institutions. The Board seeks to ensure that any provisions to assist MDIs are clearly defined and applied in CRA performance evaluations, and that these special provisions are prominent and clear in a revised Regulation BB, supervisory guidance, and other agency public documentation.

a. Clarify Treatment of Activities with MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions Outside of a Bank's Assessment Area

Although majority-owned institutions currently may receive CRA consideration for investments in MDIs, women-owned financial institutions, and low-income credit unions outside of the majority-owned institution's assessment areas(s) or the broader statewide or regional area, such activities are not common. Stakeholders have noted that bankers do not know with confidence where and how these activities will count in their CRA evaluations. Therefore, the Board proposes that activities in support of these entities should be counted at the institution level when they are outside of the bank's assessment areas or eligible states and regions, as discussed in Section VIII.C below. This would ensure that there is a clear "place" for such activities to be counted.

b. Consider Activities with MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions as a Factor in Achieving an "Outstanding" Rating

An additional change the Board is considering to increase the incentives for activities in support of MDIs, women-owned financial institutions, and low-income credit unions is to consider these activities as a factor in determining whether a bank qualifies for an "outstanding" rating for the Retail Test or Community Development Test. The Board believes that explicitly

[157] 12 CFR 228.21(f).

designating these activities as a criterion for an "outstanding" rating would give them greater emphasis and would provide banks with additional certainty regarding how these activities would be considered.

c. Provide Credit for MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions Investing in or Partnering with Other MDIs, Women-Owned Financial Institutions, and Low-Income Credit Unions

Currently, only majority-owned institutions can receive CRA consideration for investing in MDIs, women-owned financial institutions, and low-income credit unions. MDIs, in particular, vary greatly in size, and there are several large MDIs that could invest in smaller MDIs. Similarly, MDIs and women-owned financial institutions that are subject to CRA may choose to partner in unique and mutually beneficial ways, and could receive credit for such activities. Therefore, the Board is considering whether MDIs and women-owned financial institutions should receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions.

d. Provide Credit for MDIs and Women-Owned Financial Institutions Investing in Limited Activities to Improve their Own Banks

The Board is proposing that MDIs and women-owned financial institutions be eligible for CRA credit for investing in limited activities to improve their own banks. Under this approach, MDIs and women-owned financial institutions could receive CRA consideration for retained earnings (less the amount of any dividends or stock repurchases) that are reinvested in the bank. Eligibility could be limited to activities that demonstrate meaningful investment in the business, such as staff training, hiring new staff, opening new branches in minority neighborhoods, or expanding products and services.

Request for Feedback:

Question 64. Would providing CRA credit at the institution level for investments in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions provide increased incentives to invest in these mission-oriented institutions? Would designating these investments as a factor for an "outstanding" rating provide appropriate incentives?

Question 65. Should MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions? Should they receive CRA credit for investing in their own institutions, and if so, for which activities?

Question 66. What additional policies should the Board consider to provide incentives for additional investment in and partnership with MDIs?

2. Community Development Financial Institutions

CDFIs, which can be banks, credit unions, loan funds, microloan funds, or venture capital providers, are common intermediaries for bank financing to reach underserved communities.[158] CDFIs certified by the U.S. Department of the Treasury's (Treasury Department) CDFI Fund must meet seven criteria to demonstrate that they are specialized organizations that provide financial services in low-income communities and to people who lack access to financing.[159]

While banks generally receive CRA consideration for investing in Treasury Department-certified CDFIs, bankers and community groups have commented that the regulation could provide a stronger incentive for these activities. Stakeholders noted that examiners sometimes require extensive paperwork to document that a CDFI assists low-income populations, even though the Treasury Department certification of a CDFI is already a clear indication of having a primary mission of community development.

[158] U.S. Department of the Treasury CDFI Fund, CDFI Certification, https://www.cdfifund.gov/programs-training/certification/cdfi/Pages/default.aspx.

[159] *Id.*

To provide greater certainty and clarity, the Board proposes to grant automatic CRA community development consideration for community development activities with Treasury Department-certified CDFIs. For activities in support of other financial entities that use the term "CDFI" but are not formally certified by the Treasury Department, the activity would continue to be reviewed individually, as in current practice.

Another issue is whether geographic limitations should apply to granting CRA credit for CDFI-related activities. Several stakeholders have suggested that investments in CDFIs should be considered on a nationwide basis, regardless of whether the CDFI operates in a bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s), which is a condition for consideration under current practices. Commenters noted that this condition can be confusing for banks considering investments in larger CDFIs that serve multistate areas, and that it limits capital investments for the underserved areas that need it the most.

To address this concern, the Board is considering whether to treat activities with CDFIs similarly to activities with MDIs, women-owned financial institutions, and low-income credit unions, so that banks could receive CRA consideration for loans, investments, or services in conjunction with CDFIs anywhere nationwide.[160] This approach would remove the geographic uncertainty about whether a CDFI's service area(s) appropriately overlaps with a bank's assessment area(s). This could also incent banks to invest in CDFIs that serve parts of the country with few or no bank assessment areas.

However, the Board is mindful that this approach could inadvertently reduce the incentive for banks to focus on their assessment areas by granting them CRA credit for investing in CDFIs that serve entirely different geographies. The proposed use of the community development financing metric and associated benchmarks to evaluate a bank's assessment area activities is

[160] 12 CFR 228.21(f).

intended to maintain a strong emphasis on serving local communities. For this reason, the Board believes that the proposed Community Development Financing Subtest will help to address concerns that eligibility for certain activities on a nationwide basis, such as support of MDIs and other specific institutions, would discourage banks from meeting the needs of their assessment areas. Alternatively, the Board is considering whether CDFIs should instead be subject to the provisions of the broader geographic areas for consideration for community development activities described below.

Request for Feedback:

Question 67. Should banks receive CRA consideration for loans, investments, or services in conjunction with a CDFI operating anywhere in the country?

C. Geographic Areas for Community Development Activities

The Board is considering approaches for providing greater clarity regarding where a bank's community development financing and services activities are eligible for CRA consideration, and for encouraging activities in areas with high unmet needs. First, the Board is proposing an approach that would consider community development activities anywhere within states, territories, or regions where a bank has at least one facility-based assessment area, with the activities counted towards the state or institution rating.[161] In addition, the Board is considering designating geographic areas of need where banks could conduct activities outside of assessment areas. The Board believes that these approaches could help alleviate the CRA hot spots and deserts dynamic and increase community development lending and investment in areas where they are needed the most.

1. Current Approach for Reviewing Activities Outside of Assessment Areas and Stakeholder Feedback

[161] In this context, region or regional refers to a multistate area.

Under current examination procedures, the standards for whether a bank receives consideration for community development loans, investments, and services differ depending on where that activity takes place. First, banks can receive consideration for community development financing activities that have a purpose, mandate or function of serving the bank's assessment area(s). Banks can also receive consideration for community development activities in a "broader statewide or regional area" that includes the bank's assessment areas *if* they have a purpose, mandate or function of serving the bank's assessment area(s). Additionally, activities that do not have a purpose, mandate or function of serving a bank's assessment area(s) are considered when evaluating the bank's performance at the state level or for the institution overall, but only if the bank is first determined to have been responsive to the credit and community development needs in its assessment area(s).[162]

Banks have indicated that the standard for being sufficiently responsive to the needs of their assessment area(s) is not clearly defined, and that this creates uncertainty regarding whether a bank's activities in broader areas will be considered for CRA credit. In addition, stakeholder feedback suggests that a bank's physical presence within an assessment area enables them to access local community development opportunities and form partnerships to expand these opportunities. For these reasons, most banks focus their community development activities within their branch-based assessment areas, which may exacerbate CRA hot spots and deserts, and may make certain banks less likely to pursue impactful community development opportunities that are statewide or regional in nature.

2. Expanding Geographic Areas for Community Development Activities

a. Eligible States and Territories and Eligible Regions

As discussed in the Community Development Test section, the Board is proposing to allow banks to receive CRA credit for community development activities not only within defined

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[162] *See* Q&A §__.12(h)—6; CA Letter 14-2, p. 21.

assessment areas, but also within "eligible states and territories" and "eligible regions." This approach would build on, clarify, and broaden the "broader statewide and regional area" approach in place today under CRA guidance, and would complement the implementation of the community development financing metric at the assessment area level.

Under the proposed approach, qualified community development activities contained within one assessment area would receive CRA credit when evaluating assessment area performance and would count toward a bank's community development financing metric for the specific assessment area. Banks could also receive credit for qualified community development activities that benefit areas outside of bank facility-based assessment area(s) anywhere within a bank's eligible states and territories, defined as any state or territory in which the bank has at least one facility-based assessment area. Qualified activities in each eligible state or territory that are partially or entirely outside of a bank's assessment area(s) would be considered when assessing a bank's performance for state and institution ratings, as applicable.

