FDIC Federal Deposit Insurance Corporation

MEMO

TO: The Board of Directors

FROM: Mark Pearce, Director
Division of Depositor and Consumer Protection

DATE: October 18, 2023

RE: Final Rule on Community Reinvestment Act Regulations

I. Recommendation

Staff recommends that the Federal Deposit Insurance Corporation's (FDIC) Board of Directors (Board) approve the attached final rule and authorize its publication in the **Federal Register** with an effective date of the first day of the first calendar quarter that begins at least 60 days after publication in the **Federal Register**, which staff expects will be April 1, 2024. The final rule, to be issued jointly with the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC), makes comprehensive regulatory amendments to the FDIC's CRA regulation implementing the Community Reinvestment Act of 1977 (CRA).[1]

As explained in more detail below, the final rule updates how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. Among other things, the final rule includes a combination of new metrics and quantitative standards to help examiners evaluate retail lending and community development financing in separate tests. The use of metrics and standards is intended to help achieve greater clarity, consistency, and transparency for banks and communities, while also calibrating expectations based on differences in local market conditions. The qualitative aspect of the current approach remains a central component of evaluation procedures in the final rule, in particular for assessing performance context, retail services, and community development services. The final rule also expands where banks may receive CRA credit for community development activities and is intended to incentivize banks to conduct such activities not only within the bank's facility-based assessment areas, but also in other areas, such as rural communities and Native Land Areas.

CONCUR:

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Harrel M. Pettway
General Counsel

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

II. BACKGROUND

Congress passed the CRA in 1977 to encourage regulated financial institutions (banks) to help meet the credit needs of the local communities in which they are chartered to do business, consistent with banks' safe and sound operations,[2] by assessing the banks' records of meeting the credit needs of their entire community, including low- and moderate-income neighborhoods.[3]

The agencies charged with implementing the statute—the FDIC, the Federal Reserve, the OCC, and the Office of Thrift Supervision (OTS) (collectively, the Federal banking agencies)—first issued joint regulations in 1978 to implement the statute.[4] Since then, the Federal banking agencies (including the OTS until 2011) have revised the CRA regulations several times and have provided guidance on the interpretation and application of the CRA regulations through the Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers).[5] The last major regulatory revisions were completed in 1995.[6]

The Federal banking agencies have met, from time to time, with various stakeholders to get their views on how to modernize the CRA regulations. On April 3, 2018, the U.S. Department of the Treasury released recommendations, based on stakeholder input, to modernize the CRA regulations.[7] Moreover, on October 19, 2020, the Federal Reserve published an Advanced Notice of Proposed Rulemaking (ANPR)[8] to solicit public input regarding modernizing the Federal Reserve's CRA regulatory and supervisory framework. The Federal Reserve sought comment on all aspects of the ANPR including feedback from stakeholders regarding, among other things, accounting for changes in the banking system, applying metrics to certain CRA evaluation standards, and providing greater clarity for CRA eligible activities. Over 600 comment letters were received from stakeholders in response to the Federal Reserve's ANPR.

On July 20, 2021, the FDIC, the OCC, and the Federal Reserve (together, the agencies) committed to working together to jointly strengthen and modernize regulations implementing the CRA.[9]

III. PROPOSED RULE

On May 5, 2022, the FDIC Board adopted a Notice of Proposed Rulemaking (NPR or proposal) to update and clarify the agencies' regulations implementing the CRA.[10] The proposal sought to update the agencies' CRA regulations in adherence with objectives that included the following:

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[2] *See* 12 U.S.C. 2901.
[3] 12 U.S.C. 2903(a)(1).
[4] 43 Fed. Reg. 47144 (Oct. 12, 1978). Note that OTS' predecessor, the Federal Home Loan Bank Board, was party to the first issued joint regulations. OTS superseded the Federal Home Loan Bank Board in 1989.
[5] Interagency Questions and Answers Regarding Community Reinvestment; Guidance, https://www.govinfo.gov/content/pkg/FR-2016-07-25/pdf/2016-16693.pdf.
[6] 60 Fed. Reg. 22156 (May 4, 1995).
[7] *See* "Community Reinvestment Act - Findings and Recommendations," U.S. Department of the Treasury, (April 3, 2018), https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf.
[8] 85 Fed. Reg. 66410 (Oct. 19, 2020).
[9] *See* Interagency Statement on Community Reinvestment Act Joint Agency Action https://www.fdic.gov/news/press-releases/2021/pr21067.html.
[10] 87 Fed. Reg. 33884 (June 3, 2022).

- Strengthen the achievement of the core purpose of the statute;
- Adapt to changes in the banking industry, including the expanded role of mobile and online banking;
- Provide greater clarity and consistency in the application of the regulations;
- Tailor performance standards to account for differences in bank size and business models and local conditions;
- Tailor data collection and reporting requirements and use existing data whenever possible;
- Promote transparency and public engagement;
- Ensure that CRA and fair lending responsibilities are mutually reinforcing; and
- Create a consistent regulatory approach that applies to banks regulated by all three agencies.

To further these objectives, the agencies proposed to update the CRA regulations with respect to, among other things, where activities receive consideration, how these activities are evaluated, and what receives consideration under the CRA.

a. <u>Delineation of Assessment Areas, Outside Retail Lending Areas, and Areas for Eligible Community Development Activities</u>

The proposal required all banks to delineate assessment areas where a bank has its main offices, branches, and deposit-taking remote service facilities (including ATMs), termed under the proposal as facility-based assessment areas. Further, the proposal required large banks to delineate assessment areas comprised of full counties, metropolitan divisions, or metropolitan statistical areas (MSAs), but permitted intermediate and small banks to continue to delineate partial county facility-based assessment areas, consistent with current practice. The proposal also required large banks to delineate retail lending assessment areas where a bank originated at least 100 home mortgage loans or at least 250 small business loans outside of its facility-based assessment areas in an MSA or nonmetropolitan area of a State, for two consecutive years.

The proposal required that the retail loans located outside of any facility-based assessment area or retail lending assessment area for large banks, including large banks evaluated under an approved strategic plan, and for certain intermediate banks with substantial outside assessment area lending, be evaluated at the institution level. The proposal also permitted banks to receive CRA credit for any qualified community development activity, regardless of location, although performance within facility-based assessment areas would be emphasized.

b. <u>Performance Tests and Standards</u>

Asset-size Thresholds. The agencies proposed to raise the asset size threshold for each bank category. Specifically, the proposal modified the definition of a small bank to increase the asset threshold from $346 million up to $600 million in assets. The proposal also created a new intermediate bank category that includes banks of at least $600 million and less than $2 billion. The proposed intermediate bank threshold would be higher than the current intermediate small bank category, which currently includes banks with assets between $346 million and $1.384 billion. The agencies defined large banks as those banks with assets of at least $2 billion, which is higher than the current large bank threshold of $1.384 billion.[11] To further reduce burden on large banks, the agencies proposed that certain large banks with assets of $10 billion or less would not be required to collect, maintain, and report certain data that would be required of banks with assets of over $10 billion.

