Wednesday, April 8, 2020

Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

RE: OCC Docket ID OCC-2018-0008; FDIC RIN 3064-AF22

Dear Comptroller Otting and Chairman McWilliams:

On December 12, 2019, the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) jointly issued a notice of proposed rulemaking (NPR, or proposal)[1] proposing to significantly change regulations under the Community Reinvestment Act (CRA). We are pleased to offer comments on the NPR. We are researchers in the Housing Finance Policy Center[2] at the Urban Institute, a Washington, DC, nonprofit research organization whose mission is "to open minds, shape decisions, and offer solutions through economic and social policy research." The views we express are our own and should not be attributed to the Urban Institute, its trustees, or its funders.

Introduction

The Community Reinvestment Act, enacted in 1977, states that "regulated financial institutions have continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered."[3] The CRA is a public disclosure statute. Bank regulators are required to periodically assess each "institution's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods," and to make much of the assessment and supporting details public.[4] This is in stark contrast to safety and soundness examinations of banks, the unauthorized release of which is a criminal offense.[5]

Implementation of the CRA is the concurrent responsibility of the three federal agencies that supervise banks: the OCC, the FDIC, and the Federal Reserve. Each agency has the authority to publish its own regulations. In practice, however, over the CRA's history (more than 40 years), the agencies have published substantially identical regulations and have collaborated on joint questions and answers elaborating on and

[1] Community Reinvestment Act Regulations, 85 Fed. Reg. 1204 (January 9, 2020). The NPR was released during a meeting of the FDIC on December 12, 2019, although not published in the Federal Register until January 9, 2020, with a March 9, 2020 deadline for comments. The comment deadline was subsequently extended to April 8, 2020. See Community Reinvestment Act Regulations; Extension of Comment Period, 85 Fed. Reg. 10996 (February 26, 2020).

[2] Our biographies are available at https://www.urban.org/policy-centers/housing-finance-policy-center/researchers.

[3] 12 U.S.C. §2901 (2012).

[4] 12 U.S.C. §2906 (2012).

[5] 18 U.S.C. §1906 (2016).

providing additional guidance concerning the statute and regulations. The current NPR stands in contrast to this history. The Federal Reserve is not joining in its proposal, and Federal Reserve governor Lael Brainard has indicated that the agency has substantial concerns with at least some portions of the NPR.[6]

The regulations under the CRA were last comprehensively revised in 1995.[7] At that time, the agencies stated they would "conduct a full review of the final rule in the year 2002,"[8] and in 2001, the agencies started such a review, though the review did not result in a revision of the regulation.[9] Subsequent efforts to revise the regulation included interagency public hearings in 2010, a joint agency report to Congress in 2017, a report by the US Department of the Treasury in 2018, and an advance notice of proposed rulemaking by the OCC in August 2018.

The CRA regulations need revision and updating. Since 1995, US financial services have undergone major changes that affect how the CRA is implemented and the statute's impact. These include a much larger and vastly more concentrated banking industry,[10] the emergence of nationwide and large regional banks, and the invention and growth of online and mobile banking, both by institutions that continue to have branch networks and by institutions that operate largely or exclusively online. Another important change is the reduced role of banks in home mortgage lending, compared with nonbanks not subject to the CRA. As of January 2020, banks originated only 34 percent of all federally insured or guaranteed home mortgage loans, arguably increasing the importance of ensuring that bank mortgage lending serves the banks' entire community.[11]

In addition to concerns relating to the changed financial services environment, the regulations themselves and their implementation raise concerns calling for modernization. These problems include the following:

- a substantial time lag between examination and issuance of an exam report (the most recent report available for the nation's largest bank was issued in 2013), which limits the reports' utility both for banks and communities
- the existence of communities (especially those in which large numbers of primarily online banks are headquartered) in which the amount of money available for CRA-eligible investments is high compared with community needs (i.e., CRA hot spots) and other areas, primarily rural, where demand for funds for CRA-eligible projects far outstrips funds available (i.e., CRA deserts)
- uncertainty as to "what counts," especially with respect to community development loans and investments, which probably leads to less investment that is responsive to community needs and may lead to less investment overall
- examination practices that not only vary from regulator to regulator but within each agency and that include superficial examinations of community development activity in many assessment areas

[6] Lael Brainard, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose," presentation at the Urban Institute event "Modernizing the Community Reinvestment Act," Washington, DC, January 8, 2020.

[7] Community Reinvestment Act Regulations, 60 Fed. Reg. 22156 (May 4, 1995).

[8] Community Reinvestment Act Regulations, 60 Fed. Reg. 22177 (May 4, 1995).

[9] Community Reinvestment Act Regulations, 66 Fed. Reg. 37602 (July 19, 2001).

[10] In 1995, the country's 10 largest banks held 25 percent of banking assets, or $1.082 trillion, but as of the end of 2019, the 5 largest banks held 42 percent of banking assets, or $7.844 trillion. See "Details and Financials: Institution Directory (ID)," Federal Deposit Insurance Corporation, accessed April 6, 2020, https://www7.fdic.gov/idasp/advSearchLanding.asp.

[11] Laurie Goodman, Alanna McCargo, Edward Golding, Jim Parrott, Sheryl Pardo, Todd M. Hill-Jones, Karan Kaul, et al., *Housing Finance at a Glance: A Monthly Chartbook, February 2020* (Washington, DC: Urban Institute, 2020).

- the publication of data for small business, small farm, and community development lending that is incomplete, too aggregated, and hard to use—coupled with no data concerning consumer lending or community development investments

These industry changes and regulatory concerns have long called out for revision of a 25-year-old regulation that was written for a different banking environment. Although multiple regulators continue to each have the authority to write regulations under the CRA, a consistent regulatory regime is in the best interest of banks and their partners, as well as the consumers and communities the CRA was designed to serve. We hope that, before a final rule is adopted changing CRA regulations, the FDIC and the OCC can come into alignment with the Federal Reserve, and all three regulators can adopt substantially similar regulations.

Beyond the lack of consistency across all regulators, we have substantial concerns with the current NPR, with respect to process and substance. The issues we discuss in this comment letter are informed by the difficulty we have had—notwithstanding significant technical resources—in evaluating the likely impact of the proposed regulation, combined with our concerns about the public's ability to understand banks' local service to their communities in the future. Our comments focus on the general performance standards, to which almost all banks with more than $500 million in assets would be subject. To summarize, we are concerned about the following issues:

- The proposal includes no data that would help the public understand the likely impact of the proposal on banks' performance and on their communities, and thus to comment on that impact based on data. Indeed, virtually concurrently with publication of the NPR, the OCC published a request for public input for much of the data that should have been included in the NPR.[12] The comptroller, testifying to Congress, stated that he would not make public the data submitted pursuant to the request.[13] Moreover, as discussed below, there is insufficient publicly available data to accurately assess the proposal's impact.
- The presumptive bank-level CRA ratings thresholds have been set to approximately replicate the current distribution of ratings under the CRA.[14]
  - » We question why matching today's distribution should be a goal in and of itself, as there is no guidance to measure whether the current distribution accurately reflects bank activities to meet community needs. Moreover, we question how the OCC and FDIC were in a position to assess how well the proposal matches the current distribution, when, as stated in the NPR, they did not have many critical numbers relating to how the proposal would function.
  - » Our analysis indicates that the proposed methodology will produce a far higher share of "outstanding" ratings than banks currently receive. Moreover, our analysis is conservative: the proposal contains a significant expansion of "what counts"[15] for the CRA, which we have not fully taken account of. A regulation that generates an overwhelmingly large number of outstanding ratings measured primarily by the dollar amount of loans on bank balance sheets will reduce incentives for banks to undertake qualifying activities. Banks will be especially

[12] Community Reinvestment Act Regulations; Request for Public Input, 85 Fed. Reg. 1285 (January 10, 2020).

[13] Joseph M. Otting, Statement before the House Financial Services Committee, Washington, DC, January 29, 2020.