Banks could also receive credit for qualified activities in an "eligible region," defined as a multistate or other regional area that includes at least one eligible state or territory. As noted in current guidance, a "regional area" may be an intrastate area or a multistate area that includes the financial institution's assessment area(s), and that typically has some geographic, demographic, and/or economic interdependencies and may conform to commonly accepted delineations, such as "the tri-county area" or the "mid-Atlantic states."[163] Qualified activities in an eligible region would be considered when evaluating the bank's performance for an institution rating.

The Board believes that this approach would provide *ex ante* certainty about when activities outside of an assessment area would be considered. This *ex ante* certainty could result in investments in areas that lack financial institutions, thus helping to alleviate CRA deserts. At the same time, banks would still have incentives to meet the needs of their assessment areas because

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[163] Q&A §__.12(h)—7.

the community development financing metric would include only activities within each assessment area, and would inform a bank's Community Development Financing Subtest conclusion. Performance in assessment areas would also be the foundation for determining the bank's state rating for the Community Development Test.

b. Designated Areas of Need

The Board is considering whether a bank should receive consideration for activities outside of its eligible state(s), territories and regions if the activity is located in designated areas of need. This approach would help ensure that community development activities outside of a bank's assessment areas, eligible states and territories, or eligible regions, are occurring in areas of highest need. The Board is exploring the following criteria for defining areas of need:

- Economically distressed rural or metropolitan areas that meet certain criteria, for example an unemployment rate that is persistently 1.5 times the national average or a persistent poverty rate of 20 percent or more.[164]
- Areas where the local benchmark for the community development financing metric is below an established threshold.
- Areas that have low levels of home mortgage or small business loans as identified by lending data.
- Areas with limited bank branches or ATMs.
- Targeted geographies designated by other federal agencies that exhibit persistent economic distress, such as: Federal Native Areas including Federally Designated Indian Reservations, Off Reservation Trust Lands or Alaskan Native Village Statistical Areas, or Hawaiian Home Lands; ARC and DRA Areas, which are areas designated as distressed by, respectively, the Appalachian Regional Commission or Delta Regional Authority; and

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[164] Such an approach could leverage persistent poverty county definitions, which are defined in the Consolidated Appropriations Act of 2012 as any county that has had 20 percent or more of its population living in poverty over the past 30 years. Pub. L. 112-74, 125 Stat. 786, 887 (2011).

Colonias areas, which are low-income communities on the U.S.-Mexico border as designated by HUD.

Careful consideration of CRA's statutory purpose would be needed in determining what criteria should be used to designate areas of need, and designations would need to be updated periodically to reflect current data. One approach would be for the Board to publish and update a list of designated areas of need on an annual or biennial basis. Areas could be removed from the list if they receive substantial amounts of community development financing, and others may be added that have pressing needs.

Request for Feedback:

Question 68. Will the approach of considering activities in "eligible states and territories" and "eligible regions" provide greater certainty and clarity regarding the consideration of activities outside of assessment areas, while maintaining an emphasis on activities within assessment areas via the community development financing metric?

Question 69. Should the Board expand the geographic areas for community development activities to include designated areas of need? Should activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories be considered particularly responsive?

Question 70. In addition to the potential designated areas of need identified above, are there other areas that should be designated to encourage access to credit for underserved or economically distressed minority communities?

D. Options to Provide Additional Certainty about Eligible Activities

The Board is considering options to improve upfront certainty related to what community development activities qualify for consideration. The Board believes that greater *ex ante* certainty will provide stakeholders with additional transparency about what, how, and where activities are considered. Significant *ex ante* certainty could be achieved through several mechanisms, including clarifying qualifying activities directly in regulatory language as discussed above. However, the Board recognizes that changes to regulatory text alone might not provide the full upfront certainty sought by banks and community groups.

Current Approaches to Determining What Community Development Activities Qualify. Currently, as part of their CRA examinations, banks submit community development activities that have already been undertaken without an assurance these activities are eligible. Previously qualified activities can frequently provide banks with some confidence that the same types of activities are likely to receive consideration in the future. However, new, less common, or more complex or innovative activities might require examiner judgment and the use of performance context to determine whether an activity qualifies for CRA purposes. For these activities, stakeholders might know only after an examination – and after a loan or investment qualification decision has been made – whether an activity will receive CRA credit. The lack of upfront certainty is a disincentive to undertake such activities, even if they potentially have great value to the local community.

Some current processes provide upfront "non-binding" feedback to banks on eligibility of certain projects. For example, the Federal Reserve's Investment Connection platform provides a popular approach to proactively engage stakeholders on CRA-eligible community development financing activities.[165] Operated through multiple Reserve Banks, the platform provides a forum for community-based organizations, financial institutions, and other funders to review planned projects that are deemed to be CRA-eligible. In addition, Investment Connection provides website portals to help provide stakeholders advance transparency on eligibility of possible investments.

To provide additional upfront certainty, the Board is exploring two proposals. The Board requests feedback on a proposal to publish an illustrative, non-exhaustive list of activities that

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[165] The Federal Reserve Bank of Kansas City pioneered the Investment Connection concept, which has been replicated by multiple Reserve Banks, https://www.kansascityfed.org/community/investmentconnection.

meet requirements for CRA consideration. The Board also requests feedback on a proposal to establish a "pre-approval" process to improve certainty about qualification of community development activities.

Create an Example List of Eligible Activities. The Board proposes publishing an illustrative, non-exhaustive list of community development activities that meet the requirements for CRA consideration. The list would be illustrative, but not exhaustive, as to the type and scope of eligible activities. Stakeholders have supported providing example activities as a way to further explain required standards of the CRA definitions while retaining definitional standards as the determinative factor in eligibility for activities.

Although an illustrative list could provide greater information on required CRA criteria, it is important that it not have the unintended consequence of dissuading stakeholders from engaging in innovative activities simply because they are not included on the list. Some community organization and industry stakeholders have supported developing an illustrative list of eligible activities through a formal notice and public comment rulemaking process. However, alternative, and less burdensome, approaches for building and maintaining an example list may also exist.

Pre-Approval Process. The Board is considering developing a formal option for stakeholders to receive feedback in advance on whether proposed activities would be considered eligible for CRA credit. Depending on the design of the process, it could either provide full confirmation that a submitted activity would qualify for consideration, including a review of transaction terms and counterparties, or instead provide information on the requirements necessary for the activity to garner consideration during a CRA evaluation.

Request for Feedback:

Question 71. Would an illustrative, but non-exhaustive, list of CRA eligible activities provide greater clarity on activities that count for CRA purposes? How should such a list be developed and published, and how frequently should it be amended?

Question 72. Should a pre-approval process for community development activities focus on specific proposed transactions, or on more general categories of eligible activities? If more specific, what information should be provided about the transactions?

IX. Strategic Plan Evaluation

The Board is considering amending the strategic plan option to provide more clarity and transparency about evaluation standards and where performance will be assessed. The Board is also considering how to tailor the strategic plan option for different bank business models as well as how to leverage the internet to facilitate public engagement in the strategic plan process. Over the past several years, 48 banks representing six percent of overall banking system assets opted to submit strategic plans; of those, five were wholesale and limited purpose banks, representing one percent of overall banking system assets.[166]

A. Current Strategic Plan Framework

Currently, the CRA strategic plan option is available to all types of banks,[167] although it has been used mainly by non-traditional banks and banks that make a substantial portion of their loans beyond their branch-based assessment areas. The strategic plan option is intended to provide banks with flexibility in meeting their CRA obligations tailored to community needs and opportunities as well as their own capacities, business strategies, and expertise. Therefore, not all of the performance tests and standards described in Regulation BB necessarily apply to each bank's strategic plan.

Banks that elect to be examined under strategic plans have a great deal of latitude in designing a strategic plan, but are subject to several key requirements. They must seek approval from the Board and solicit community feedback prior to submitting a strategic plan for regulatory

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[166] The banking system assets are based on June 30, 2020 FFIEC Call Report data, https://cdr.ffiec.gov/public/PWS/DownloadBulkData.aspx.