Performance Tests for Large, Intermediate, and Small Banks. The agencies also proposed an evaluation framework taking into consideration differences in bank size and business model with different performance tests applied to banks of different sizes and to wholesale and limited purpose banks. Specifically, the agencies proposed to evaluate: (i) large banks under the proposed Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test; (ii) intermediate banks would be evaluated under the Retail Lending Test and the *status quo* (or current) community development test, unless the bank opted to be evaluated under the proposed Community Development Financing Test; and (iii) small banks would be evaluated under the current small bank lending test, unless the bank opted to be evaluated under the Retail Lending Test. The agencies also proposed to evaluate wholesale and limited purpose banks under an appropriately adjusted version of the Community Development Financing Test. Finally, the agencies proposed to continue permitting any bank to be evaluated under an approved strategic plan.

Under the proposal, specific weights would be assigned to each test: for large banks, the Retail Lending Test would carry 45 percent weight, the Retail Services and Products Test, 15 percent, the Community Development Financing Test, 30 percent, and the Community Development Services Test, 10 percent; for intermediate banks, the Retail Lending Test and the *status quo* community development test, or at the bank's option, the Community Development Financing Test, would carry equal weight.

The agencies proposed that each performance test be applied to a bank in light of the relevant performance context information. Under the current CRA regulations, examiners rely on a broad range of economic, demographic, and bank- and community-specific information to understand the context in which a bank's record of performance should be evaluated. To fairly evaluate the responsiveness of a bank's activities, the agencies proposed that consideration be given to performance context information, including the bank's capacity and constraints, its business strategy, the needs of the community, and the opportunities for lending, investments, and services in the community.

Regarding the treatment of certain bank subsidiaries, the agencies proposed requiring the inclusion of relevant activities of a state member bank's ‘‘operations subsidiaries'' and a national bank's, Federal savings association's, state non-member bank's, and state savings association's ‘‘operating subsidiaries'' in the evaluation of the relevant bank's CRA performance. Banks exercise a high level of ownership, control, and management of their subsidiaries, and therefore, the activities of those subsidiaries should reasonably be attributable to the bank. The agencies also proposed to maintain the current flexibility for banks to choose to include or exclude the relevant activities of other bank affiliates.

[11] The agencies proposed to calculate a bank's assets based on its average assets over four quarters of the calendar year, for two consecutive calendar years. If a bank's average assets correspond to two different bank size categories in two consecutive years, the bank would be considered to belong to the smaller of the two size categories. The agencies would use this approach for calculating a bank's assets for purposes of distinguishing between large banks with assets of $10 billion or less from large banks with assets of over $10 billion for purposes of further tailoring certain elements of the proposal.

Retail Lending Test. The agencies proposed categories and standards for determining when a bank's retail lending product lines would be evaluated under the proposed Retail Lending Test. The agencies proposed the following retail lending product line categories: closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, and small farm loans. The agencies also proposed including automobile loans as an eligible retail lending product line. In addition, the agencies proposed a major product line standard to determine when a retail lending product line is evaluated.

The proposed Retail Lending Test would standardize evaluations of retail lending performance in facility-based assessment areas and retail lending assessment areas for large and intermediate banks. The agencies proposed using a retail lending volume screen to evaluate a bank's retail lending volumes. The agencies also proposed to evaluate a bank's major product lines using two distribution metrics that measure the bank's record of lending in low- and moderate-income census tracts and to borrowers of different income or revenue levels. Further, the agencies proposed to establish a standardized methodology[12] for setting performance expectations for specific product lines. The agencies also proposed certain multipliers for defining performance ranges with the objective of aligning benchmarks with the agencies' performance expectations.

Retail Services and Products Test. The agencies proposed to evaluate a large bank's delivery systems, and its deposit products and credit products and programs in facility-based assessment areas, under a Retail Services and Products Test. The proposal would have required large banks with assets of over $10 billion to be evaluated for the availability and responsiveness of their digital delivery systems and other delivery systems, and the availability and usage of deposit products responsive to the needs of low- and moderate-income individuals. The proposed test would use a predominantly qualitative approach, incorporating quantitative measures as guidelines, as applicable.

Community Development Financing Test. The agencies proposed to evaluate the community development loans and investments of large banks, as well as those of intermediate banks that opt into the test, under the proposed Community Development Financing Test. The test would include metrics (a measure of a bank's relevant activity) and benchmarks[13] for consideration during evaluations, while also incorporating an impact review to complement the benchmarks. This test would measure how well a bank meets the community development lending and investment needs of, as applicable, the bank's facility-based assessment areas, States, multistate MSAs, and institution levels, and would inform assigned conclusions at each of those levels.

Community Development Services Test. The agencies proposed to evaluate a large bank's community development services under the Community Development Services Test in facility-based assessment areas,

[12] The methodology in the proposal defined performance ranges for each conclusion category for each product, and this performance would then be averaged together. Under the methodology, the amount of lending needed to achieve a given conclusion would differ across assessment areas according to local credit demand and would calibrate across business cycles.
[13] To calculate the metrics and benchmarks, the agencies proposed an approach that would allocate the dollar value of community development activities to one or more counties, States, or to the institution level, depending on the geographic scope of the activity.

States, multistate MSAs, and nationwide areas. The evaluation would include a standard metric[14] for large banks with assets over $10 billion. These banks would collect community development services data in a standardized format, which would include hours for each community development service activity. Other large banks would continue to be evaluated for community development services on a qualitative basis. In addition, the agencies would evaluate the impact and responsiveness of a bank's community development services, including a series of specific qualitative factors, for all large banks.[15]

Community Development Financing Test for Wholesale and Limited Purpose Banks. The agencies proposed a Community Development Financing Test for Wholesale and Limited Purpose Banks, which included a qualitative review of a bank's community development loans and investments in each assessment area and an institution level-metric measuring a bank's volume of activities relative to its capacity. The agencies also proposed giving wholesale and limited purpose banks the option to have examiners consider qualitatively community development service activities that would qualify under the Community Development Services Test, for consideration of a possible adjustment of an overall institution rating from "Satisfactory" to "Outstanding."