[14] Community Reinvestment Act Regulations, 85 Fed. Reg. 1221–22 (January 9, 2020).

[15] The most clear-cut expansion is the increase in the threshold for the size of small business and small farm loans and entities from $1 million and $500,000, respectively, to $2 million, but there are also substantial expansions in community development activities (e.g., the inclusion of housing outside LMI areas with rents affordable to residents at 80 percent of area median income), the monetization of service activities, and in the geography within which activities count (e.g., inclusion of Indian country and community development activities nationwide). There are also a few limitations, including home mortgage loans to middle- and upper-income households in LMI communities and a limitation on the extent to which loans that are originated but quickly sold count.

disincented to do activities that are difficult or have a smaller-dollar value—two characteristics of activities in low-income areas and rural communities. To even begin to have the same impact as the CRA currently does, the ratings thresholds would have to be significantly higher than in the NPR.

- The retail lending tests are pass-fail tests. The bank-level CRA evaluation measure allows a bank to be strong on one activity but weak on another. But the retail distribution tests are unforgiving: failing one activity fails the entire institution. Moreover, thresholds are set such that some very large banks would not be measured on activities where they have a large presence, because their lending in another line of business is considerably larger. And small institutions with few assessment areas are at a considerable disadvantage.
- The NPR would substantially reduce the amount of information made available to the public (including public officials other than federal bank regulators) through which to assess how well individual banks are meeting community needs, as well as how community needs are being met on a smaller-than-county basis. Instead of increasing the public availability of data—which is currently inadequate for small business, small farm, and community development lending and is nonexistent for consumer lending and community development investments—the proposal would limit public data to aggregated countywide data on all banks' retail lending activities in the county, plus nationwide data about each bank's total dollars of retail lending and community development activities.[16]

We recognize that some features of this proposal are good. We recognize CRA regulations need to be modernized, and we applaud the OCC and FDIC for starting the discussion on how it should be done. We recognize and agree that banks need more objective measures. We also like the fact that banks would be able to obtain confirmation that an activity will qualify for CRA purposes before committing to an investment. But we question the proposed methodology used to assess the rating, the thresholds that are set for the ratings, and the substantial diminution in public disclosure under the proposal. We urge the agencies to join with the Federal Reserve to issue a substantially revised proposal that deals with these issues, along with the essential background information to help the public comment effectively.

The OCC and FDIC Proposal

The proposal uses a framework composed of three objective measures of CRA performance to evaluate a bank's CRA performance, as follows:[17]

- **Bank-level CRA evaluation metric.** The bank-level CRA evaluation measure divides the value of qualifying activities by a bank's retail domestic deposits, with a small positive adjustment for the share of the bank's branches located in LMI areas. Qualifying activities include community development (CD) loans, investments, or services; retail loans to LMI borrowers, small businesses, and small farms; and small business and small farm loans in qualifying geographies. If this measure meets or exceeds 11 percent, and the bank passes the other two tests described below, the bank is presumptively awarded an outstanding rating. If this measure meets or exceeds 6 percent, but is

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[16] High-quality data on single-family and multifamily mortgage lending originations would continue to be provided under the Home Mortgage Disclosure Act (HMDA). But (1) the agency responsible for HMDA's implementation, the Consumer Financial Protection Bureau, has proposed significant cutbacks in publicly available HMDA data (see Home Mortgage Disclosure [Regulation C], 84 Fed. Reg. 20972 [May 13, 2019] and Home Mortgage Disclosure [Regulation C] Data Points and Coverage, 84 Fed. Reg. 20049 [May 8, 2019]), and (2) HMDA data cover originations, whereas CRA ratings under the NPR would be substantially influenced by the dollar volume of loans on bank balance sheets, about which there is no public information concerning loan location or size.

[17] See §25.12 (OCC) and §345.12 (FDIC). The regulation proposed by the two regulators is substantively identical but is numbered differently to conform to each agency's regulatory scheme. Section numbers starting with 25 refer to the OCC; section numbers starting with 345 refer to the FDIC.

less than 11 percent, and the bank passes the other two tests, the bank is presumptively awarded a satisfactory rating. If this measure ranges between 3 and 6 percent, the bank is presumptively rated needs to improve; less than 3 percent indicates the bank is in substantial noncompliance.

- **Retail distribution tests.** A bank is evaluated against thresholds established in the proposal for each retail distribution test for each of its major retail lending product lines in each assessment area in which it makes at least 20 loans during the examination period. For each individual retail lending test, the bank must pass in the majority of its assessment areas. The bank must pass all applicable retail lending tests to get an outstanding or satisfactory rating.[18]
- **Community development test.** The bank is tested to see if the qualified value of CD loans and CD investments in an assessment area, divided by the average of the bank's assessment area retail deposits, meets or exceeds 2 percent. To get an outstanding or satisfactory rating, the bank must pass in the majority of its assessment areas, and in addition, the bank's CD loans and investments must exceed 2 percent of the bank's retail deposits on a bank-level national basis.

The last two tests are pass-fail, and a bank must pass both to be rated outstanding or satisfactory.

Evaluating the Proposal

These comments reflect our empirical work to try to assess the impact of this proposal. To evaluate the proposal, we needed data on how banks actually behave. But the necessary data are not fully available, and what is available has to be combined in a way that is difficult and reduces accuracy. We have done the best we can, making conservative assumptions, discussed below. Our experience only increases our concern that the agencies would be irresponsible to adopt this proposal without understanding what the impact would be and revealing that understanding to the public. Our work provides some insights, but it is no substitute for the work the OCC and FDIC should have made part of the NPR.

Bank-Level CRA Evaluation Measure

As detailed in the appendix, we started our analysis by matching institutions in the CRA database of the Federal Financial Institutions Examination Council (FFIEC) to the institutions in the Home Mortgage Disclosure Act (HMDA) database to the database of FDIC institutions. For each bank for which we could make this match, we added together each qualifying activity and divided by total deposits less brokered deposits, using the fields from the FDIC call report that are specified in the proposal.[19] We made the following assumptions on the qualifying activities.

- **CD activities (including multifamily lending).** We calculated CD loans as the sum of multifamily lending, other CD loans, and CD investments. For the multifamily lending component, we used multifamily loans on the balance sheet (from call reports) times an adjustment to reflect the share of these loans that would qualify for CRA times a multiplier of 2, as housing and community development financial institution loans have a multiplier of 2 under the NPR.[20] For other CD loans,

[18] Community Reinvestment Act Regulations, 85 Fed. Reg. 1218 (January 9, 2020).

[19] Although the proposal states that is based on "retail domestic deposits" (§25.10(b)(1) and §345.109(b)(1)), the definition of "retail domestic deposits" refers to schedule RC-E, item 1, which includes many commercial deposits. See §25.03 and §345.03.

[20] We assume that 60 percent of multifamily lending qualifies for CRA credit. In our 2019 publication on the CRA, we showed that close to half of bank lending by loan count, or 40 percent by dollar volume, was to LMI census tracts. See Laurie Goodman, Jun Zhu, and John Walsh, *The Community Reinvestment Act: What Do We Know, and What Do We Need to Know?* (working paper, Urban Institute, 2019).