[167] 12 CFR 228.27(a).

approval.[168] In addition, they are required to delineate assessment areas in the same manner as traditional banks,[169] and large banks are obligated to report relevant lending data.[170]

Strategic plans also offer banks flexibility in various areas. Although banks must include measurable goals for helping to meet the credit needs of each assessment area, particularly the needs of LMI census tracts and LMI individuals, they have flexibility in setting these goals.[171] Plan terms can be up to five years in length as long as any multi-year plan includes annual goals that are measurable.[172] Banks are required to include goals for "satisfactory" performance, and they may opt to provide goals for "outstanding" performance as well.[173] A bank also may provide in the plan that if it substantially fails to meet its goals for a "satisfactory" rating, the bank can be examined under the standard examination procedures.[174] In addition, a bank may request the Board to approve an amendment to its strategic plan if there is a material change in circumstances.[175]

Regulation BB states that a bank's plan shall address the lending test, the investment test, and the service test and shall emphasize lending and lending-related activities unless the bank is a designated wholesale or limited purpose bank, in which case the plan would include only community development loans, investments, and services.[176] The regulation also provides flexibility for a bank to choose a different emphasis as long as the change is responsive to the

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[168] 12 CFR 228.27(d) and (e).

[169] *See*, *e.g.*, 12 CFR 228.27.

[170] 12 CFR 228.27(b).

[171] 12 CFR 228.27(f)(1).

[172] 12 CFR 228.27(c)(1).

[173] 12 CFR 228.27(f)(3).

[174] 12 CFR 228.27(f)(4).

[175] Amendments to a CRA strategic plan must include public participation in the same manner as when the plan was initially developed and finalized. 12 CFR 228.27(h).

[176] 12 CFR 228.27(f)(1)(ii).

characteristics and credit needs of its assessment area(s) and takes into consideration public comment and the bank's capacity and constraints, product offerings, and business strategy.[177]

When reviewing a strategic plan, the Board considers the public's involvement in formulating the plan, any written public comments on the plan, and the bank's response to any public comments.[178] A bank's engagement with its community is vital to the strategic plan process to develop the requisite information about community needs. Criteria for evaluating strategic plan goals include the extent and breadth of lending or lending-related activities; the amount and innovativeness, complexity, and responsiveness of qualified investments; the availability and effectiveness of the bank's retail banking services; and the extent and innovativeness of the bank's community development services.[179]

B. Stakeholder Feedback on Strategic Plan Approach

Both banks and community organizations have expressed support for the strategic plan option, but banks have asked for more flexibility in developing goals and a streamlined strategic plan process. Stakeholder feedback also has emphasized the need to address the increased use of mobile and online banking, which allows banks to offer products and services in areas far from their branch footprint. While there is broad support for community input into the strategic plan process, some have requested that the role of community input be clarified, especially for banks whose strategic plan covers a broad geographic area, including multiple assessment areas or the entire nation.

C. Updating the Strategic Plan Framework

The Board is considering potential revisions to the current strategic plan framework to facilitate effective use of strategic plans, including the options discussed below.

1. Updating the Public Input Process for Strategic Plans

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[177] *Id.*

[178] 12 CFR 228.27(e).

[179] 12 CFR 228.27(g)(3).

Communication between a bank and the public allows for an exchange of information about community needs and the bank's business model and areas of expertise, which enables banks to develop responsive strategic plan goals that reflect the bank's capacity, constraints, and community needs.

The Board is considering three proposals to improve the public input process. First, banks could be required to post the strategic plan on their website, the Board's website, or both, in place of the current newspaper publication requirement.[180] Second, the Board is considering codifying in regulation the current guidance that it will consult with banks regarding procedural requirements, although it would not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.[181] Finally, some industry stakeholders have suggested that strategic plan requirements should clarify that public comments help a bank to identify community needs and priorities, give a bank the opportunity to develop responsive products and services, and demonstrate the ways a bank has met those needs. Industry stakeholders also suggest that an amended regulation should codify current guidance that banks are not required to enter into community benefit agreements as a condition of developing strategic plans.[182]

2. Increased Flexibility on Assessment Areas and Evaluation Method for Strategic Plans

The Board is considering updating where banks are assessed for performance under the strategic plan framework. Currently, banks are required to delineate assessment areas in the same manner as traditional banks. The Board is considering allowing banks greater flexibility in defining assessment areas through a strategic plan, while also providing greater transparency and

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[180] For LMI, rural, and other areas without broadband service, the Board is considering options to provide access to bank's CRA strategic plans.

[181] *See* Q&A §__.27(c)—1.

[182] Q&A §__.29(b)—2.

certainty about the process. The Board also seeks feedback on providing an option of using metrics to evaluate performance in those assessment areas, rather than the bank proposing measurable goals.

Defining Assessment Areas in Strategic Plans More Broadly than a Branch Network. The Board is considering allowing a bank choosing the strategic plan approach to delineate assessment area(s) in addition to its branch-based assessment area(s) that would capture areas in which the bank has a significant proportion of its business and that align with the bank's capacity and constraints, product offerings, and business strategy.[183] For each assessment area a bank would need to define goals and engage in the same process of seeking community feedback and regulatory approval. Alternatively, the Board is seeking feedback on whether banks that have a significant business footprint beyond their branch-based assessment areas should be required to define associated assessment areas, as opposed to allowing banks to define additional assessment areas voluntarily.

Leveraging Metrics-Based Approaches to Evaluation. The Board is also considering enabling banks electing to prepare a strategic plan to have flexibility in leveraging retail lending and community development financing metrics as part of the bank's performance evaluation. This option could provide banks with greater certainty in how they will be evaluated by opting for the metrics-based approaches described in Sections V (Retail Test) and VII (Community Development Test), as appropriate based on a bank's size and business model.

3. Flexibility in Setting Plan Goals

Regulation BB sets forth general expectations that a strategic plan address the lending, investment, and services performance categories, emphasizing lending but with flexibility to

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[183] This option would be an alternative to defining assessment areas based on branches, instead using deposit or lending data. Deposit-based and lending-based assessment areas are discussed in more detail in Section III. These assessment areas would need to consist of at least whole census tracts, not reflect illegal discrimination, and not arbitrarily exclude LMI census tracts.

choose a different emphasis if it is responsive to the particular characteristics and credit needs of the bank's assessment area(s). In practice, the Board has exercised flexibility in the types of goals that banks may choose based on business strategy, expertise, capacity, constraints, public involvement, and whether the goals are responsive to assessment area characteristics and credit needs. The Board is considering whether to revise the strategic plan regulatory provisions to codify the flexibility in setting goals that has been allowed in practice.

4. Strategic Plan Amendments

As noted earlier, Regulation BB states that a bank may request its banking agency approve an amendment to its strategic plan on grounds that there has been a material change in circumstances. The Board seeks to provide greater clarity regarding what constitutes a material change that should trigger amendments to strategic plans.

5. Options for Streamlining the Strategic Plan Approval Process

Some stakeholders have noted that the strategic plan procedures could be further streamlined to make the option more appealing to a larger number of non-traditional banks. The Board is considering developing an electronic template with illustrative instructions to make it more straightforward for banks to engage in the strategic plan request and approval process. These changes would be procedural and would not require regulatory changes.

Request for Feedback:

Question 73. In fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, should banks be required to publish them on the regulatory agency's website, their own website, or both? Would it be helpful to clarify the type of consultation banks could engage in with the Board for a strategic plan?

Question 74. How should banks demonstrate that they have had meaningful engagement with their community in developing their plan, and once the plan is completed?

Question 75. In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, are there new criteria that should be required to prevent redlining?

Question 76. Would guidelines regarding what constitutes a material change provide more clarity as to when a bank should amend their strategic plan?

Question 77. Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?

X. Ratings

The Board is proposing an approach to ratings that is grounded in performance in a bank's local communities. This approach would provide a transparent and consistent process for considering assessment area performance conclusions for the Retail Test and the Community Development Test when assigning ratings for each state and multistate MSA, as applicable, and for the institution overall. For large banks subject to the Community Development Test, the proposed approach also incorporates an assessment of community development activities outside of assessment areas in determining the overall state and institution ratings.

The Board recognizes that CRA and fair lending responsibilities are mutually reinforcing. As such, the Board would continue to consider fair lending and illegal credit violations in determining overall CRA ratings for all institutions. Finally, the Board proposes to encourage activities involving MDIs, women-owned financial institutions, and low-income credit unions by making retail and community development activities with these institutions a factor in achieving an "outstanding" Retail Test or Community Development Test rating. Additionally, small banks would remain under the current CRA framework and would have the ability to opt into the Retail Lending Subtest and the proposed ratings approach.