Strategic Plans. The agencies proposed to maintain a strategic plan option as an alternative method for evaluation. Banks that elect to be evaluated under a CRA strategic plan would continue to request approval for the plan from their appropriate Federal banking agency. The agencies proposed more specific criteria to ensure that all banks are meeting their CRA obligation to serve low- and moderate-income individuals and communities. As proposed, banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and would submit plans that include the same performance tests and standards that would otherwise apply, unless the bank is substantially engaged in activities outside the scope of these tests. In seeking approval for a plan that does not adhere to requirements and standards that are applied to other banks, the plan would be required to include an explanation of why the different standards would be more appropriate in meeting the credit needs of the bank's communities.

c. Community Development Definitions, Illustrative List of Activities, and Impact Review

To clarify eligibility criteria for different community development activities, the agencies proposed to include eleven categories of activities that establish specific eligibility standards for a broad range of community development activities. The proposed definitions included: affordable housing; economic development that supports small businesses and small farms; community supportive services; revitalization activities; essential community facilities; essential community infrastructure; recovery activities in designated disaster areas; disaster preparedness and climate resiliency activities; activities with minority depository institutions (MDIs), women's depository institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs) that are certified by the U.S. Treasury; financial literacy; and qualifying activities in Native Land Areas. The agencies proposed using a primary purpose standard for determining eligibility of these

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[14] The Bank Assessment Area Community Development Service Hours Metric would measure the total hours for all community development services performed by a bank in a facility-based assessment area divided by the total number of the bank's full-time equivalent employees, to obtain the average number of community service hours per employee.
[15] For example, the use of community development services by low- and moderate-income individuals, the extent to which the services benefit low- and moderate-income individuals, and the proportion of services that relate to and provide additional support for the bank's community development financing activities.

activities, with pro rata consideration for certain affordable housing activities. Activities with a primary purpose of community development would continue to receive full CRA credit[16] under the Community Development Financing and Community Development Services Tests. The additional definitions reflect an emphasis on activities that are responsive to community needs, especially the needs of low- and moderate-income individuals and communities, rural, and Native Land areas, as well as the needs of small businesses and small farms. The proposal also expanded eligible activities with MDIs, WDIs, CDFIs that are certified by the U.S. Treasury, and LICUs.

To provide more certainty and clarity on the types of activities eligible for community development consideration, the agencies also proposed to maintain a publicly available illustrative, non-exhaustive list of activities that meet the community development definitions and criteria, and therefore be eligible for CRA consideration. The agencies also proposed including a process for modifying the illustrative list of activities periodically, and a process under which banks could confirm that an activity is eligible for community development consideration under the CRA regulations.

d. Data Collection, Maintenance, and Reporting

The agencies proposed to tailor the requirements for data collection, maintenance, and reporting. More specifically, all large banks would be required to collect and report community development financing data, retail services and products data for branch and remote service facilities, small business and small farm data,[17] data for Home Mortgage Disclosure Act (HMDA) reporters similar to current regulatory requirements, and assessment area delineations. The proposal required large banks with assets of over $10 billion to be subject to additional data collection and reporting requirements. In particular, these banks would be required to collect and report data at the county level, automobile lending data, retail services and products data for digital and other delivery systems and responsive deposit products, and community development services data for a proposed metric under the Community Development Services Test. The agencies proposed no additional data requirements for small and intermediate banks.

The proposal also retained the existing large bank data requirements for small business and small farm lending, although the agencies proposed replacing this with the CFPB's Section 1071 data[18] once this data became available.

In furtherance of the agencies' objective to promote transparency, the agencies proposed providing additional information to the public in CRA performance evaluations for large banks related to the distribution by borrower race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's assessment areas. This disclosure would leverage existing data available under the HMDA.

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

[17] Until Section 1071 data from the CFPB is made available.

[18] The CFPB's Section 1071 Rulemaking amends Regulation B to implement changes to ECOA made by Section 1071 of the Dodd-Frank Act. This rulemaking requires covered financial institutions to collect and report to the CFPB data on applications for credit for small businesses, including businesses that are owned by women or minorities. *See* 86 FR 56356 (Oct. 8, 2021), as corrected by 86 FR 70771 (Dec. 13, 2021). Since the agencies' proposal was published, the CFPB has finalized its rule. *See* 88 FR 35150 (May 31, 2023).

e. Assigned Conclusions and Ratings

The agencies proposed to provide greater transparency and consistency on assigning ratings for a bank's overall performance. The proposed approach would produce performance scores for each applicable test, at the State, multistate MSA, and institution levels, based on a weighted average of assessment area conclusions, as well as consideration of additional test-specific factors at the State, multistate MSA, or institution level. These performance scores would be mapped to conclusion categories to assign test-specific conclusions at each level. The agencies further proposed to combine these performance scores across tests to assign ratings at each level.

The agencies proposed to determine a bank's overall rating by taking a weighted average of the applicable performance test scores. For large banks, the agencies proposed the following weights: 45 percent for Retail Lending Test performance score; 15 percent for Retail Services and Products Test performance score; 30 percent for Community Development Financing Test performance score; and 10 percent for Community Development Services Test performance score. For intermediate banks, the agencies proposed to weight the Retail Lending test at 50 percent and the community development test, or if the bank opted into the Community Development Financing Test, at 50 percent.

The agencies also proposed updating the criteria to determine how discriminatory and other illegal practices would adversely affect a rating, as well as what rating level (State, multistate MSA, and institution) would be affected.

The agencies requested feedback on all aspects of the proposal, including but not limited to the specific questions outlined in the proposal.

f. Effect of Community Reinvestment Act Performance on Applications

The agencies proposed to maintain the current regulatory provisions for considering CRA performance on bank applications, such as those for mergers and acquisitions, deposit insurance, and branch openings and relocations.

IV. SUMMARY OF COMMENTS RECEIVED ON THE PROPOSED RULE

The comment period for the NPR ended on August 5, 2022. The agencies received almost 1,000 unique comment letters from various stakeholders, including from financial institutions, financial institution trade associations, non-financial institution trade associations, community advocacy organizations, community development groups, consumer advocacy groups, civil rights groups, non-financial businesses, Federal, State, and Local governments, tribal governments, tribal organizations, nonprofit organizations, religious organizations, academics, individuals, and other interested parties. The majority of the commenters supported the agencies' goal of modernizing the CRA regulations to meet the current state of banking, but commenters were divided on various aspects of the proposed rule.

a. Assessment areas

Facility-based assessment areas. Many commenters supported the facility-based assessment area proposal, including the modifications relative to the current rule. However, other commenters expressed concerns, especially regarding the types of bank facilities that would trigger the facility-based assessment area requirement, and the requirement for large banks to delineate facility-based assessment areas consisting of, at a minimum, whole counties.