But the proposed definition of what counts is broader than current law. In particular, under current law, an institution receives credit for affordable housing that benefits or primarily benefits LMI individuals or families or middle-income individuals or families in high-cost areas. Under the proposal, the bank would receive full credit for loans that primarily we used the CD number from the 2018 FFIEC loan files and, to avoid double counting, subtracted 75 percent of the multifamily loans made in LMI tracts within a bank's assessment area in 2018.[21] For CD investments, we used the FFIEC CD number and multiplied by 20 percent to reflect a conservative estimate of CD investments, including mortgage-backed securities. As the FFIEC CD number reflects annual originations, not loans on the balance sheet, we adjusted the CD investment total to reflect the duration of the assets. We assumed a multiplier of 1.5 on this to take account of both the 2 times multiplier for CD investments and the exclusion from the multiplier of mortgage-backed securities.[22]

- **Consumer loans.** We used consumer loans on a bank's balance sheet from the FDIC call reports and multiplied by 0.2 to reflect loans to LMI borrowers. Unfortunately, unlike for home mortgage, small business, and small farm loans, there are no data currently available on the proportion of consumer loans (including credit cards) that count for the CRA. According to the Federal Reserve's Report on the Economic Well-Being of US Households in 2018, 61 percent of households earning less than $40,000—who together make up 37 percent of the population—have at least one credit card.[23] Our 0.2 multiplier is consistent with these findings.
- **Mortgage loans.** We used 2018 HMDA originations and calculated the counts and volume of loans to LMI borrowers plus loans in Indian country. We then looked at whether the loans were sold or held in portfolio. We used a multiplier of 0.25 for the loans that were sold, as per the NPR, and a multiplier of 5 for the loans that were held on the balance sheet to account for the duration of a home mortgage. We looked at total loans on the balance sheet to confirm this was a reasonable assumption.
- **Small business loans.** Using the FFIEC loan files, we calculated the share of 2018 small business loan originations that were small or were extended to small business borrowers in LMI areas. We applied this percentage to on-balance-sheet loans.
- **Small farm loans.** Using the FFIEC loan files, we calculated the share of 2018 small farm loan originations that were small or were extended to small farm borrowers in LMI areas. We applied this percentage to on-balance-sheet loans.[24]

This analysis is biased toward lower estimates than what the institutions will actually register. In particular, there are four instances where the data are unavailable, and we have made conservative assumptions:

- Banks can get up to a 1 percent add-on to the bank-level CRA evaluation measure for the share of bank branches in LMI areas. For example, if 10 percent of a bank's branches are in LMI areas, it

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benefit a specific population or area. For activities that only partially benefit a population or area, the bank would receive a pro-rata credit for the dollar value of the activity equal to that portion that benefited the specified population or area. In addition, multifamily loans outside of LMI areas will count if their rents do not exceed 30 percent of 80 percent of area median income, even if those rents are not contractually required to be maintained. Thus, a larger proportion of multifamily lending will count as an eligible activity.

[21] Although some multifamily loans in LMI tracts within assessment areas count toward CD lending, not all do. We assumed 75 percent of the loans counted, and to avoid double counting, we subtracted those from the FFIEC CD total for each bank, as we include multifamily loans as a separate component. Because the FFIEC data reflect originations, not loans on the balance sheet, we adjusted this amount to reflect the duration of the assets.

[22] Under the proposal, CD services are monetized and count as part of the bank-level CRA evaluation measure. Because there are no data available to assess what banks are currently doing with respect to CD services, we could not include this in our overall count of activities—another way in which our conclusions probably understate presumptive ratings.

[23] "Report on the Economic Well-Being of U.S. Households in 2018–May 2019," Board of Governors of the Federal Reserve System, accessed April 6, 2020, https://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-preface.htm.

[24] The FFIEC files are ambiguous as to whether they include small farm loans between $500,000 and $1,000,000.

would receive a 0.1 percentage-point addition to the bank-level CRA evaluation measure. If 100 percent of its branches were in LMI areas, it would receive a 1 percentage-point addition (e.g., from 10 percent to 11 percent). Although these add-ons are small, and we have ignored them, they could make a difference for a bank at the margin of a ratings range.

- We have made conservative assumptions about investments and services, as we have virtually no data on that, likely understating CD activities. In a 2019 report analyzing CRA reports from the 50 largest banks by assets, for which CD lending information was available on 28 institutions and CD investment information available on 29, CD lending composed a median of 2.29 percent of total assets, and CD investments composed a median of 0.8 percent of total assets.[25] This suggests that by using only CD lending, our estimate would be about 33 percent too low. We therefore multiplied the 2018 FFIEC CD lending totals for each bank by 1.2 to conservatively take account of investments.
- The definition of small business loans and small farm loans would be expanded under the proposal. Under the current definition of small business loans, the loan (or in some cases, business) must be under $1 million, but the proposal would expand it to $2 million. Similarly, the proposal would expand the definition of small farm loans and small farms from $500,000 to $2 million. We could not to find any data on lending in the expanded categories and have therefore counted only small business and small farm loans as currently reported under the CRA, likely generating conservative estimates of small business and small farm lending that would count under the NPR.[26]
- The definition of qualifying CD activities would be vastly expanded under the proposal. In particular, the proposal clarifies that certain CD loans for rental housing for low-, moderate-, and middle-income households in high-cost areas would count. Moreover, some of the changes (1) would shift the focus of activity from those that primarily or exclusively serve LMI households or communities to activities that "benefit or serve" or "partially or primarily benefit or serve" LMI populations or communities[27]; (2) reflect noncontextual one-line descriptions of activities that, as the comptroller noted in testimony, have previously been allowed to count on a case-by-case contextual basis[28]; or (3) cover activities that may be worthwhile but are not required to have any focus on LMI communities or people at all.[29] Our analysis relies on the community development lending numbers reflected in the 2018 FFIEC files; hence, we use a narrower definition than the current proposal.

Table 1 displays the results of this analysis, by bank size.[30]

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[25] John Silver, "An Evaluation of Assessment Areas and Community Development Financing: Implications for CRA Reform," National Community Reinvestment Coalition, July 30, 2019, https://ncrc.org/an-evaluation-of-assessment-areas-and-community-development-financing-implications-for-cra-reform/.

[26] In our analysis, we used 2018 FFIEC loan files and call reports, both of which use a $1 million cutoff for small business loans and either a $500,000 or $1 million cutoff for small farm loans (it was ambiguous in the CRA data, with the definition specifying $500,000 and the data fields showing $1 million). We tried to figure out how many small business loans between $1 and $2 million are made each year but failed. We went to several sources, including the FDIC's Small Business Lending Survey, the Federal Reserve's Small Business Credit Survey, the Census Bureau's Annual Survey of Entrepreneurs, and the Small Business Administration's Office of Advocacy. We can only conclude that these data were unavailable not only to us but to those preparing the NPR.

[27] §25.04(c)(1)(i)(A), (4), (5), (6) and §345.04(c)(1)(i)(A), (4), (5), (6).

[28] §25.04(c)(3) and §345.04(c)(3).

[29] §25.04(c)(9) and §345.04(c)(9).

[30] Banks with assets below $1.28 billion are not required to report small business, small farm, or community development lending, and relatively few banks choose to report.

TABLE 1

Lender-Level CRA Evaluation Metric and Composition (Median), CD Rating

		CRA Evaluation Metric + CD Rating			Composition					
Bank size (assets)	***N***	**Outstanding**	**Satisfactory**	**CD pass**	**Bank-wide CRA evaluation metric**	**Single family-credits**	**CD credits**	**Small business credits**	**Small farm credits**	**Consumer loans**
>$100 billion	22	72.7%	18.2%	90.9%	14.8%	1.4%	6.7%	1.5%	0.1%	2.2%
$10 billion to $100 billion	82	93.9%	4.9%	92.7%	31.9%	2.2%	9.6%	10.3%	0.0%	0.6%
$1.25 billion to $10 billion	398	96.2%	1.5%	93.7%	40.8%	3.5%	14.0%	14.8%	0.3%	0.3%
$500 million to $1.25 billion	108	96.3%	1.9%	90.7%	33.7%	3.6%	9.5%	15.7%	0.0%	0.2%
≤$500 million	21	90.5%	4.8%	71.4%	34.8%	5.2%	7.4%	10.1%	0.0%	0.3%
All	631	94.9%	2.7%	92.2%	37.4%	3.2%	11.6%	14.2%	0.1%	0.3%

Source: Urban Institute calculations from Home Mortgage Disclosure Act, Community Reinvestment Act, and Federal Deposit Insurance Corporation data.

Note: CD = community development; CRA = Community Reinvestment Act.