A. Current Process for Developing Ratings

Consistent with the CRA statute, Regulation BB provides that a bank is assigned an institution rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" in connection with a CRA examination.[184] Ratings are also required for a bank's performance in each state in which the institution maintains one or more branches, and for each multistate MSA for those institutions that have branches in two or more states within a multistate MSA.[185] As a first step to assigning an overall institution rating, examiners assign state and multistate MSA ratings for each applicable performance test (lending, investment and service tests) based on the performance "conclusions" assigned for each assessment area within the state or multistate MSA.[186] Overall state-level or multistate MSA performance test ratings are assigned by combining the performance test ratings within each state or multistate MSA. Institution-level performance test ratings are derived from the state and multistate MSA performance test ratings, which are combined for the overall institution rating.

With one notable exception, the rating scale used for performance test ratings mirrors that of the statutory institution-level ratings – "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance." For large banks, however, the "satisfactory" rating for each performance test is split into "high satisfactory" and "low satisfactory" at the state, multistate MSA and institution level. For the overall institution rating for large banks, though, the "satisfactory" rating is not split into "high satisfactory" and "low satisfactory."[187]

Under existing procedures for large banks, examiners use a rating scale in the Interagency Questions and Answers that assigns points to each test and each rating category, and adds those together to determine the overall institution rating.[188] With the exception of this rating scale, the

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[184] 12 U.S.C. 2906(b), implemented by 12 CFR 228.28(a). The narrative descriptions of the ratings for performance under each evaluation method are in Appendix A to Regulation BB, 12 CFR part 228.

[185] 12 U.S.C. 2906(d).

[186] Ratings are not required at the assessment area level. Therefore, examiners provide conclusions about a bank's performance at the assessment area level. If a bank operates in just one assessment area, however, the bank's institution-level rating is equivalent to the performance conclusion within that assessment area.

[187] *See* Q&A §__.28(a)—3.

[188] *Id*.

process of combining performance test ratings to determine the state, multistate MSA or institution ratings relies primarily on examiner judgment, guided by quantitative and qualitative factors outlined in the regulation. There is otherwise not a strictly defined process for assessing how different components of each performance test are combined or how performance conclusions or ratings should be weighted to determine overall ratings. The current rating system is designed to be flexible; for example, exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others.[189]

Current examination procedures also allow for assessment areas to be evaluated either for full-scope or limited-scope review. Full-scope reviews employ both quantitative and qualitative factors, while limited-scope reviews are assessed only quantitatively and tend to have less weight in their contribution to the overall state, multistate MSA, or institution rating. Examiners select assessment areas for full-scope review based on a number of factors, such as community needs and opportunities, comments from community groups and the public regarding the institution's performance, and any apparent anomalies in the reported CRA and HMDA data for any particular assessment areas, among other factors.[190]

Under current examination procedures, the Board uses a fact-specific review to determine whether an overall institution-level CRA rating should be downgraded due to discriminatory and other illegal credit practices. Currently, the Board considers the nature, extent, and strength of the evidence of any discriminatory or other illegal credit practices, as well as any policies and procedures in place, or lack thereof, to prevent these kinds of practices, and any corrective action that the bank has taken or has committed to take.

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[189] Q&A Appendix A to 12 CFR 228—1.

[190] *See, e.g.,* CA Letter 14-2.

B. Stakeholder Feedback on Ratings

Stakeholders have consistently stated that CRA ratings should reflect a bank's performance in the local communities they serve. Both banks and community organizations have expressed concern that the current ratings process is subjective and lacks transparency about the levels of performance associated with different ratings. Both have also suggested that more transparency is needed regarding the selection of evaluated products and the weighting of products and tests when rating a bank. Many community organizations have stated that the ratings process should be reformed to add more rigor and stricter standards. Others have suggested that the current rating system using the statutory ratings does not provide enough detail to gauge a bank's true performance, and that ratings should better differentiate performance to help the public understand a bank's true commitment to its community.

C. Increasing Transparency by Grounding Ratings in Assessment Area Conclusions

The Board proposes revisions to the current CRA ratings framework to provide greater transparency, clarity and consistency in the assignment of ratings. The foundation for the proposed approach to ratings is based on a weighted average of assessment area conclusions. To increase consistency and reflect a more comprehensive assessment of a bank's overall performance, the Board is proposing to eliminate the distinction between full-scope and limited-scope assessment areas. Ratings would continue to be assigned for the institution, as well as for each state and multistate MSA where the bank has a presence, as required by the statute.[191] Additionally, the Board proposes using the same ratings for banks of all sizes.

Weighted Average Approach. The Board is proposing to apply a weighted average approach to combining assessment area conclusions. The weight applied to each assessment area would average the percentage of a bank's deposits from that assessment area and the percentage of a

[191] 12 U.S.C. 2906.

bank's dollars of loans in that assessment area.[192] For example, for a bank with 30 percent of its deposits in an assessment area and 20 percent of its retail lending in an assessment area, the assessment area weight would be 25 percent.

This use of both deposits and loans to weight assessment areas (as well as states and multistate MSAs, as applicable) would help to ensure that ratings accurately reflect performance in all markets, including those where lending volume is low relative to deposits. Compared to the current method, where limited scope assessment areas have less impact on the overall rating, the proposed approach would give full consideration to performance in each assessment area, proportional to a bank's lending level and capacity to lend.

In order to combine assessment area conclusions in a manner consistent with these weights, examiners would first convert a Retail Test conclusion or Community Development Test conclusion to a score in each assessment area according to the following scale: Outstanding = 3, Satisfactory = 2, Needs to Improve = 1, and Substantial Non-Compliance = 0. Examiners would then take the weighted average of these assessment area scores, using the assessment area weights described above, to produce a state, multistate MSA or institution score. These aggregated weighted average scores would be used as the foundation for a bank's ratings. The underlying weights for each assessment area could be made available in the performance evaluations, making the ratings process transparent.

Inclusive of All Assessment Areas. The Board is considering several options to ensure that all assessment areas, including smaller rural assessment areas, are appropriately factored into the Retail and Community Development Test ratings. First, as discussed above, the Board is

[192] For small banks that opt in to the revised framework, the Board is considering two options to reduce the burden of using deposits data to weight assessment areas: either using FDIC SOD data that allocates deposits to branches, or removing the deposit prong and only weighting assessment areas based on the percentage of a bank's retail lending in each assessment area. For example, if a small bank's assessment area were weighted solely based on retail lending, then a bank with 20 percent of its retail lending in an assessment area would have a weight of 20 percent for that assessment area.

considering weighting performance in all assessment areas based on deposits and loans to determine state and institution ratings. Second, the Board is considering limiting how high an overall rating can be for the evaluated state or multistate MSA if there is a pattern of weaker performance in multiple assessment areas. For example, the state rating could not be higher than the rating achieved by a certain percentage of the number of assessment areas for a bank that has several assessment areas in a state. Third, the Board is considering downgrading a bank's assessment area conclusion to "substantial non-compliance" if the bank's performance in that assessment area was "needs to improve" at the prior examination and the bank showed no appreciable improvement (and the performance context does not explain why).[193] The second and third stipulations in particular would be intended to ensure that banks do not count on strong performance in a few assessment areas to offset persistently weak performance in numerous small assessment areas in the overall rating of a state, multistate MSA (as applicable), or institution.

Consistency in Ratings Levels. The Board is proposing to use the four statutory ratings for banks of all sizes – "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance." This revision would eliminate the "high" and "low" distinctions for "satisfactory" performance of large banks at the state and multistate MSA levels. While using both the "high satisfactory" and "low satisfactory" ratings can help to differentiate performance, the Board anticipates that a more transparent and metrics-based approach would help provide a more detailed perspective on performance.

Request for Feedback:

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[193] This would, in effect, modify current guidance, which provides that a bank's overall "needs to improve" rating can be downgraded when the bank fails to improve performance by the next evaluation. *See* Q&A §__.21(b)(5)—1. Rather than considering the downgrade on a bank's overall evaluation, the Board is considering applying the downgrade at the assessment area level.

Question 78. Would eliminating limited-scope assessment area examinations and using the assessment area weighted average approach provide greater transparency and give a more complete evaluation of a bank's CRA performance?

Question 79. For a bank with multiple assessment areas in a state or multistate MSA, should the Board limit how high a rating can be for the state or multistate MSA if there is a pattern of persistently weaker performance in multiple assessment areas?

Question 80. Barring legitimate performance context reasons, should a "needs to improve" conclusion for an assessment area be downgraded to "substantial non-compliance" if there is no appreciable improvement at the next examination?

Question 81. Should large bank ratings be simplified by eliminating the distinction between "high" and "low" satisfactory ratings in favor of a single "satisfactory" rating for all banks?

D. State, Multistate MSA and Institution Ratings for the Retail Test and Community Development Test

The Board is proposing a ratings approach that builds on the weighted average of the bank's assessment area performance on the Retail Test and the Community Development Test, as applicable. The proposed approach would use the 0-3 scale discussed above to translate performance scores into state, multistate MSA, and institution ratings.