Retail lending assessment areas. Commenters expressed a range of views regarding the proposed retail lending assessment area approach. Some commenters expressed support for this requirement noting that banks would be held accountable for serving low- and moderate-income individuals and communities. Other commenters opposed the requirement to delineate retail lending assessment areas arguing, among other things, that they are not consistent with the CRA's references to a bank's "local communities" and that the statute limits evaluations to areas where a bank maintains deposit-taking facilities. Other commenters provided suggestions on how to further adjust this requirement and urged the agencies to reduce the number of retail lending assessment areas to reduce what they viewed as an overly burdensome requirement.

Outside retail lending areas. Commenters expressed a variety of views regarding the outside retail lending area proposal, with some commenters supporting the proposed approach and others opposing it. Commenters also provided feedback on specific aspects of the outside retail lending area proposal, especially views on which banks should be evaluated under the outside retail lending area approach.

b. Performance tests and standards

Performance tests for large, intermediate, and small banks. Many commenters supported the proposed four-test framework for large banks offering reasons that included increased test rigor, additional quantitative standards for assessing performance, and permitting a more comprehensive evaluation of CRA activities. Other commenters offered recommendations to revise the proposed test structure for large banks by adding to, eliminating, or reconfiguring one or more of the four tests. Some commenters supported the agencies' proposal for the intermediate bank evaluation noting that the ability to opt into the Community Development Financing Test appropriately balances regulatory burden.

However, other commenters made various recommendations that ranged from continuing an intermediate bank's evaluation under the current standards and permitting the option to opt into the Retail Lending Test, to requiring that intermediate banks be subject to all large bank tests. With respect to small banks, although some commenters supported the proposed evaluation framework for these banks, other commenters suggested alternative or additional tests for small banks, including that the agencies require that small banks be evaluated under the Retail Lending Test and, if necessary, provide accommodations. Such suggested accommodations include a longer transition period; require the evaluation of their retail services activities and impose the same community development obligations as large banks; or at the very least, that small banks should not be totally exempt from having community development activities evaluated.

Asset-size thresholds. With respect to the agencies' proposal to increase the asset-size thresholds for small, intermediate, and large banks, many commenters expressed support noting that the asset size thresholds are reasonable and would represent an appropriate burden relief for small and intermediate banks, particularly for small banks given their more limited resources. Other commenters expressed a contrary view noting that reclassified banks, due to the change in asset-size thresholds, would be subject to less rigorous performance standards and diminished agency oversight, which would minimize transparency and accountability and reduce the CRA obligations and reinvestment activity of those banks. Other commenters stated that agencies did not appropriately justify the increase in asset thresholds given that banks already perform successfully under the current, lower thresholds for small, intermediate small, and large banks.

Operating subsidiaries. Some commenters supported the proposal's automatic inclusion of the activities of bank operating subsidiaries in CRA examinations, but other commenters objected with at least one commenter stating that the requirement would reduce flexibility when compared to the current rule.

Performance context. Many commenters expressed general support for the agencies' proposal to continue application of performance context information in performance tests and standards and strategic plans. Some commenters provided recommendations on how performance context should be incorporated into a bank's performance under the CRA.

Retail Lending Test. Commenters' views on the proposed metrics approach to evaluating a bank's retail lending performance, which includes benchmarks and multipliers, were mixed. Many commenters were supportive of the approach stating that the metrics would provide for rigor in the proposed Retail Lending Test, reduce CRA grade inflation by increasing the number of adverse performance conclusions, and incentivize banks to increase lending to underserved communities. Other commenters raised concerns about the proposed metrics-based approach stating, among other things, that the approach is overly complex, does not provide for sufficient consideration of performance context, and is unworkable for certain business models. Some of these commenters expressed concern that the proposed multipliers were too stringent and recommended that they be lowered.

Commenters' views were also mixed regarding the Retail Lending Volume Screen with some supporting its inclusion in the proposed Retail Lending Test and noting that it would help what some described as grade inflation on CRA examinations. However, other commenters opposed or raised concerns with the screen with some suggesting modifications. Several commenters addressed the proposed major product lines approach with some stating that the approach would create uncertainty because banks would not know which products constituted major product lines until examination time, and, as a result, that uncertainty would impede banks' ability to implement credit programs responsive to community needs. A few commenters asked that the agencies simplify the Retail Lending Test by consolidating the six proposed major product lines into as few as two, and up to four, product categories.

Retail Services and Products Test. A majority of commenters generally agreed with the agencies' proposed Retail Services and Products Test, but opinions differed on how to apply the test. Some commenters agreed that branches and remote service facilities remain an important component of a bank's delivery systems for CRA evaluation, but some commenters questioned how this evaluation would impact banks with few or no branches or remote service facilities. Other commenters expressed concerns regarding the evaluation of digital and other delivery systems noting that they could not be properly evaluated using quantitative metrics. Moreover, most commenters supported evaluating credit products under the Retail Services and Products Test, including unanimous support for listing special purpose credit programs (SPCPs) as an example of a responsive credit product or program. However, commenters' views were mixed regarding the evaluation of the responsiveness of deposit products to the needs of low- and moderate-income individuals, with some arguing that the agencies lacked statutory authority to evaluate deposit products.

Community Development Financing Test. Commenters supported certain aspects of the proposed Community Development Financing Test, with some objecting to several aspects of the test. Many commenters objected to the combined evaluation of community development loans and investments under the proposed Community Development Financing Test due to the potential negative impact the test would have on equity tax credit markets and community development investments, noting banks could be incentivized to make community development loans that are less costly. In contrast, some industry commenters supported the combined test, noting that it would allow for more flexibility in financing decisions.

Several commenters stated the proposed Community Development Financing Test's inclusion of metrics and benchmarks was an improvement compared to current regulations, but also noted the test lacks sufficient rigor or standards to guide examiner judgment. These commenters were particularly concerned that this test did not include proposed performance standards similar to those included in the retail lending test. Commenters also expressed general support for allowing consideration of community development activities outside of a bank's assessment areas.