For the 22 banks with over $100 billion in assets, the median bank-wide CRA evaluation metric was 14.8 percent, even with our conservative assumptions. Medians were 1.4 percent for single-family lending credits, 6.7 percent for CD credits, 1.5 percent for small business credits, a very small amount of small farm credits, and 2.2 percent for consumer credits.[31] There are some notable differences between banks, by size. The largest banks are strongest on consumer lending, as these institutions tend to have large credit card businesses. Smaller institutions have an even higher median bank-wide CRA evaluation measure, as they have more single-family mortgage credits, more CD credits, more small business credits, and fewer consumer loans relative to their deposit base.[32]

Using our conservative methodology, we find that under the proposal, **an overwhelming number of institutions would receive an outstanding rating on the bank-level CRA evaluation metric**. That is, 72.7 percent of the largest banks would score outstanding, and an additional 18.2 percent would score satisfactory. For banks with $10 to $100 billion in assets, 93.9 percent would score outstanding, and an additional 4.9 percent would score satisfactory.

Retail Lending Tests

For each major retail lending activity (e.g., mortgage lending, consumer lending, small business lending, small farm lending), banks must pass a borrower distribution test, and small business and small farm lending must also pass a geographic distribution test. A major retail lending activity is defined at the bank level as "a retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period."[33]

The borrower distribution test for mortgage and consumer loans, applied at the assessment area level, requires that the share of loans that the bank has made to LMI individuals must exceed either (1) 55 percent of the share of LMI families in the assessment area or (2) 65 percent of the share of home mortgage or consumer loans to LMI individuals and families originated by all peer banks evaluated in the category in the assessment area. The borrower distribution test for small business or small farm lending requires that the share of loans to small businesses and small farms must exceed either (1) 55 percent of the share of businesses or farms in the assessment area that are small businesses or small farms or (2) 65 percent of the share of small business or small farm loans made by peer banks evaluated in the category in the assessment area. According to the preamble of the NPR, to obtain an outstanding or satisfactory rating, a bank would have to pass each applicable test in a majority of their assessment areas.[34]

The geographic test, also applied at the assessment area level, requires that the share of a bank's small loans to businesses or farms in the LMI tracts of its assessment areas must meet or exceed either (1) 55 percent of the share of business or farm loans in the assessment area that are in LMI tracts or (2) 65 percent of the share of peer banks' small loans to businesses or farms that peer banks evaluated in the assessment area have made in LMI tracts.

We tried to replicate these tests to understand their likely impact but ran into significant data constraints. For the 15 percent threshold to qualify as a major product line, we could not include consumer loans, as we had no data on consumer loan originations. The FDIC call reports include only aggregate data on the volume of loans on the balance sheet. To figure out which institutions met the 15 percent threshold for mortgage, small business, and small farm loans, and thus were subject to the assessment area tests, we

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[31] Totals do not add to 14.8 percent because each component is itself a median.

[32] We believe midsize and small banks may be stronger on these measures because their retail deposits are really retail deposits. The proposed CRA definition of retail deposits includes consumer deposits and commercial deposits (less brokered deposits), and the very large banks have a substantial amount of commercial deposits, downward biasing their results. This makes comparisons by institution size more difficult.

[33] §25.03 and §345.03.

[34] Community Reinvestment Act Regulations, 85 Fed. Reg. 1218 (January 9, 2020).

used 2018 data from HMDA and FFIEC. The omission of consumer lending meant that we determined that more institutions would be subject to the assessment area tests than is likely to be the case under the proposal. Fewer institutions would be subject to the test if the denominator of total retail lending volume were larger.

If the retail product line qualifies as a major retail line, and if the number of loans made in a metropolitan statistical area comprising an assessment area in 2018 was more than 20, we applied the retail lending test to the assessment area. The NPR calls for 20 loans over the examination period (3 to 5 years) or 4 to 7 loans per year, which seems too low either to accurately measure how well an institution is serving its assessment area or for the institution's lending to be representative of an assessment area. Unfortunately, we were only able to do the peer comparator analysis, not the demographic comparator, as we did not have data on the composition of loans in the assessment area. But the NPR calls for the bank to pass either test. By applying only one test, we are being conservative; that is, our analysis passes fewer banks than would likely pass under the NPR in practice. For the peer comparator analysis, we assumed the peer group to be the universe of banks subject to the CRA in that assessment area that made more than 20 loans in the assessment area in 2018.

For each bank, we applied each applicable test to each applicable assessment area. The bank passes that assessment area if it lends at least 65 percent of the share of peer bank loans go to the targeted group, and we tally the results across the institution. The bank passes a retail lending test in a given product line if it passes in more than 50 percent of the bank's assessment areas. To pass the retail lending tests and hence to earn a presumptive outstanding or satisfactory rating, a bank must pass all applicable retail lending tests. If an institution is subject to all six retail lending tests, it must pass all six (the two geographic tests and the four borrower distribution tests). If subject to four tests, it must pass all four.

TABLE 2

Composition of Retail Lending and the Share of Lenders Subject to Each Test

		Composition			Share Subject to Test		
Bank size (assets)	***N***	**Small business**	**Small farm**	**Single-family**	**Small business**	**Small farm**	**Single-family**
>$100 billion	22	29.2%	0.6%	70.2%	63.6%	0.0%	72.7%
$10 billion to $100 billion	82	29.1%	2.3%	68.5%	52.4%	2.4%	67.1%
$1.25 billion to $10 billion	398	33.5%	4.5%	62.0%	43.0%	5.5%	50.8%
$500 million to $1.25 billion	108	33.6%	4.8%	61.5%	25.0%	5.6%	34.3%
≤$500 million	21	38.6%	4.2%	57.2%	14.3%	0.0%	14.3%
All	631	32.6%	3.9%	63.5%	40.9%	4.8%	49.6%

Source: Urban Institute calculations from Home Mortgage Disclosure Act and Community Reinvestment Act data.

Table 2 shows the composition of retail lending by bank size and the portion of banks subject to each retail lending test. In 2018, for the 22 banks with over $100 billion in assets, 29.2 percent of their lending was to small businesses, 0.6 percent was to small farms, and 70.2 percent was mortgages. Of these 22 banks, 14 (63.6 percent) would be subject to the small business tests and 16 would be subject to the mortgage tests. (None would be subject to the small farm test, and we could not do the consumer lending test.) Several of the very large banks that did a substantial amount of small business lending would not be subject to the small business test, as their small business lending was nevertheless less than 15 percent of their retail lending. For other very large banks, the mortgage lending test did not apply for the same reason. Thus, under the proposal, banks doing a significant amount of one type of retail lending in an assessment area may not be evaluated in that area—and thus how well the bank meets the credit needs of that community would not be a factor in its CRA rating. This suggests the 15 percent threshold for a retail lending line to be evaluated is too high, especially for very large institutions.

TABLE 3

Results for the Geographic Distribution Test

		Small Business			Small Farms		
Bank size (assets)	*N*	Average number of AAs	Average AA pass rate	Share of lenders that pass[a]	Average number of AAs	Average AA pass rate	Share of lenders that pass[a]
>$100 billion	22	100.65	93%	100%	34.70	N/A	N/A
$10 billion to $100 billion	82	16.49	93%	100%	5.97	75%	100%
$1.25 billion to $10 billion	398	4.51	81%	94%	2.96	40%	50%
$500 million to $1.25 billion	108	2.27	70%	85%	2.04	33%	50%
≤$500 million	21	2.95	83%	100%	2.00	N/A	N/A
All	631	8.88	83%	94%	4.62	41%	53%

Source: Urban Institute calculations from Community Reinvestment Act data.

Note: AA = assessment area; N/A = not available.

[a] At least 50 percent of the assessment areas must pass for the lender to pass.