This approach would tailor how performance ratings are assigned based on bank size and business model. Small banks opting into the revised framework would be rated on the Retail Lending Subtest, and large banks would be rated based on all four subtests under the Retail Test and Community Development Test. Wholesale and limited-purpose banks would be rated on the Community Development Test alone.

1. *Retail Test Ratings*

a. Retail Test Conclusions in Assessment Areas

The Board is proposing an approach for developing one Retail Test conclusion at the assessment area level that would provide more consistency and certainty in assigning assessment area conclusions, while accounting for performance context factors. Small banks opting into the revised framework would receive a Retail Lending Subtest conclusion in each assessment area, which would also serve as their overall Retail Test conclusion in each assessment area. For large banks evaluated under both the Retail Lending Subtest and Retail Services Subtest, the Board proposes using the below matrix to standardize how examiners combine these two conclusions into a single Retail Test conclusion in each assessment area.

Table 6: Retail Test Assessment Area Conclusions

		Retail Services Subtest Conclusion			
		Outstanding	***Satisfactory***	***Needs to Improve***	***Substantial Noncompliance***
Retail Lending Subtest Conclusion	***Outstanding***	Outstanding	Outstanding	Satisfactory	Satisfactory or Needs to Improve
	Satisfactory	Outstanding or Satisfactory	Satisfactory	Satisfactory or Needs to Improve	Needs to Improve
	Needs to Improve	Needs to Improve	Needs to Improve	Needs to Improve	Needs to Improve or Substantial Noncompliance
	Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance

Given CRA's traditional emphasis on lending, the Board is proposing to weight the Retail Lending Subtest conclusion more heavily than the Retail Services Subtest conclusion in determining the overall Retail Test assessment area conclusion for large banks. Using this standardized approach, most combinations of subtest conclusions would provide examiners with only one option for the overall Retail Test conclusion. However, in cases where the overall Retail Test conclusion could be one of two options based on the level of performance for each subtest and performance context factors, examiner judgment would be required. In these cases, the specific factors that informed the examiner's decision would need to be clearly articulated within the performance evaluation.

b. State, Multistate MSA, and Institution Retail Test Ratings

As noted above, the CRA statute requires a separate rating for each state and multistate MSA, and for the institution overall.[194] To develop the state, multistate MSA, and institution ratings for the Retail Test, the Board is proposing to aggregate a bank's assessment area performance using the weighted average approach described above. This approach would take a weighted average of the assessment area Retail Test scores to yield (as applicable) a Retail Test state score, Retail Test multistate MSA score, or Retail Test institution score. These scores in turn would translate to one of the four ratings by rounding.

The below example shows how this weighting would work for the Retail Test for a state-level rating where a bank had two assessment areas in a state:

Assessment Area 1:	"Satisfactory" performance and weight of 25 percent
	2 * 0.25 = 0.5
Assessment Area 2:	"Outstanding" performance and weight of 75 percent
	3 * 0.75 = 2.25
Retail Test State Score:	0.5 + 2.25 = 2.75 or "outstanding"

The Board is considering aggregating assessment area conclusions to calculate the Retail Test institution rating as well, rather than aggregating all Retail Test state ratings. With stipulations in place to ensure that all assessment areas, including smaller rural assessment areas, are appropriately factored into ratings (as discussed above), calculating the Retail Test institution rating based on assessment area conclusions could encourage banks to maintain a focus on retail activities in all of their assessment areas and not just the largest assessment areas in each state.

Finally, to promote additional retail lending activities in Indian Country, the Board is proposing to make retail lending activities in Indian Country (both inside and outside of a bank's assessment area) eligible for CRA consideration. Activities inside a bank's assessment area(s)

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[194] 12 U.S.C. 2906(b) and (d).

would be considered when determining assessment area conclusions; activities outside of a bank's assessment area(s) would be evaluated qualitatively, and could be considered as a possible enhancement to a bank's Retail Test state or institution rating.

2. Community Development Test Ratings

a. Community Development Test Conclusions in Assessment Areas

Large retail banks and wholesale and limited purpose banks would receive separate conclusions for the Community Development Financing Subtest and Community Development Services Subtest for each assessment area. To provide greater certainty and transparency in assigning Community Development Test assessment area conclusions, a matrix, such as the one presented in Table 7, would be provided to standardize how examiners would combine the two conclusions into a single Community Development Test conclusion in each assessment area. This would provide transparency to local communities about a bank's overall community development performance within their assessment area.

Table 7: Community Development Test Assessment Area Conclusions

		Community Development Services Subtest Conclusion			
		Outstanding	***Satisfactory***	***Needs to Improve***	***Substantial Noncompliance***
Community Development Financing Subtest Conclusion	***Outstanding***	Outstanding	Outstanding	Satisfactory	Satisfactory or Needs to Improve
	Satisfactory	Outstanding or Satisfactory	Satisfactory	Satisfactory or Needs to Improve	Needs to Improve
	Needs to Improve	Satisfactory or Needs to Improve	Needs to Improve	Needs to Improve	Substantial Noncompliance
	Substantial Noncompliance	Needs to Improve or Substantial Noncompliance	Needs to Improve or Substantial Noncompliance	Substantial Noncompliance	Substantial Noncompliance

Using this standardized approach would allow an examiner to determine how to weight the Community Development Financing Subtest conclusion and the Community Development Services Subtest conclusion, with some combinations resulting in a single conclusion option. Where the overall Community Development Test conclusion could be one of two options, examiners would consider the level of performance for each subtest and take into account performance context factors, including the relative need for community development financing and services in the assessment area. In these cases, the specific factors that informed the examiner's decision would need to be clearly articulated within the performance evaluation.

b. State and Multistate MSA Ratings for the Community Development Test

To develop the state and multistate MSA ratings for the Community Development Test, the proposed approach would aggregate a bank's assessment area performance for the Community Development Test using the weighted average approach described above. This would result in a Community Development Test state score or Community Development Test multistate MSA score. After calculating these scores, the examiner would need to take into account community development activities, if any, outside of a bank's assessment area(s) but within the relevant state or multistate MSA.

The Board is proposing to create adjusted state scores or multistate MSA scores when an examiner determines that a bank's community development activities outside of its assessment area(s), but within the respective state or multistate MSA, merit an increase in the bank's Community Development Test score. After factoring in this adjustment for any outside assessment area activity, the adjusted score would then be rounded to the nearest whole number to assign a state or multistate MSA Community Development Test rating. The specific factors that informed the examiner's decision to increase the score would be clearly articulated within the performance evaluation. The Board is considering what standards should be developed to assist examiners in determining whether to increase these scores and, if so, by how much.

c. Institution Ratings for the Community Development Test

The Board proposes to derive a bank's Community Development Test institution score by using a weighted average of the adjusted state scores and multistate MSA scores (as applicable), rather than using assessment area conclusions.[195] Using state and multistate MSA scores would reflect statewide activities, if any, in addition to the conclusions for assessment areas in the state or multistate MSA.

The Board is considering how to incorporate the volume and responsiveness of community development activities (both community development financing and community development services) not previously counted at the assessment area, state or multistate MSA levels.[196] These activities could be reviewed qualitatively in addition to the weighted average calculation of state- and multistate MSA-level performance, to determine the appropriate increase for an adjusted institution Community Development Test score. This score would then be rounded up or down to the nearest whole number to produce the institution level Community Development Test rating.

d. Consistency in Evaluating Community Development Activities Outside of Assessment Areas

The Board is exploring options to provide more consistency in evaluating community development activities outside of a bank's assessment area(s), which would be considered for the state, multistate MSA (as applicable), and institution Community Development Test ratings. For state ratings, one approach could be the use of a statewide community development financing metric. Similar to the community development financing metric for an assessment area, a statewide community development financing metric would compare the total dollar amount of a bank's qualifying community development loans and investments in a state to total deposits from all of the bank's assessment areas in the state. A statewide community development financing metric could provide more consistency to the evaluation of community development financing activities outside of assessment areas.

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[195] The proposed approach would weight states in a similar way to weighting assessment areas, based on an average of the percentage of a bank's deposits inside each state and the percentage of a bank's retail lending in each state.

[196] See Section VIII.C.2

A second option for evaluating community development activities outside of a bank's assessment area(s) would be the use of an impact score. Examiners could use bank-provided information along with a review of performance context to determine an impact score for activities outside of the bank's assessment area(s). The impact score could then be incorporated into the Community Development Test rating for the state, multistate MSA (as applicable), or the institution. The impact score and the basis for it would be stated in the performance evaluation, which would increase transparency in the evaluation process by clarifying how activities outside of assessment areas are factored in to the overall state, multistate MSA, or institution ratings.