Community Development Services Test. A few commenters generally supported the proposed Community Development Services Test. However, many commenters addressing this test believed it would create the possibility of misplaced examiner discretion and urged the agencies to develop guidelines to prevent inconsistent and inflated ratings. A few commenters stated that the proposed Community Development Services Test is insufficiently robust, with at least one of these commenters asserting the scope of activities is too narrow. The agencies received mixed feedback on the community development service hours metric, with some commenters noting the burden of collecting and reporting such data would be great, while others noted that banks already maintain this data.

c. Community Development Definitions, Illustrative List of Activities, and Impact Review

Community Development Definitions: Although commenters generally supported the proposed definitions for community development activities, some expressed various concerns with certain aspects of the definitions and made suggestions on how they should be clarified or implemented. For example, regarding the proposed affordable housing definition, some commenters argued the agencies should not distinguish between government-subsidized and unsubsidized affordable housing. With respect to the proposed definition of economic development, many commenters expressed concerns that, relative to the current rule, the proposed changes would limit the activities that could qualify for credit and the range of small businesses that could be supported, and urged the agencies to maintain the existing size and purpose tests. Regarding financial literacy activities, some commenters opposed the proposed approach to consider activities that benefit people of all income levels, arguing that the need is more acute for low- and moderate-income individuals.

Illustrative List of Qualifying Activities. Most commenters expressed support for the agencies' proposal to maintain a non-exhaustive illustrative list of qualifying activities. Commenters generally stated that an illustrative list would simplify compliance, promote consistency among agencies and examiners, and provide more regulatory certainty regarding community development activities that meet the requirements for CRA credit.

Impact Review of Community Development Activities. Commenters generally favored adopting the proposed impact factors, while expressing a range of views regarding how particular impact factors should be implemented. Several commenters urged the agencies to expand impact factor reviews to the proposed Retail Lending Test and Retail Services and Products Test. Commenters generally supported the inclusion of the impact review in the Community Development Financing Test, the Community Development Services Test, and the Community Development Financing Test for Wholesale or Limited Purpose Banks. Other commenters recommended that the agencies provide further clarity and processes concerning how the agencies would review and apply impact factors in examinations and ratings determinations.

d. Data Collection, Maintenance, and Reporting

Regarding retail services and products data, several commenters expressed concerns that the proposed retail services and product data requirements were overly burdensome given the relatively small impact the test would have on a bank's overall CRA rating. Commenters' views regarding the proposed deposits data requirements were mixed with some generally supporting the agencies' proposal, while other commenters expressed concerns that the deposits data collection and reporting requirements would be overly burdensome for large banks. Commenters expressed support for the agencies' proposal to use the CFPB's Section 1071 rule for collection and reporting of small business loans and small farm loans.

Many commenters supported the agencies' proposal to disclose HMDA data by race and ethnicity in CRA performance evaluations, but they also expressed disappointment that the HMDA race and ethnicity data would not impact CRA ratings. A few other commenters opposed the proposal altogether, arguing that disclosing the data would mislead the public or would be outside the scope of CRA.

e. Performance Conclusions and Ratings

Several commenters expressed that they liked the clear expectations and increased rigor under the proposed performance score and assigned ratings, but many urged the agencies to reconsider the rating scale to allow for a greater distinction between ratings.

Several commenters noted that the large bank weighting was inflexible and could place a disproportionate emphasis on retail loans for banks focused on other business lines. Many commenters expressed concern that the proposal did not place adequate weight on community development activities as compared to retail activities, which could disincentivize community development activity.

Some commenters expressed support for downgrading banks that engage in discrimination, but some objected to the expansion of the provision to cover all discriminatory or other illegal practices because they believe these practices are addressed under other regulatory schemes and that the expansion would be inconsistent with Congress's intent in enacting the CRA.

f. Other Comments

Transition. Many commenters expressed that the proposed 12-month transition period was insufficient and urged the agencies, when finalizing the implementation date of this rule, to consider the amount of preparation banks will need to complete during the transition period in response to the final rule, including analysis, hiring additional staff, training, data collection implementation, and the development of new software. These commenters argued the transition period should be at least 18 months.

Racial Equity. Many commenters asserted that the agencies' proposal missed an opportunity to make racial equity a central focus of CRA based on the history of redlining, other systemic discrimination, and structural racism as the background behind enactment of the CRA. Commenters expressed frustration that the majority of banks pass their CRA examinations, while the racial wealth and homeownership gaps persist. These commenters urged the agencies to explicitly consider race and ethnicity in the CRA evaluation framework. A few commenters cautioned against expanding consideration of race and ethnicity in the CRA regulatory framework due to legal concerns.

V. OVERVIEW OF THE FINAL RULE

In an effort to modernize the current CRA regulatory framework to encourage banks to more effectively meet the needs of low- and moderate-income communities and individuals, the final rule implements substantive changes in five key areas: (1) Assessment Areas; (2) Performance Evaluation Framework; (3) Community Development Activities; (4) Data Collection, Maintenance, and Reporting; and 5) Performance Conclusions and Ratings. The following sections provide a brief overview of the final rule in each of those areas.

a. Delineation of Assessment Areas, Outside Retail Lending Areas, and Areas for Eligible Community Development Activities

Facility-based assessment areas. The final rule adopts the proposal's facility-based assessment area requirement mostly[19] as proposed. Specifically, a bank's facility-based assessment areas must include each county in which a bank has a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding geographic areas in which the bank has originated a substantial portion of its loans. Large banks and limited purpose banks[20] will be required to delineate assessment areas that consist of full counties; however, small and intermediate banks will be permitted to adjust the boundaries of their facility-based assessment areas to include a portion of a county that the bank can reasonably be expected to serve. The final rule also retains the proposed and current rule's prohibition that assessment areas may not reflect illegal discrimination or arbitrarily exclude low- or moderate-income census tracts.

Retail lending assessment areas. In response to commenters' feedback and to better align the retail lending assessment area approach with the agencies' important policy objectives, the final rule adopts the proposal

[19] Unlike under the proposal, the final rule does not require a bank to delineate a facility-based assessment area based on the location of a staffed banking facility (other than a main office, branch, or deposit-taking remote service facility) that accepts deposits and is open to the general public.
[20] As noted below, under the final rule the wholesale bank designation will be rolled into the limited purpose bank designation with no substantive impact intended.

with several modifications to the retail lending assessment area delineations to limit this requirement to a narrower subset of large banks, reduce the number of retail lending assessment areas that affected large banks will need to delineate, reduce the number of product lines evaluated in retail lending assessment areas, and narrow the geographic scope of certain retail lending assessment areas. Specifically, the final rule:

- exempts large banks that conduct more than 80 percent of their retail lending in facility-based assessment areas from the retail lending assessment area requirement;
- increases the proposed count thresholds for triggering retail lending assessment areas to at least 150 closed-end home mortgage loans and at least 400 small business loans (from the proposed 100 and 250, respectively);
- modifies the evaluation of a large bank's retail lending performance in retail lending assessment areas so that only closed-end home mortgage loans and small business loans are evaluated, and only if they exceed the applicable loan count threshold; and
- limits the proposed geographic requirements for State nonmetropolitan retail lending assessment areas to exclude any counties where a large bank has not originated any home mortgage or small business loans.