TABLE 4

Results for the Borrower Distribution Test

		Small Business			Small Farms			Single-Family Mortgages		
Bank size (assets)	*N*	Average number of AAs	Average AA pass rate	Share of lenders that pass[a]	Average number of AAs	Average AA pass rate	Share of lenders that pass[a]	Average number of AAs	Average AA pass rate	Share of lenders that pass[a]
>$100 billion	22	100.65	98%	100%	34.70	N/A	N/A	95.77	95%	100%
$10 billion to $100 billion	82	16.49	90%	95%	5.97	100%	100%	16.45	86%	96%
$1.25 billion to $10 billion	398	4.51	89%	93%	2.96	100%	100%	4.30	86%	94%
$500 million to $1.25 billion	108	2.27	90%	96%	2.04	96%	100%	2.11	95%	100%
≤$500 million	21	2.95	100%	100%	2.00	N/A	N/A	1.41	89%	100%
All	631	8.88	90%	94%	4.62	99%	100%	8.79	87%	96%

Source: Urban Institute calculations from Home Mortgage Disclosure Act and Community Reinvestment Act data.

Note: AA = assessment area; N/A = not available.

[a] At least 50 percent of the assessment areas must pass for the lender to pass.

Table 3 shows the results for the geographic distribution test, and table 4 shows the results for the borrower distribution test by bank size. The largest banks have the most assessment areas, averaging 100.65. Banks with between $10 and $100 billion in assets average 16.5 assessment areas, those with $1.25 to $10 billion have 4.5 assessment areas, and smaller institutions have 2 to 3 assessment areas.

The preamble to the NPR suggests that a bank will pass the retail lending test if it passes in 50 percent of the bank's assessment areas.[35] This is an easier (and probably fairer) test for banks with a larger number of assessment areas. As a result, all the 22 largest banks pass all the applicable retail lending tests. For the 22 banks with between $1.25 and $10 billion in assets subject to the small farm geographic test, the tests are more difficult, and 50 percent of the banks fail. These banks average three assessment areas for the small farm tests and therefore must pass at least two.

These tests seem arbitrary and frequently apply to a small number of loans and often a small number of assessment areas. Moreover, the tests are unforgiving. Superb performance in other categories does not compensate for failing another test to which a bank is subject. If a bank fails one of the retail lending tests, it cannot get even a satisfactory rating on the overall exam.

This part of the NPR needs to be reconsidered. The 15-percent-of-retail-lending threshold is too high, especially for very large banks. Conversely, the 20 loans in an examination period is too low to allow for meaningful evaluation of a bank's service to the community. And the unforgiving pass-fail nature of the test is especially troubling for small banks. Although we can think of mathematical solutions that are fairer than the proposal,[36] we think the agencies should rethink this part of the proposal to ensure that each bank that does a significant portion of its own business or a significant amount of business in an assessment area (regardless of the proportion of that bank's business) is evaluated on its performance in that assessment area. Moreover, there needs to be enough flexibility in the evaluation that insufficient performance in one or even a few assessment areas can be outweighed by superior performance in others.

CD Minimum

The NPR requires each bank to be tested in each assessment area to see if the value of the bank's CD loans and investments in the assessment area divided by the quarterly average of the bank's assessment area retail domestic deposits meets or exceeds 2 percent. The bank must again pass in 50 percent of its assessment areas.

We had no information with which to test the CD minimum at each assessment area, nor to be able to evaluate whether passing in 50 percent of the assessment areas is reasonable. We could, however, do the test on a bank-wide national basis for each institution, using the methodology described above to determine CD activity for the bank-level performance standard.[37] The results of this analysis are shown in table 1, in the CD pass column. More than 90 percent of the institutions pass in every size category except for the smallest. These small institutions would not be subject to the test unless they opt into the general performance standard.

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[35] Community Reinvestment Act Regulations, 85 Fed. Reg. 1218 (January 9, 2020).

[36] For example, the regulators could consider all the tests together. Thus, if Bank X is subject to the two small business tests (i.e., geographic distribution and borrower distribution) in 12 assessment areas, the two small farm tests (i.e., geographic distribution and borrower distribution) in 3 assessment areas, and the mortgage test in 10 assessment areas, put the 64 tests (test x activity * # of assessment areas) together and require that the bank pass at a reasonably high threshold, such as 70 percent.

[37] §25.12(c) and §345.12(c).

Discussion of Overall Results

Table 5 shows the components of the rating under the proposal, along with the putative presumptive rating, and compares the presumptive rating under the proposal with current CRA ratings.[38] Table 6 shows the relationship between the presumptive rating under the proposal and the existing rating. The most obvious conclusion is that the distributions are quite different, suggesting that the regulators' goal of replicating existing ratings has not been met. In particular, while the "needs to improve" share is similar to current ratings, a higher share of the institutions score an "outstanding" rating. Whatever these institutions are currently doing to fully serve their communities, this proposal gives them no incentive to improve their performance. In fact, for the substantial number of institutions whose scores far exceed the outstanding threshold, the proposal could encourage them to cut back on CRA-eligible activities. Moreover, although there is a positive relationship between banks that do well on the existing test and those that do well under the proposed test, some institutions that need to improve based on the existing test would score outstanding on the proposed test, a questionable result.

For the 22 largest banks, based on the bank-level CRA evaluation measure, 72.7 percent would have a presumptively outstanding rating, and another 18.2 percent would be presumptively satisfactory; 90.9 percent of these very large institutions pass the CD test, and 100 percent pass the assessment area retail distribution tests. But one of the banks that would have obtained a satisfactory rating on the bank-level CRA evaluation measure failed the CD test, so in the proposed ratings, 72.7 percent of the very large banks are presumptively rated outstanding, and 13.6 percent are presumptively rated satisfactory. In comparison, in the existing ratings scheme, 54.5 percent of these banks have outstanding ratings and 40.9 percent are satisfactory.

The high share of outstanding ratings relative to the current environment is even more striking in midsize and small institutions. Of the 396 banks with assets between $1.25 and $10 billion, 84.1 percent would score outstanding in the proposed rating (333 banks) and 0.3 percent (1 bank) would be satisfactory, versus 7.3 percent outstanding (29 banks) and 85.4 percent (338 banks) satisfactory under the current system.

Even more troubling, of the 396 banks with $1.25 to $10 billion in assets (most banks fall within this range), 7.3 percent (29 banks) currently receive a "needs to improve" rating. Under the proposed regulation, 23 of these 29 institutions would move to an outstanding rating, and another 6 would stay as needs to improve. None would move to satisfactory. Of those institutions initially rated satisfactory, 283 would move from satisfactory to outstanding, 1 would stay satisfactory, and 54 would need to improve. The number that would actually move to "needs to improve" would undoubtedly be lower if the proposal were enacted, as we have been conservative with our methodology. But the correlation between the existing ratings and the new ratings is weak, suggesting that the proposal would not meet even this modest goal.

[38] There were three institutions in table 1 for which we could not find a current rating. These institutions are not included in tables 5 and 6; hence, there is a small difference in the number of institutions in table 4 versus that shown in tables 5 and 6.

TABLE 5

Components of the Rating under the Proposal

		Components				Proposed Rating		Existing Rating	
Bank size (assets)	*N*	Bank-wide CRA evaluation metric: Outstanding	Bank-wide CRA evaluation metric: Satisfactory	CD pass	Retail lending pass	Outstanding	Satisfactory	Outstanding	Satisfactory
>$100 billion	22	72.7%	18.2%	90.9%	100.0%	72.7%	13.6%	54.5%	40.9%
$10 billion to $100 billion	82	93.9%	4.9%	92.7%	95.1%	85.4%	3.7%	15.9%	80.5%
$1.25 billion to $10 billion	396	96.2%	1.5%	93.7%	90.4%	84.1%	0.3%	7.3%	85.4%
$500 million to $1.25 billion	107	96.3%	1.9%	90.7%	93.5%	85.0%	0.0%	4.7%	81.3%
≤$500 million	21	90.5%	4.8%	71.4%	100.0%	71.4%	0.0%	4.8%	81.0%
All	628	94.9%	2.7%	92.2%	92.2%	83.6%	1.1%	9.6%	82.3%

Source: Urban Institute calculations from Home Mortgage Disclosure Act, Community Reinvestment Act, and Federal Deposit Insurance Corporation data.

Note: CD = community development; CRA = Community Reinvestment Act.