E. Overall Ratings for Large Retail Banks

The Board is considering how to weight consistently the Retail Test and Community Development Test to determine overall ratings at the state, multistate MSA, and institution levels for large retail banks. One option is to take a weighted average of the Retail Test institution score and the Community Development Test adjusted institution score, assigning a 60 percent weight to the Retail Test and a 40 percent weight to the Community Development Test to reflect the traditional emphasis on retail activities as the most significant aspect of CRA performance. This would result in an overall institution score, which would be rounded up or down to the nearest whole number to produce the institution's overall CRA rating.

F. Overall State, Multistate MSA, and Institution Ratings for Small Banks

The Board is considering basing the overall state, multistate MSA, and institution ratings for small banks on the Retail Lending Subtest, for those opting into the metrics-based approach. Small banks would not be subject to the Retail Services Subtest or the Community Development Test. Consistent with the current Regulation BB, small banks could receive an overall "outstanding" rating based solely on the Retail Lending Subtest. Nonetheless, for those small banks who choose to receive an evaluation of their retail services, community development loans, qualified investments, or community development services, including volunteer activities, the Board would rely on a qualitative review of the activities and examiner judgment to determine whether a ratings enhancement is warranted.

The Board is contemplating two options for incorporating community development activities and retail services into the small bank overall institution rating at the bank's request. One approach, similar to current procedures, would be that these activities could be considered only to elevate a "satisfactory" rating for the retail lending test to "outstanding." This approach also maintains a primary emphasis on retail lending within the CRA evaluation.

A second option is to use community development activities and retail services to augment performance at any level. For instance, a bank that received a rating below "satisfactory" for the Retail Lending Subtest could request a review of community development activities and retail services as a possible enhancement to achieve a "satisfactory" rating. Taking this approach would put more emphasis on the full range of activities that small banks engage in to meet community needs. The Board considers that this approach should apply only to small banks that serve primarily rural areas in order to reflect the particular importance of volunteer and community development financing activities provided by community banks in rural areas in advancing economic and community development and strengthening the capacity of community and civic organizations. Alternatively, this option could be limited to small banks with only a small number of assessment areas or an asset size lower than that used to define a small bank.

G. Overall Ratings for Wholesale Limited Purpose Banks

Consistent with current practices, the overall state, multistate MSA and institution ratings for wholesale and limited-purpose banks would be based solely on the Community Development Test.

Request for Feedback:

Question 82. Does the use of a standardized approach, such as the weighted average approach and matrices presented above, increase transparency in developing the Retail and Community Development Test assessment area conclusions? Should examiners have discretion to adjust the weighting of the Retail and Community Development subtests in deriving assessment area conclusions?

Question 83. For large banks, is the proposed approach sufficiently transparent for combining and weighting the Retail Test and Community Development Test scores to derive the overall rating at the state and institution levels?

Question 84. Should the adjusted score approach be used to incorporate out-of-assessment area community development activities into state and institution ratings? What other options should the Board consider?

Question 85. Would the use of either the statewide community development financing metric or an impact score provide more transparency in the evaluation of activities outside of assessment areas? What options should the Board consider to consistently weight outside assessment area activities when deriving overall state or institution ratings for the Community Development Test?

Question 86. For small banks, should community development and retail services activities augment only "satisfactory" performance, or should they augment performance at any level, and if at any level, should enhancement be limited to small institutions that serve primarily rural areas, or small banks with a few assessment areas or below a certain asset threshold?

H. Fair Lending and Other Illegal Credit Practices

As noted in the Background section, the CRA was enacted along with several other important statutes that are mutually reinforcing civil rights laws designed to address systemic inequities in access to credit. Discrimination and illegal credit practices undermine the ability of creditworthy applicants to obtain loans and are thus seen as inconsistent with a bank's affirmative obligation to meet the entire community's credit needs. Accordingly, discrimination and illegal credit practices negatively impact an institution's CRA evaluation. The Board anticipates that in any revised CRA ratings framework, a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices by the bank in any geography or by any affiliate whose loans have been considered as part of the bank's lending performance in any assessment area. If examiners determine that a bank has engaged in discriminatory or other illegal credit practices, the Board anticipates that, if warranted, a ratings downgrade could occur when rating the institution overall, similar to current practices and consistent with Regulation BB. This subsection discusses revisions to the criteria considered in determining the impact of fair lending and other illegal credit practices on a bank's overall CRA rating, and revisions to examples of violations that are inconsistent with helping to meet community credit needs. These revisions reflect updates to the Uniform Interagency Consumer Compliance Rating System, as well as relatively recently enacted laws and regulations.

1. *Effect of Fair Lending and Other Illegal Credit Practices on a CRA Rating*

Currently, in determining the effect of fair lending and other illegal credit practices violations on a bank's assigned rating, the banking agencies consider the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.[197] These criteria were put in place at a time when the rating system for consumer compliance examinations placed greater emphasis on transaction testing rather than the adequacy of an institution's consumer compliance management system in preventing consumer harm. In 2016, the FFIEC agencies revised the Consumer Compliance Rating System to focus more broadly on an institution's commitment to consumer protection.[198] Accordingly, the Board is considering updating the criteria for

[197] 12 CFR 228.28(c)(2).

[198] *See* FFIEC, "FFIEC Issues Uniform Consumer Compliance Rating System" (Nov. 7, 2016), https://www.ffiec.gov/press/pr110716.htm.

determining the effect of evidence of discriminatory or other illegal credit practices to be consistent with the updated Consumer Compliance rating system.

Under a modernized Regulation BB, the Board could determine the effect of evidence of discrimination and other illegal credit practices on a bank's assigned CRA rating based on the root cause or causes of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations. In this way, the criteria to determine whether a CRA downgrade is warranted would be aligned with the Uniform Interagency Consumer Compliance Ratings System. In addition to the root cause, severity, duration, and pervasiveness of violations, examiners would also consider the degree to which the financial institution establishes an effective compliance management system across the institution to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm. All consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade.

2. *Examples of Fair Lending and Other Illegal Credit Practices*

Currently, the Board considers evidence of discriminatory or other credit practices that violate an applicable law or regulation[199] including, but not limited to:

- Discrimination against applicants on a prohibited basis in violation, for example, of ECOA or the FHA;
- Violations of the Home Ownership and Equity Protection Act;[200]
- Violations of section 5 of the Federal Trade Commission Act;[201]

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[199] 12 CFR 228.28(c).

[200] 15 U.S.C. 1601-02, 1639-41.

[201] 15 U.S.C. 45(a)(1).

- Violations of section 8 of the Real Estate Settlement Procedures Act;[202]
- Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;[203] and
- Violations of the Fair Credit Reporting Act.[204]

The Board is considering amending Regulation BB to include violations of the Military Lending Act,[205] the Servicemembers Civil Relief Act,[206] as well as the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP),[207] because the Board views violations of these laws as inconsistent with helping to meet community credit needs. It is important to note that this does not represent a substantive change to current examination procedures, since the included list of applicable laws, rules, and regulations is illustrative, and not exhaustive, and violations of these laws and regulations are currently considered in finalizing a bank's CRA rating. Nonetheless, the Board believes adding these laws to the list would provide greater clarity.

Request for Feedback:

Question 87. Should the Board specify in Regulation BB that violations of the Military Lending Act, the Servicemembers Civil Relief Act, and UDAAP are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings? Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?

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[202] 12 U.S.C. 2607.

[203] 15 U.S.C. 1635.

[204] 15 U.S.C. 1681 *et seq.*

[205] 10 U.S.C. 987 *et seq.*

[206] 50 U.S.C. 3901 *et seq.*

[207] 12 U.S.C. 5531.

I. Consideration of "Outstanding" for Impactful Support to Minority Depository Institutions, Women-Owned Financial Institutions, and Low-Income Credit Unions

Another change the Board is considering is to use the ratings framework to encourage increased engagement with MDIs, women-owned financial institutions, and low-income credit unions. This approach would make lending or investment activities in these institutions a factor that could be used to enhance ratings for the Retail Test and Community Development Test. These activities could be considered when evaluating performance in an assessment area, state or multistate MSA, or for the institution. Activities with MDIs, women-owned financial institutions, and low-income credit unions located outside of the bank's footprint would be considered when assessing institution performance. The Board is considering that substantive and meaningful engagement with MDIs, women-owned financial institutions, and low-income credit unions would be explicitly designated as criteria for an "outstanding" overall rating in order to elevate the profile and importance of investments in these mission-oriented institutions.