Outside Retail Lending Areas. In response to commenters' feedback and to better align the outside retail lending area approach with the agencies' important policy objectives, the final rule adopts the proposal with several modifications involving the delineation of outside retail lending areas and in the weighting used in constructing the benchmarks used to evaluate a bank's retail lending in the bank's outside retail lending area. Specifically, the final rule excludes any nonmetropolitan counties where a large bank has not originated any retail loans from its outside retail lending area. The final rule also uses loan count in individual product lines to weight the community and market benchmarks in each component geographic area when calculating the tailored benchmarks used to evaluate each major product line in a bank's outside retail lending area.

Areas for eligible community development activities. The final rule also adopts the proposal to permit banks to receive consideration for any community development activity, regardless of location. In assessing a large bank's Community Development Financing Test performance, the emphasis on performance within facility-based assessment areas is calibrated based on the concentration of a bank's retail lending and deposits inside its facility-based assessment area(s). In this way, the Community Development Financing Test recognizes differences in bank business models and also gives weight to community development financing activity taking place across an entire State, multistate MSA, or nationwide.

b. <u>Performance Evaluation Framework</u>

The final rule retains the three bank size categories with the following thresholds, consistent with the proposal:

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

Under the final rule, approximately 600 banks currently categorized as intermediate small banks would be recategorized as "small banks," and approximately 130 banks currently categorized as large banks would be recategorized as "intermediate banks."[21] Bank-size thresholds will be adjusted annually for inflation and published by the FDIC.[22] The limited purpose bank designation will be retained; however, the wholesale bank designation will be rolled into the limited purpose bank designation with no substantive impact intended. The final rule also retains the ability of a bank to be evaluated for its performance under an approved strategic plan, with additional clarity for banks relative to the proposal in determining which performance tests and standards apply and what modifications are permitted.

Consistent with the current and proposed rule, the final rule implements a revised framework under which the agencies will evaluate a bank's CRA performance based on bank asset size and business model. However, the final rule revises the proposal pertaining to the weight assigned to each large bank performance test by decreasing the weight of the Retail Lending Test and increasing the weight of the Community Development Financing Test. A large bank will be evaluated under the following four tests with specific weights applied to each performance test in assigning a bank's ratings as follows:

- Retail Lending Test weighted at 40 percent;
- Retail Services and Products Test weighted at 10 percent;
- Community Development Financing Test weighted at 40 percent; and
- Community Development Services Test weighted at 10 percent.

Except for the Community Development Services Test, each test will use various metrics and qualitative measures to evaluate a bank's CRA performance. The final rule also applies certain aspects of the evaluation framework for large banks, specifically, the evaluation of certain provisions of the Retail Services and Products Test, only to large banks with assets of over $10 billion.

The final rule will evaluate an intermediate bank's performance under the Retail Lending Test and the Intermediate Bank Community Development Test, or at the bank's option, the Community Development Financing Test, with the Retail Lending Test and the applicable community development test receiving equal weighting. An intermediate bank may receive additional consideration for activities that qualify under the Retail Lending Test and the Community Development Services Test, as applicable depending on the community development test under which the bank is evaluated for a possible adjustment from a "Satisfactory" to an "Outstanding" rating.

The final rule largely adopts the proposal's evaluation framework for small banks. Specifically, a small bank will be evaluated under one test, the Small Bank Lending Test, which evaluates the bank's retail lending in its facility-based assessment areas. The final rule also adopts the proposal to permit, at the bank's option, evaluation under the Retail Lending Test. A small bank may request and receive additional consideration for additional activities for a possible adjustment from a "Satisfactory" to an "Outstanding" rating.

[21] The agencies based these estimates on year-end assets from 2021 and 2022 Call Report data.
[22] The dollar figure would be adjusted annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

The final rule adopts the proposal's provision that required banks to include the activities of affiliates that are operating subsidiaries in the evaluation of the bank's CRA performance. However, consistent with the current rule, banks may continue to include or exclude the activities of other affiliates that are not operating subsidiaries.

The final rule does not adopt the proposed expansion beyond credit practices for the consideration of evidence of discriminatory or other illegal practices, but rather retains the existing regulatory standard with clarification. The final rule clarifies the current rule's provision on the effect of evidence of discriminatory or other illegal credit practices on a bank's CRA rating by providing that discriminatory or other illegal credit practices consist of violations of specified laws, including any other violation of a law, rule, or regulation consistent with the types of violations listed. The final rule also adopts the proposal's provision that provides that a bank's performance may be adversely affected by evidence of discriminatory or other illegal credit practices engaged in by the bank's operating subsidiaries because those activities are considered a component of the bank's own operations.

i. Performance Tests and Standards

Retail Lending Test. The final rule adopts the proposed Retail Lending Test with revisions described below. The test employs a Retail Lending Volume Screen and distribution metrics and benchmarks, and includes additional factors as part of the evaluation. The Retail Lending Volume Screen evaluates the volume of a bank's lending in the bank's facility-based assessment areas and compares it to other banks in the same facility-based assessment area. The geographic distribution metric is used to evaluate how well banks are serving low- and moderate-income census tracts, while the borrower distribution metric is used to evaluate lending to low- and moderate-income borrowers, small businesses, and small farms. The final rule also provides a list of additional factors that the agencies can use to adjust a recommended conclusion resulting from the distribution analysis.

The agencies reduced the Retail Lending Test multipliers utilized to calculate performance thresholds, which will result in "Outstanding" and "High Satisfactory" Retail Lending Test conclusions being more common relative to the agencies' proposal. In addition, in consideration of the comments received, the final rule reduces the number of loan products evaluated under the Retail Lending Test from six to four (closed-end home mortgage loans, small business loans, small farm loans, and automobile loans), and only evaluates the automobile lending of large and intermediate banks for which such loans represent a majority of the bank's lending, or other banks that opt to have their automobile lending evaluated.

Retail Services and Products Test. The final rule also adopts the proposal's Retail Services and Products Test. The test evaluates a bank's retail banking services and the responsiveness of the bank's deposit products and credit products and programs to the needs of the bank's entire community, including low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms. This test utilizes a qualitative approach while incorporating quantitative benchmarks to evaluate branch and remote service facility distributions.