TABLE 6

Relationship between the Proposed Rating and the Existing Rating

		Proposed Rating		Existing Rating		Existing Rating_Proposed Rating								
Bank size (assets)	*N*	O	S	O	S	O_O	S_O	N_O	S_S	N_S	O_S	N_N	S_N	O_N
>$100 billion	22	72.7%	13.6%	54.5%	40.9%	9	7	0	1	1	1	0	1	2
$10 billion to $100 billion	82	85.4%	3.7%	15.9%	80.5%	11	58	1	3	0	0	2	5	2
$1.25 billion to $10 billion	396	84.1%	0.3%	7.3%	85.4%	27	283	23	1	0	0	6	54	2
$500 million to $1.25 billion	107	85.0%	0.0%	4.7%	81.3%	4	73	14	0	0	0	1	14	1
≤$500 million	21	71.4%	0.0%	4.8%	81.0%	1	12	2	0	0	0	1	5	0
All	628	83.6%	1.1%	9.6%	82.3%	52	433	40	5	1	1	10	79	7

Source: Urban Institute calculations from Home Mortgage Disclosure Act, Community Reinvestment Act, and Federal Deposit Insurance Corporation data.

Note: N = needs improvement; O = outstanding; S = satisfactory.

Public Disclosures

The NPR proposes to do away with the current rules relating to public disclosure and replace them with a weak and skeletal regime—and to do this notwithstanding requiring the banks to collect new and different data than under the current system and to report those data to the regulators. In particular, after proposing to do away with current requirements that all but small banks annually disclosure significant information about the number and geography of community development, small business, and small farm loans,[39] the proposal would require public disclosure only of the following on an annual basis:

- For each bank, on a bank-wide national basis: the value of qualifying retail loans, community development loans, community development investment, and community development services.
- For each county: all institutions would be aggregated and the regulators would release aggregate all-bank information on the number of home mortgage originations, the number of home mortgage originations to LMI borrowers, the number of originations for each consumer loan product line, the number of originations to LMI individuals by consumer product line, the number of small loans to businesses, the number of small loans to businesses in LMI census tracts, the number of small loans provided to small businesses, the number of small loans to farms, the number of small loans to farms in LMI census tracts, and the number of small loans to farms provided to small farms.
- The ratings of all banks regulated by the supervisory agency and a separate list of banks that achieve an outstanding rating.[40]

This new proposed public disclosure regime is insufficient. By aggregating data on a bank-wide basis and for all banks at the county level, the new disclosures would make it impossible for the public to understand how well each bank was serving the communities in which it was doing business. This ignores the CRA's disclosure purpose—to enable the public to understand how banks are serving their communities. We experienced difficulty using publicly available data, by bank at the assessment area level, to evaluate the NPR. Fully understanding how banks are serving their communities requires more, and more granular, publicly available data. In this, the proposal fails.

The Need for Consensus among the Federal Regulators

We believe it is important that the three federal regulators move in tandem. In particular, the Federal Reserve has not joined this proposal because, as stated by Federal Reserve governor Lael Brainard,

> If the past is any guide, major updates to the CRA regulations happen once every few decades. So it is much more important to get reform right than to do it quickly. If we only have one opportunity for a few decades, I want to make sure CRA reform is based on the best analysis and ideas and the broadest input available. It is critical to analyze carefully the likely effects of any proposed changes on credit access and community development in LMI communities, as well as any additional reporting and procedural burdens for banks.[41]

We agree with this. As we have pointed out in this comment letter, it is impossible to understand the NPR's true impact.

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[39] Compare part 345, subpart 3 of the current FDIC rules and regulations to proposed section 345.24, and part 25, subpart C of the current OCC regulations to proposed section 25.24. Mortgage lending would still be reported under the Home Mortgage Disclosure Act.

[40] The proposal would continue to require banks to maintain a public file that includes the public portion of the bank's most recent CRA performance evaluation (§25.25(a)(2) and §345.25(a)(2)), but it is unclear from the proposal whether the regulators would continue to publish performance evaluations on the FFIEC website.

[41] Lael Brainard, "Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose."

Conclusion

Although this NPR is a useful starting point for discussion, it needs substantial revision, warranting a new proposal. We applaud the OCC and FDIC for recognizing the need for CRA modernization and more objective ways to measure how much banks are doing for their communities, and we agree that a bank's ability to confirm whether an activity will count before committing to an investment is a welcome improvement. But the proposal has significant weaknesses and unknowns, such as these:

- The data are unavailable to do a full evaluation to gauge the impact of this proposal. We did our best to evaluate the proposal's impact using publicly available information. Although we know the OCC and FDIC have better data than we do, some of the data that would be required to do a full analysis are simply not collected in a form that would allow anyone to do the analysis. We could not evaluate the CD minimum test at the assessment area level, we have little information on consumer loans except that provided on balance sheet, and we could not do all the small business or small farm tests. Moreover, we could not do most of the tests using the expanded definitions in the proposal for what counts.
- Our analysis suggests that, even using conservative estimates on many dimensions, far more institutions would obtain an outstanding rating under the proposal than is currently the case. Our conservative estimates do not include, for the most part, expanded definitions of small business loans, small farm loans, and CD loans and investments. Many institutions will be able to do less and still obtain an outstanding rating. At the very least, this argues for setting the ratings thresholds substantially higher.
- The retail lending test does not make sense as written for several reasons. First, it is a pass-fail test. If an institution fails for any retail line of business, it fails the retail lending test. And if the institution fails any component of the retail lending test, it cannot receive a "satisfactory" or "outstanding" rating overall. The bank-level CRA evaluation metric allows the institution to be stronger in one area or another, but the retail lending test does not allow for compensating factors. Second, it fails to test banks for retail activities where the retail lending activity is less than 15 percent of their origination volume, even if this activity is large in a given assessment area. Third, it is more difficult for small institutions to pass this test because they have fewer assessment areas and they make fewer loans. The threshold of 20 loans in an exam cycle is low, and these loans may not be representative of a bank's actual service to its community.
- Finally, the amount of information to be released to the public is too aggregated, both as to institutions and geographies, and would make it impossible for the public to assess how well individual banks are meeting community needs, as well as how these needs are being met in small geographic areas. The current information release is already inadequate; the proposal exacerbates this situation.

This regulation is critical to the future of our communities and our banking institutions. The current proposal is deficient. It is imperative that the OCC and FDIC, in conjunction with the Federal Reserve, develop a new proposal that builds on, not tears down, the existing system, fixes weaknesses in the current system, and increases the timeliness of examinations and both the timeliness and quality of disclosures to the public. And it is essential that, before publishing such a new proposal, the regulators evaluate its likely impact on communities and institutions and release the underlying data so the public can understand the proposal's impact and meaningfully participate in the rulemaking process.

Thank you for this opportunity to comment.

Sincerely,

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Appendix

Data

We relied on three data sources: 2018 Home Mortgage Disclosure Act (HMDA), 2018 Federal Financial Institutions Examination Council (FFIEC) loan files (CRA), and 2018 FFIEC's call report database.

1. Lender Matching among HMDA, CRA, and Call Report Databases

To determine lending inside and outside banks' assessment areas and combine the empirical results on small business, small farm, and community development loans, we need to match the lenders in the HMDA file with the lenders in the CRA file. We applied a waterfall method. We first match lenders using the Replication Server System Database (RSSD). For unmatched lenders, we then match by the tax ID, followed by their name. We matched 631 CRA lenders out of 696 CRA lenders in 2018 with unique HMDA IDs. We then match all the HMDA-CRA lenders with FFIEC's call reports database using RSSD.