Request for Feedback:

Question 88. Should consideration for an outstanding rating prompted by an investment or other activity in MDIs, women-owned financial institutions, and low-income credit unions be contingent upon the bank at least falling within the "satisfactory" range of performance?

Question 89. Would it be helpful to provide greater detail on the types and level of activities with MDIs, women-owned financial institutions, and low-income credit unions necessary to elevate a "satisfactory" rating to "outstanding"?

XI. Data Collection and Reporting

The Board is considering what data collection and reporting requirements would be necessary to implement certain options for updating the delineation of assessment areas and the proposed metrics-based approaches in the Retail Lending Subtest and the Community Development Financing Subtest. The Board is mindful of the tradeoff between seeking to minimize burden potentially associated with new data collection and reporting requirements, especially for small banks that opt in to the metrics-based approach, while also enabling greater clarity, consistency, and transparency through the enhanced use of metrics.

A. Current Data Collection and Reporting Requirements

1. Current Data Used for Deposits

Currently, the Board's CRA regulation does not require banks to collect or report deposits data. Instead, for small banks, total deposits and total loans data from the Call Report are used to calculate the loan-to-deposit ratio for the entire bank. Total deposits allocated to each branch from the FDIC SOD are used for performance context for banks of any size. Deposits data by depositor location are not currently collected or reported.

2. *Current Small Bank and Intermediate Small Bank Data Standards for Retail Lending*

Currently, small banks and intermediate small banks are not required to collect, maintain, or report loan data, unless they opt to be evaluated under the lending, investment, and service tests that apply to large banks.[208] Examiners use information for a bank's major loan products gathered from individual loan files and maintained on the bank's internal operating systems, including data reported pursuant to HMDA, if applicable.

3. *Current Large Bank Data Standards for Retail Lending and Community Development Financing*

Large banks collect and report certain lending data for home mortgages, small businesses, small farm, and community development loans pursuant to either HMDA or Regulation BB. Examiners use these data, along with other supplemental data to evaluate CRA performance, as explained below. A bank may use the free FFIEC software for data collection and reporting or develop its own programs.

Retail lending data collection and reporting requirements differ based on the product line. For large banks that do not report HMDA data, examiners use home mortgage information

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[208] 12 CFR 228.42(a) and 12 CFR 228.42(f).

maintained on the bank's internal operating systems and/or from individual loan files. The data elements from home mortgage loans used for CRA include loan amount at origination, location, and borrower income. For small business and small farm loans, Regulation BB requires large banks to collect and maintain the loan amount at origination, loan location, and an indicator of whether a loan was to a business or farm with gross annual revenues of $1 million or less. Large banks report this information at the census tract level.[209] Large banks are not required to collect or report data on consumer loans; however, if a large bank opts to have consumer loans considered as part of its CRA evaluation, the bank must collect and maintain this information and include it in its public file.[210]

Regulation BB also requires large banks to report the total number and dollar amount of their community development loans originated or purchased during the review period, but does not require information for individual community development loans, such as the location of the loan.[211] Regulation BB does not require the reporting or collection of community development loans that remain on the bank's books or the collection and reporting of qualified community development investments. As a result, the total amount (originated and on-balance sheet) of community development loans and investments nationally, or within specific geographies, is not available. Consequently, examiners supplement reported community development loan data with additional information provided by the bank at the time of an examination, including the amount of investments, the location or areas benefited by these activities and information describing the community development purpose.[212]

4. Data Currently Used for CRA Retail Services and Community Development Services Analyses

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[209] 12 CFR 228.42(b)(1).

[210] 12 CFR 228.42(c)(1); 12 CFR 228.43(b)(1)(i).

[211] 12 CFR 228.42(b)(2).

[212] FFIEC, "A Guide to CRA Data Collection and Reporting," https://www.ffiec.gov/cra/guide.htm.

There are no specific data collection or reporting requirements in Regulation BB for retail services or community development services. A bank must, however, provide examiners with sufficient information to demonstrate its performance in these areas. The bank's CRA public file includes a list of bank branches, with addresses and census tracts; a list of branches opened or closed; and a list of services, including hours of operation, available loan and deposit products, transaction fees, and descriptions of material differences in the availability or cost of services at particular branches, if any.[213] Banks have the option of including information regarding the availability of alternative systems for delivering services.[214] Banks also volunteer information on community development services, such as the number of activities, bank staff hours dedicated or the number of financial education sessions offered.

B. Deposits Data Options

The proposed approaches for the Retail Lending Subtest and Community Development Financing Subtest, as well as the potential approach for designating deposits-based assessment areas, would require deposits data that includes geographic location. The approach to ratings discussed in Section X could also potentially involve the use of deposits data. As discussed below, the Board seeks to balance proposals for a metrics-based approach that could increase certainty and transparency, with the need to minimize additional data reporting and collection requirements wherever possible.

1. Deposits Data Sources

The use of SOD data would rely on an existing FDIC data source that collects information on a bank's total domestic deposits as defined in the Call Report, including deposits of: (1) individuals, partnerships, and corporations; (2) U.S. Government; (3) States and political subdivisions in the United States;, (4) commercial banks and other depository institutions in the

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[213] 12 CFR 228.43(a).

[214] *Id.*

United States; (5) Banks in foreign countries; and (6) foreign governments and official institutions (including foreign central banks).[215] Of these, the first and third components are the data points most relevant to CRA. Importantly, FDIC deposits reporting requirements allocate deposit accounts to specific bank branches, rather than by the address of the depositor.[216]

A requirement for some large banks to collect and report deposits data reflecting the location of those deposits would align evaluations more closely with the purpose of CRA by reporting the community *where* a bank takes deposits. This option would require careful consideration of and comment on the types of deposits that should be used for this purpose, as well as determining appropriate ways to report geographic location.

2. Deposits Data for Small Banks and Large Banks with One Assessment Area

Under the Board's proposal, additional deposits data collection or reporting would not be required for small banks that opt-in to the metrics-based approach and for large banks with one assessment area. For small banks, only the Retail Lending Subtest would apply, and SOD data could be used for the retail lending screen, which would not require additional data. For large banks with one assessment area, SOD data could also be used for the retail lending screen and community development financing metric.

Because SOD data requires banks to allocate deposit accounts to specific bank branches, rather than by the depositor location, using SOD data for small and large banks with a single assessment area would be more precise than for banks with multiple assessment areas. For small banks with multiple assessment areas, the Board believes SOD data are also appropriate because

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[215] *See* FFIEC, Schedule RC-E, Deposit Liabilities, p. 34, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_202006_f.pdf.

[216] *See*, *e.g.*, FDIC, "Summary of Deposits Reporting Instructions" (June 30, 2020), https://www.fdic.gov/regulations/resources/call/sod/2020-06-sod-instructions.pdf. These instructions provide examples of common allocation methods and state, "It is recognized that certain classes of deposits and deposits of certain types of customers may be assigned to a single office for reasons of convenience or efficiency. However, deposit allocations that diverge from the financial institution's internal record-keeping systems and grossly misstate or distort the deposit gathering activity of an office should not be utilized." *Id.* at 3.

this data would be used only for the retail lending screen and, potentially, when calculating ratings, and because it would minimize burden for small banks.

3. *Options for Deposits Data for Large Banks with more than One Assessment Area*

For large banks with more than one assessment area, the Board is considering whether these banks should also use SOD data for deposits or be required to collect and report deposits data that includes geographic information about the location of the bank's deposits. The Board is also considering whether large banks with more than one assessment area should be further differentiated between those that have deposits concentrated around their branches and those that have a substantial share of deposits that are more diffuse and not concentrated around branches. However, setting a standard to differentiate the location of deposits in this way could be challenging, given the limitations of existing deposits data.

As noted above, large banks would need deposits data for the retail lending screen and community development financing metric. If SOD data is used, large banks would not be required to collect and report deposits data. However, there are several challenges with this approach. For large banks with multiple assessment areas, the practice of allocating deposit accounts to specific bank branches could lead to less accurate calculations of deposits in each of a bank's assessment areas. This lack of precision would likely be even greater for those large banks with business models and practices that generate significant deposits outside of their branch network. Another shortcoming in using SOD data for these banks is that it includes more information than needed for CRA purposes, such as deposits from foreign countries.

This lack of precision in deposits data could misrepresent a bank's deposits drawn from a particular assessment area, as well as the performance of a bank's peers in that market. This lack of precision also could reduce the accuracy of the community development financing metric and increase an examiner's reliance on performance context information to interpret a large bank's performance.