Under the final rule, the agencies will evaluate the digital delivery systems and other delivery systems of a large bank with assets greater than $10 billion and large banks with assets of $10 billion or less that do not operate branches. The agencies will not evaluate the digital delivery systems and other delivery systems of other large banks with assets of $10 billion or less, unless the bank opts to have them considered.

Also under the Retail Services and Products Test, the agencies will evaluate a bank's credit products and programs responsive to the credit needs of low- and moderate-income individuals, families, or households, residents of low- and moderate-income census tracts, small businesses, and small farms. In addition, the agencies will evaluate the availability and usage of deposit products responsive to the needs of low- and moderate-income individuals, families, or households. The deposit product evaluation will be required for large banks with assets of over $10 billion, but remains optional for other large banks with assets of $10 billion or less. Under the final rule, the agencies evaluate a bank's credit and deposit products to determine whether the bank's performance contributes positively to the bank's Retail Services and Products Test conclusion.

Community Development Financing Test. The final rule adopts the proposed Community Development Financing Test with revisions. The Community Development Financing Test applies to large banks and intermediate banks that opt to be evaluated under the test. The Community Development Financing Test is a qualitative evaluation that includes: a community development financing metric used to evaluate the dollar amount of a bank's community development loans and investments relative to the bank's deposit base; standardized benchmarks to aid in qualitatively evaluating performance; and an impact review to determine whether activities are particularly impactful or responsive.

The final rule also adopts an additional metric for large banks with assets greater than $10 billion to evaluate community development investments at the institution level. The final rule does not prescribe a particular weighting for community development loans or investments within the Community Development Financing Test, nor does it prescribe weighting for the metrics and benchmarks or impact and responsiveness review components.

Community Development Services Test. The final rule adopts the proposed Community Development Services Test with revisions. In the final rule, the agencies will evaluate, qualitatively, a banks' community development services performance in facility-based assessment areas, States, multistate MSA, as applicable, and the nationwide area. The final rule maintains the proposed consideration of the impact and responsiveness of the bank's community development services, but does not include the proposed quantitative metric for large banks with assets over $10 billion. Importantly, the final rule requires community development services evaluated under the test to be related to the provision of financial services or the expertise of bank staff.

Community Development Financing Test for Limited Purpose Banks. The final rule adopts the proposal, with revisions, to evaluate limited purpose banks (including wholesale banks) under a specific Community Development Financing Test for these banks. In the final rule, the designations for wholesale and limited purpose banks are streamlined by combining both into a limited purpose bank designation. Although the name has changed, the Community Development Financing Test for Limited Purpose Banks will employ qualitative and quantitative factors similar to those proposed at the assessment area, multistate MSA, and State levels. At the institution level, the evaluation will also employ a Limited Purpose Bank Community Development Financing Metric as a standard measurement of a bank's volume of activities relative to its capacity.[23]

Strategic Plan. The final rule retains the strategic plan option with some significant changes that continue to provide banks with flexibility in meeting their CRA obligations. The term of a bank's plan cannot exceed five years and must include the same performance tests that would apply in the absence of an approved plan, subject to certain eligible modifications and additions (including the optional establishment of performance goals). Plans must also include justifications as to why the bank's business model is inconsistent with the performance tests that would apply in the absence of the plan; why evaluating a bank using a plan would be more meaningful, and the need for any eligible modifications or additions to the applicable performance tests.

Banks must share and formally solicit public comment on the initial draft plan for at least 60 days by sharing it broadly on the bank's and the bank's primary Federal regulator's websites and publishing notice in a newspaper of general circulation. The final rule expands the timeframe for public review and more explicitly requires banks to explain how public input was considered in the development of the plan. Banks operating under a plan will be required to delineate assessment areas and be evaluated subject to the same geographic areas as comparable banks that are not operating under a plan. The final rule details the circumstances under which a plan could eliminate, modify, or add a performance test component, as well as when a plan could include alternative weights for assessing performance across geographic areas and tests.

c. Community Development Definitions, Illustrative List of Activities, and Impact Review

The final rule updates the definition of community development to provide banks with additional clarity regarding the loans, investments, and services that the agencies have determined support community development. Specifically, the final rule includes the following community development categories:

- Affordable housing, which retains the four components of this category from the proposal and adds a category for affordable single-family rental housing in nonmetropolitan areas;
- Economic development, which adds a direct loan to small businesses component, in addition to the proposed components focused on activities other than directly lending through government programs, as well as activities with intermediaries;
- Community supportive services;
- Place-based activities, which replaces the revitalization and stabilization activities component of the current rule with six categories of activities that benefit residents of targeted geographic areas, including:
  - Revitalization or stabilization activities undertaken in conjunction with a government or mission-driven nonprofit organization plan, program, or initiative;
  - Essential community facilities;
  - Essential community infrastructure;
  - Recovery activities that support the revitalization of a designated disaster area;

[23] One key difference between the final Community Development Financing Test metric for large banks and the final Community Development Financing Test for Limited Purpose Banks is that the test for large banks will use deposits to construct its metric and the test for Limited Purpose Banks will use assets to construct its metric. This difference is intended to account for the unique business models of limited purpose banks, which may not collect retail deposits.

- Disaster preparedness and weather resiliency; and
    - Qualifying activities in Native Land Areas.
- Activities with MDIs, WDIs, LICUs, and CDFIs; and
- Financial literacy, which retains the proposed approach of allowing activities to individuals of all income levels, including low- and moderate-income individuals.

The final rule also includes a list of impact and responsiveness review factors which the agencies will consider in evaluating the extent to which a bank's community development loans, investments, and services are impactful and responsive in meeting community development needs.

Further, to promote clarity and consistency, the final rule includes a process through which banks can confirm with the agencies whether a particular activity may be eligible for community development consideration. Under the final rule, the agencies will commit to maintaining a publicly available, non-exhaustive illustrative list of activities eligible for community development consideration.

d. Data Collection, Recordkeeping, and Reporting

Consistent with the proposal, the final rule does not impose any new data collection and reporting requirements for small and intermediate banks. In addition, the final rule updates the existing data collection and reporting requirements while leveraging existing data where possible. In some instances, however, the final rule updates the CRA regulations to introduce incremental data collection, maintenance, and reporting requirements for large banks to fill gaps in the current regulation for such requirements. In addition to leveraging existing data, the final rule requires large banks, as applicable, to collect, maintain, and report data that will enable the agencies both to implement the metrics-based approaches in the Retail Lending Test and Community Development Financing Test, and to evaluate activities under the Retail Services and Products Test and Community Development Services Test. In a change from the proposal, data collection is expected to begin on January 1, 2026 with reporting beginning the following year, by April 1, 2027.