2. Total Assets and Total Retail Deposits

The total assets of the institutions included in the matched HMDA-CRA lender file are obtained from the 2018 call report as of December 31, 2018. Based on the proposal's definition of a small bank, we use the following total asset cutoffs for bank size:

a) Small bank: ≤$500 million
b) Medium small bank: $500 million to $1.25 billion
c) Medium large bank: $1.25 billion to $10 billion
d) Large bank: $10 to $100 billion
e) Very large bank >$100 billion

We rely on 2018 call reports to calculate the retail deposits for each lender. Based on guidance in the NPR, we use retail deposits as reported on schedule RC-E item 1 of the call report. We use the following formula to calculate the total retail deposits. Based on the proposal, commercial deposits are included the calculation.

$$Retail\ deposits = Rcon\ B549\ \ (item\ 1\ from\ schedule\ RC\_E) + Rcon\ B550\ (item\ 1\ from\ schedule\ RC\_E) - Rcon\ 2365\ (total\ brokered\ deposits)$$

3. Consumer Loans

Consumer loans are those on reported on the call report, schedule RC-C, Loans and Lease Financing Receivables, part 1, item 6, Loans to individuals for household, family, and other personal expenditures, which include the following product lines:

a) credit cards
b) other revolving credit plans
c) automobile loans
d) other consumer loans

We further assume that 20 percent of consumer loans, by dollar volume, are extended to LMI borrowers. We use the following formula to calculate the consumer loan credit toward the CRA:

$$
\begin{aligned}
&Consumer\ loan\ credit\\
&\qquad = 20\% * [RCON\ B538\ (item\ 6.a\ credit\ card)\\
&\qquad + RCON\ B539\ (item\ 6.b\ other\ revolving\ credit\ plans)\\
&\qquad + RCON\ K137\ (item\ 6.C\ automobile\ loans)\\
&\qquad + RCON\ K207\ (item\ 6.d\ other\ consumer\ loans)]
\end{aligned}
$$

4. One-to-Four-Family Mortgage Loans

We include all the single-family loans from HMDA extended by CRA reporting institutions, excluding those whose loan purpose is defined as unknown. Overall, we have 2.2 million loans, including those with an open line of credit. For single-family mortgage loans, we calculate the counts and volume of loans which are lent to LMI borrowers (those whose income is less than 80 percent of the area median income, or AMI). We also calculate the counts and volume of loans that are located in Indian country but are not extended to LMI borrowers (to avoid double counting). To identify Indian country, we rely on tribal census tract and US census tract shapefiles through nhgis.org.

After we identify the one-to-four-family loans extended by CRA reporting institutions, we further separate the loans into balance sheet loans and purchased loans using the purchaser indicator. If the loan is purchased by Fannie Mae, Ginnie Mae, Freddie Mac, Farmer Mac, or private securitizers, we define the loan as a purchased loan. Otherwise, the loan is defined as a balance sheet loan. For each lender, we apply a multiplier of 5 for all the balance sheet loans because mortgage loans have roughly five years of duration.[42] We also apply a multiplier of 0.25 on purchased loans, per the guidance in the NPR.

1–4 family mortgage loan credit
*= 0.25 * volume of purchased single-family mortgages to LMI borrower*
*+ 0.25 * volume of purchased single-family mortgages in Indian country*
*+ 5 * volume of one balance sheet single-family mortgages to LMI borrowers*
*+ 5 * volume of one balance sheet single-family mortgages in Indian country*

5. CD Lending, Multifamily, and CD Investment

Based on the proposal, we consider three components for community development: CD lending (excluding multifamily lending), multifamily lending, and CD investment.

For the CD lending without multifamily, we first rely on community development loan originations from FFIEC. We look at the total dollar volume of the CD loans each lender reports, using the CRA files through FFIEC. But because this includes some multifamily lending within a bank's assessment area, we need to subtract this out. We calculate multifamily lending to LMI tracts inside a lender's assessment area (AA) from HMDA, and then exclude 75 percent of that number from the total CD amount from FFIEC; making the implicit assumption that 75 percent of multifamily lending to LMI tracts inside a lender's AA is already included in the CD loan originations from FFIEC. Furthermore, we apply a credit multiplier of 1 and a duration multiplier of 4 to this portion of CD lending.

[42] To determine the multiplier of 5 is reasonable, we considered two items reported on the call report, Schedule RC-C, Loans and Lease Financing Receivables, Part I, specifically: A) Item 1.a.(1) 1-4 family residential construction loans, with variable name RCON F158 and B) Item 1.c Loans secured by 1-4 family residential properties (includes closed-end and open-end loans), with three variables added up: RCON1797 (item 1.c(1)), RCON5367 (item 1.c(2)(a)), and RCON5368 (item 1.c.(2)(b)). The total volume on the call report is calculated for each lender. We then calculated the total volume for all the one-to-four-family loans from HMDA for each lender. Overall, we have an average of multiplier of 7.5, ranging 5.2 to 8.9 for lenders with different asset size. Thus, a multiplier of 5 is conservative for this exercise.

CD credit (without multifamily)
*= 1 * 4 * (volume of CD loans from FFIEC*
*– 75% * LMI tracts lending in AA for multifamily)*

The second component is CRA-qualifying multifamily lending. We assume that 60 percent of multifamily lending qualifies for CRA credit. We then apply this ratio to the multifamily volume on the balance sheet. To determine the total volume of multifamily mortgages on the balance sheet for each lender, we rely on the call reports. To be more specific, we consider the following item reported on the call report: schedule RC-C, Loans and Lease Financing Receivables, Part I, Item 1.d Loans secured by multifamily (5 or more) residential properties, with variable name RCON1460 (item 1.d). We then apply a multiplier of 2 based on guidance from the NPR.

$$Multifamily\ \ credit = 2 *\ 60\% * \mathrm{RCON1460\ (item\ 1.d)}$$

The third component is the CD investment. We do not have a direct measure of CD investment. We assume that CD investment is roughly 20 percent of the total CD lending, as given by the FFIEC. We then apply a multiplier of 4 for the duration and a multiplier of 1.5.

$$CD\ investment\ credit = 1.5 * 4 * 20\%(volume\ of\ CD\ loans\ from\ FFIEC)$$

Thus, the total CD credit would be

$$CD\ credit =\ CD\ \ credit\ (without\ multifamily) + Multifamily\ \ credit +\ CD\ investment\ credit$$

6. Small Business Loans

We use two steps to calculate the small business CRA credit. First, we use the CRA small business file to get the CRA credit ratio. Second, we apply the small business CRA credit ratio to the total amount of small business loans on the balance sheet.

Using the CRA small business loan file from FFIEC,[43] we count the following loan categories toward the CRA:

a) small business loan originated in LMI tracts
b) small business loan originated in non-LMI tracts to companies with total business ≤$1 million

The following formula is used to calculate the small business credit ratio based on the CRA files provided through FFIEC:

$$\begin{aligned}&Small\ business\ CRA\ credit\ ratio\\&=\ \ [volume\ of\ small\ business\ loans\ originated\ in\ LMI\ tracts\\&+ volume\ of\ small\ business\ loans\ originated\ in\ non\ LMI\ tracts\ to\ companies\ with\ total\ business\\&\leq \$1\ million\ ]\ /[volume\ of\ small\ business\ loans]\end{aligned}$$

To calculate the total volume of small business loans, we rely the 2018 call reports. Small loans to a business is defined as either a loan reported on the call report, schedule RC-C, Loans and Lease Financing Receivables, part 1, item 1.e, Secured by nonfarm nonresidential properties, or item 4, Commercial and industrial loans. Thus, we add up variable RCON F160 (as item 1.e) and RCON1766 (as item 4).