An alternative approach to using SOD deposits data would be requiring certain large banks to collect and report retail deposits data. The data could also be used in the future if deposits-based assessment areas were established. A concern, however, is that the process of implementing systems to compile the requisite data could be costly and burdensome, even for large banks. Stakeholders have noted that deposits data based on the address of a depositor would require a substantial one-time investment in systems and ongoing staff-related costs to identify customer records from multiple loan, deposit and investments platforms that need to be geocoded and allocated to the appropriate assessment areas.

Request for Feedback:

Question 90. Is it appropriate to rely on SOD data for all banks, a subset of large banks with multiple assessment areas based on business model or the share of deposits taking place outside of assessment areas, or only for small banks and large banks with one assessment area? What standards would be appropriate to set for business models or the appropriate share of deposits taking place outside of assessment areas, if such an approach is chosen?

Question 91. Is the certainty of accurate community development financing measures using bank collected retail deposits data a worthwhile tradeoff for the burden associated with collecting and reporting this data for all large banks with two or more assessment areas?

C. Retail Lending Data Options for Small Banks Opting for the Metrics-based Approach

Under the Board's proposed approach, small banks that opt in to the metrics-based approach would be evaluated under only the Retail Lending Subtest, not the Community Development Test or the Retail Services Subtest. Small bank lending is currently evaluated using a sample of data that is gathered from a bank's loan files, data pulled from its internal operating systems, or a combination of the two if a bank maintains some, but not all, information in its internal systems. Many small banks maintain information such as loan amount at origination, loan location, and borrower income or revenue in their internal operating systems, but some do not collect income or business revenue information. These data fields would be needed to calculate the retail lending distribution metrics.

The Board is considering two options for gathering this information. Under the first option, the Board would use a sample of bank data drawn from each assessment area to generate the retail lending metrics for small bank evaluations. This approach could use information maintained by the bank in its internal operating systems and could supplement it with information pulled from loan files, similar to the process used today. A benefit to this approach is that it would not require any changes to a bank's data collection processes. A drawback to this approach is that it would not allow a small bank to obtain the certainty and clarity of knowing its performance in advance of an examination. The bank would not know which loans would be included in the sample used to evaluate performance and, therefore, could not use the metrics dashboard described in Section V with the same degree of confidence. In addition, as is the case today, bank staff would have to gather the information or files needed for examiners to review the loans sampled.

As a second option, a bank could maintain information in a format consistent with its own internal operating systems, with income or revenue information required only to the extent it is used in the bank's underwriting process. A key benefit of this option is that it would provide a bank with certainty about the loans considered in the evaluation and, as a result, would allow it to track its performance using the dashboard to monitor its retail lending performance against the threshold for a presumption of "satisfactory" performance. A drawback to this option is that any small bank that uses, but does not capture, revenue or income information in the credit granting process, would need to update its systems and processes to capture this information.

Request for Feedback:

Question 92. Which approach for retail lending data collection would provide the best balance between data collection burden and the transparency and predictability of CRA examinations for small banks that opt in to the metrics-based approach – using a sample of bank data drawn from each assessment area to generate the retail lending metrics, or the use of information maintained by a bank in a format consistent with its own internal operating systems?

Question 93. Are there other approaches to data collection that would benefit small banks and should be considered?

D. Collection and Reporting of Loan and Investment Data and Services Information for Large Banks

The Board is considering how other data collection and reporting requirements would need to change to effectively implement a metrics-based approach for large banks for the Retail Lending Subtest and the Community Development Financing Subtest. In addition, while the Retail Services Subtest and Community Development Services Subtest would remain primarily qualitative in nature, the Board seeks to improve the transparency of these evaluations by making more consistent information available to examiners.

1. Collection of Retail Lending Data

Much of the retail lending data needed to examine a large bank under the proposed Retail Lending Subtest is currently collected and reported. However, additional data would be needed for the retail lending metrics for consumer loan data and home mortgage data for non-HMDA reporters. The data necessary to analyze CRA performance for both home mortgage and consumer loans are loan amount at origination, loan location (state, county, census tract), and borrower income. The two options discussed above for gathering data for small banks (having examiners sample the bank's data or having banks collect the data in their own format) could also be used at large banks. A third option is to have large banks collect data in a format prescribed by the Board, as is done for small business or small farm loans under Regulation BB. The third option would not involve reporting consumer loans for large banks or home mortgage data for non-HMDA reporters that are also large banks.

Request for Feedback:

Question 94. What are the benefits and drawbacks of relying on examiners to sample home mortgage data for non-HMDA reporters and consumer loan data for all large banks, requiring banks to collect data in their own format, or requiring banks to collect data in a common Board prescribed format?

2. Collection and Reporting of Community Development Financing Data

The lack of granular reporting of community development loan data or any community development investment data means that there is no aggregate community development data at a local level available to create the local benchmarks for the community development financing metric described in Section VII. In order to develop the community development financing metric and local benchmarks, large banks would need to report annually the number and dollar amount of community development loans originated and investments made, and the remaining number and dollar amount of community development loans and qualifying investments from prior years as reflected on the balance sheet at the end of the calendar year. As was noted earlier, large banks already report community development loans on an aggregated basis for the institution.

The Board is considering the development of a Board-prescribed, machine-readable format to ensure a consistent and transparent process for collecting community development financing data. Information that could be collected for each community development loan or qualified investment includes the loan or investment amount (original or remaining on balance sheet), area(s) benefitted, community development purpose (*e.g.,* affordable housing or economic development), and type of investments (*e.g.,* equity investment or mortgage-backed security). A subset of that data (*e.g.,* number and dollar amount of community development loans and qualified investments) would be reported at some aggregated level (*e.g.,* county or MSA). The Board acknowledges that the collection and reporting of standardized community development loan and qualified investment data will likely necessitate up front changes to a bank's internal operating systems, including possibly the processes for booking community development loans and investments.

Request for Feedback:

Question 95. Are the community development financing data points proposed for collection and reporting appropriate? Should others be considered?

Question 96. Is collecting community development data at the loan or investment level and reporting that data at the county level or MSA level an appropriate way to gather and make information available to the public?

Question 97. Is the burden associated with data collection and reporting justified to gain consistency in evaluations and provide greater certainty for banks in how their community development financing activity will be evaluated?

3. Collection of Retail Services Information

The Board is considering standardizing the types of data that banks would provide to examiners to make the assessment of the effectiveness and responsiveness of the bank's delivery systems, services, and products more consistent across large bank examinations. Relevant information would be provided in the CRA performance evaluation, thereby providing some transparency to the public.

For the branch distribution analysis, the Board is considering whether it would be beneficial for banks to submit standardized branch data, including the number and location of branches, ATMs, hours of operation by branch location, and record of opening and closing of branch offices and ATMs (as of dates). A standardized (Board-provided) template for services would streamline the process for banks and examiners and produce a more consistent evaluation methodology. Given that branch data are currently required to be retained in the public files, this approach would not require new data collection.

For non-branch delivery channels, a services template could include information on customer usage, number of transactions (rate of adoption), and cost to determine whether non-branch delivery channels are reaching LMI areas and individuals. For branch-related services, banks could include in the template a customized list of services offered that are responsive to LMI needs, including bilingual/translation services in specific geographies, disability accommodation, free or low-cost government, payroll, or other check cashing services, and reasonably priced international remittance services.

Request for Feedback:

Question 98. Would collecting information in a Board-provided standardized template under the Retail Services Subtest be an effective way of gathering consistent information, or is there a better alternative?

4. Collection of Community Development Services Information

In evaluating community development services, examiners currently consider the information a bank chooses to collect and provide to demonstrate the quantitative and qualitative aspects of its community development services. Banks generally provide information related to the lists included in the Interagency Questions and Answers, such as the number of community development service activities, bank staff hours dedicated, the number of LMI participants, or the number of organizations served.[217]

The Board is considering a standardized (Board-provided) template with free form text fields. Banks would collect information on data points, such as the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Further, a bank could provide information it deems relevant on the impact and responsiveness of its community development services activities. For example, a bank may choose to provide the number of clients in financial education classes who opened a bank account, or a description of how a banker's service on the board of directors of a local organization led to the creation of a new small business lending program. The number of bank

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[217] *See* Q&A §__.24(e)—2.

employees in an assessment area is another quantitative field that could be collected as a reference point if metrics are used.

Request for Feedback:

Question 99. Possible data points for community development services may include the number and hours of community development services, the community development purpose, and the counties impacted by the activity. Are there other data points that should be included? Would a Board-provided template improve the consistency of the data collection or are there other options for data collection that should be considered?

By order of the Board of Governors of the Federal Reserve System, September 22, 2020.

Ann E. Misback,
Secretary of the Board.

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