Deposits Data. Under the final rule, large banks, including limited purpose banks, with assets of over $10 billion are required annually to collect, maintain, and report deposits data based on the location of the depositor, instead of at the bank branch level as is done for the FDIC's Summary of Deposits (SOD). Deposits data will be used to construct the various metrics and benchmarks at the facility-based assessment area, State, multistate MSA, and institution levels for the Retail Lending Test and the Community Development Financing Test. Deposit data will also be used for weighting to assign conclusions at the State, multi-state MSA, and institution levels. For large banks, including limited purpose banks, with assets of $10 billion or less, intermediate banks, and small banks that opt into the Retail Lending Test, SOD data will be used unless the bank opts to collect, maintain, and report the deposits data.

Retail Lending Data. Under the final rule, large banks will be required to collect, maintain, and report retail lending data in a prescribed format for loans to small businesses and small farms.[24] While there are no reporting

[24] Due to ongoing legal challenges regarding the CFPB's Section 1071 Final Rule, the final rule will delay the effective date of the transition to the CFPB's Section 1071 data indefinitely. The agencies will issue a rulemaking in the **Federal Register** announcing the effective date of the Section 1071 transition in the future. In the short term, data collection and reporting

requirements, large banks must collect and maintain automobile lending data in a prescribed format when more than 50 percent of the bank's loans are automobile loans or the bank opts to have such loans evaluated under the Retail Lending Test, while all other banks may choose to collect and maintain this data at their option. The final automobile lending data collection requirements differ notably from the proposal, which would have required collection *and reporting* by all banks with assets over $10 billion without regard to their concentrations of automobile loans. With respect to data on home mortgage loans,[25] in response to comments, the final rule expands on the proposal by adding a new requirement that, if a large bank is not a HMDA reporter due to its branch location but would otherwise meet size and lending activity thresholds, the bank must collect and maintain limited data in a prescribed format.

Under the final rule, as proposed, small and intermediate banks will not be required to collect, maintain, or report retail lending data. Instead, as is done under the current rule, examiners will continue to use the data provided by these banks (either optionally collected and maintained by the bank or sampled by examiners) or reported as required by other laws or regulations (*e.g.*, HMDA).

Retail Services and Products Data. Under the final rule, large banks will be required to collect and maintain relevant information regarding the locations of and services offered at its branches and remote service facilities in a prescribed format. Regarding digital delivery systems and other delivery systems, only large banks with assets of over $10 billion, large banks with assets of $10 billion or less with no branches, or banks that request additional consideration for their digital delivery systems and other delivery systems, must collect and maintain data in a prescribed format as it relates to the range of services and products offered, the number of checking and savings accounts opened through these channels by census tract income level for each calendar year, and the number of checking and savings accounts opened through these channels that are active at the end of each calendar year by census tract income level.

Additionally, large banks with assets over $10 billion or large banks that request additional consideration for deposit products that are responsive to low- and moderate-income individuals must collect and maintain data in a prescribed format that details the number of responsive deposit accounts opened and closed each year by tract income level, as well as the percentage of responsive deposit accounts compared to total deposit account overall. Further, a bank may optionally collect and maintain any other information that demonstrates the usage of responsive deposit accounts in the format of their choosing.

Community Development Loans and Investments Data. Under the final rule, large banks and comparably-sized limited purpose banks will be required to collect, maintain, and report community development financing data in a standardized format for each community development loan or investment. Collection of this data will be required to construct the community development financing metrics and benchmarks. Small banks will not have data collection and reporting requirements for community development loans or investments; however, consistent with current practice, a small bank will need to present sufficient information if consideration for

requirements and processes for small business loans and small farm loans will remain similar to how they are constructed under the current rule (several data fields have been updated). However, in the longer term, the agencies intend to replace the current requirements with the CFPB's data collection and reporting requirements under its Section 1071 rule, when that rule becomes effective.

[25] Under the final rule, large banks must collect, maintain, and report home mortgage data similar to current regulatory requirements. If it is a HMDA reporter, a large bank is required to report the location of each home mortgage loan outside of the MSAs in which the bank has a home or branch office.

these activities is requested. An intermediate bank that opts to be evaluated under the Community Development Financing Test will be required to collect and maintain the same data as a large bank but could do so in a format of the bank's choosing and will have no reporting requirement.

Community Development Services Data. Under the final rule, all large banks will be required to collect and maintain, in a prescribed format or format of their own choosing, relevant community development services information. The final rule does not adopt the proposed Community Development Services Test metrics that would have been required of large banks with assets of over $10 billion. There is no reporting process for this data, and no other banks are required to collect or maintain data on community development services.

HMDA data by income, race, and ethnicity. The final rule adopts the agencies' proposed HMDA data disclosure by income, race, and ethnicity. However, instead of disclosing this data on the CRA performance evaluation as proposed, the relevant agency will publish this data on its public website for each large bank's facility-based assessment areas, and as applicable, its retail lending assessment areas.

e. Assigned Conclusions and Ratings

Except for a small bank and a bank operating under an approved strategic plan,[26] conclusions and associated scores will be assigned at the State, multistate MSA, and institution levels using the following corresponding point values: "Outstanding" (10 points); "High Satisfactory" (7 points); "Low Satisfactory" (6 points); "Needs to Improve" (3 points); "Substantial Noncompliance" (0 points). Consistent with the CRA statutory requirements, the final rule adds a provision that was not included in the proposal, which requires conclusions for MSAs and nonmetropolitan areas of the States where the bank maintains one or more branches. Conclusions in the rated areas are a function of the performance in the corresponding assessment areas and geographic areas (such as the outside retail lending area and nationwide), as applicable.

The conclusions will be rolled into State, multistate MSA, and institution ratings, using the statutory ratings of "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance."   All ratings are subject to adverse adjustment due to evidence of discriminatory or other illegal credit practices.

VI. EFFECTIVE DATE

This rule will be effective on the first day of the first calendar quarter that begins at least 60 days after publication in the **Federal Register**, which staff expects will be April 1, 2024. The rule also contains a number of amendments that will be effective through January 1, 2031, and others that will be delayed indefinitely. The agencies will publish a document in the **Federal Register** announcing an effective date for these delayed amendments.

[26] Small Bank Lending Test does not have a "Low Satisfactory" or "High Satisfactory" conclusion; rather, performance in these categories is combined in a "Satisfactory" category. Strategic plan banks' conclusions are based on the plan methodology.

VII. CONTACTS

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