[43] The data structure of small business loans is unclear. For each income group and all the split counties with both assessment areas and non–assessment areas, we assume the following order for the raw data (and hand-calculate the loan counts to make sure it is the order for all counties): assessment area count, non–assessment area count, and total county count. If there are only two observations instead of three observations, we consider only the counts for assessment areas and non–assessment areas, assuming the total count is missing.

$$Small\ business\ credit = small\ business\ CRA\ credit\ ratio * [\text{RCON F160 (item 1.e)} + \text{RCON1766 (item 4)}]$$

7. Small Farm Loans

The small farm loan CRA data file has the same data structure as the small business CRA data file. Consequently, we use the same methodology to obtain the amount of small farm loans eligible for CRA credit as we do for the small business category. Thus, for small farm loans, we count the following loan categories toward the CRA:

a) small farm loans originated in LMI tracts
b) small farm loans originated in non-LMI tracts to companies with total business <=$1 million[44]

The following formula is used to calculate the small business credit ratio:

$$Small\ farm\ CRA\ credit\ ratio = \ volume\ of\ small\ farm\ loans\ originated\ in\ LMI\ tracts + volume\ of\ small\ farm\ loans\ originated\ in\ non\ LMI\ tracts\ to\ companies\ with\ total\ business \leq \$1\ million\ ]$$

To calculate the total volume of small farm loans, we rely on the FDIC call reports. Small loans to a farm are defined as either a loan reported on the call report, schedule RC-C, Loans and Lease Financing Receivables, part 1, item 1.b, Secured by farmland, or item 3, Loans to finance agricultural production and other loans to farmers. Thus, we add the following two variables: RCON1420 (1.b) and RCON1590 (item 3). The final small farm credit is calculated as follows:

$$Small\ farm\ credit = small\ farm\ CRA\ credit\ ratio * [\text{RCON1420 (1.b)} + \text{RCON1590 (item 3)}\ ]$$

Rating

1. Bank-Level CRA Evaluation Metric

Based on all the information above, we then calculate the share “counting” toward the CRA for the CRA evalaution metric. The share is derived by taking each individual category discussed above and dividing by retail deposits.

$$Percentage\_total = percentage\_single\ family + percentage\_CD + percentage\_small\ business + percentage\_small\ farms + percentage\_consumer\ lending$$

Moreover, we assign a presumptive rating of outstanding if the total share is at least 11 percent. We assign a presumptive rating of satisfactory if the total share is at least 6 percent but less than 11 percent.

2. Bank-Level CD Pass-Fail Rating

If the total share for CD is at least 2 percent, we assign a rating of CD pass.

[44] The proposal increase the size thresholds for a small loan to a farm to $2 million or less. From the 2018 CRA file, the maximum cutoff provided for a small loan to a farm is $1 million. We use $1 million for this small farm analysis.

3. Bank-Level Retail Lending Test Pass-Fail Rating

For banks to be subject to a given retail lending test, that product line has to be 15 percent of total retail lending (by origination volume). We consider the following three retail lending types: small business, small farm, and one-to-four-family mortgage, as we did not have data on consumer lending. We calculate the 2018 origination for the three retail lending categories for which we had data and divide it by the sum of the three categories to get the composition ratio. Thus, a rating for a given retail lending category will be assigned if a lender has more than 15 percent of its origination volume in that category.

We perform the applicable retail lending tests to each assessment area with 20 or more loan originations in that product category. In the small business or small farm product categories, the bank is subject to both a geographic test and a borrower distribution test in each AA. For mortgage loans and consumer loans (we could not evaluate the latter), the bank is subject only to a borrower distribution test in each AA. Each test requires that we evaluate the bank against its peer group. We define a bank to be eligible to be part of the peer group for a retail product in an assessment area if the bank makes more than 20 originations in that product line in that assessment area. Thus, banks that may not be subject to a given retail lending test may still be in the peer group for that test.

To pass a given retail lending test, the bank must pass in at least 50 percent of its AAs. To pass the entire retail lending test, the bank must pass the test in every product line in which the test is applicable.

(a) Geographic distribution test for the small business loan product line

We calculate the following share for each lender in each assessment area:

$$Percentage\ of\ small\ business\ loans\ = \frac{\#\ of\ small\ loans\ to\ business\ in\ LMI\ tracts}{total\ \#\ of\ small\ loans\ to\ businesses}$$

We then calculate the geographic peer comparator threshold:

$$geographic\ peer\ comparator\ threshold = \frac{small\ loans\ to\ businesses\ in\ LMI\ tracts\ originated\ by\ all\ banks\ \ in\ AA}{small\ loans\ to\ businesses\ by\ all\ banks\ in\ AA}$$

For each AA, we assign a pass rating if the share of small business loans is at least 65 percent of the geographic peer comparator threshold. We then calculate the share of AAs with a pass rating out of the total number of AAs applicable for each lender. If at least 50 percent of the AAs receive a pass rating, we give a pass rating at lender level for the small business loan product.

(b) Geographic distribution test for the small farm loan product line

We calculate the following share for each lender in each assessment area:

$$Percentage\ of\ small\ farm\ loans\ = \frac{\#\ of\ small\ loans\ to\ farm\ in\ LMI\ tracts}{total\ \#\ of\ small\ loans\ to\ farms}$$

We then calculate the geographic peer comparator threshold:

$$geographic\ peer\ comparator\ threshold = \frac{small\ loans\ to\ farms\ in\ LMI\ tracts\ originated\ by\ all\ banks\ evaluated}{small\ loans\ to\ farms\ by\ all\ banks}$$

We assign a pass rating if the share of small farm loans is at least 65 percent of the geographic peer comparator threshold. We then calculate the share of AAs with a pass rating out of the total number of AAs applicable for each lender. If at least 50 percent of a bank's AAs receive a pass rating, we give a pass rating at the lender level for the small farm loan product.

(c) Borrower distribution test for the home mortgage lending product line (single-family only)

We calculate a bank's share of home mortgage loans as follows:

$$bank's\ percentage\ of\ home\ mortgage\ loans = \frac{\#\ of\ single\ family\ loans\ to\ LMI\ borrowers\ originated\ by\ the\ lender}{\#\ of\ single\ family\ loans\ by\ the\ lender\ in\ AA}$$

We calculate the borrower peer comparator threshold:

$$the\ borrower\ peer\ comparator\ threshold = \frac{\#\ of\ LMI\ borrowers}{\#\ of\ borrowers\ in\ the\ AA}$$

For each AA, we assign a pass rating if the share of home mortgage loans is at least 65 percent of the borrower peer comparator threshold. We then calculate the share of AAs with a pass rating out of the total number of applicable AAs for that lender. If at least 50 percent of a bank's AAs receive a pass rating, we give a pass rating at lender level for the mortgage lending product.

(d) Borrower distribution test for the small business loan product line.

We calculate the following share for each lender in each assessment area:

$$Percentage\ of\ loans\ to\ small\ business\ (small\ business\ as\ \leq 1\ million) = \frac{\#\ of\ loans\ to\ small\ business\ )}{total\ \#\ of\ small\ business\ loans\ for\ that\ lender\ in\ that\ AA}$$

We then calculate the borrower peer comparator threshold:

$$borrower\ peer\ comparator\ threshold = \frac{\#\ of\ loans\ to\ small\ business\ in\ the\ AA}{total\ \#\ of\ small\ business\ loans\ in\ AA}$$

We assign a pass rating if the share of small business loans is at least 65 percent of the borrower peer comparator threshold. We then calculate the share of AAs with a pass rating out of the total number of AAs applicable for that lender. If at least 50 percent of a bank's AAs receive a pass rating, we give a pass rating at the lender level for the small farm product.

(e) Borrower distribution test for the small farm loan product line.

We calculate the following share for each lender in each assessment area:

$$Percentage\ of\ loans\ to\ small\ farm\ (small\ farm\ as\ \leq 1\ million)$$

$$= \frac{\#\ of\ loans\ to\ small\ farm}{total\ \#\ of\ small\ farm\ loans\ for\ that\ lender\ in\ that\ AA}$$

We then calculate the borrower peer comparator threshold:

$$borrower\ peer\ comparator\ threshold\ = \frac{\#\ of\ loans\ to\ small\ farm\ in\ the\ AA}{total\ \#\ of\ small\ farm\ loans\ in\ AA}$$

We assign a pass rating if the share of small farm loans is at least 65 percent of the borrower peer comparator threshold. We then calculate the share of AAs with a pass rating out of the total number of AAs applicable for that lender. If at least 50 percent of a bank's AAs receive a pass rating, we give a pass rating at the lender level for the small farm product.

To reiterate, to pass the entire retail lending test, the bank must pass the test in every product line in which the test is applicable.

4. Total Rating

The lender-level total rating is defined by three components: bank-level CRA evaluation rating rating, CD pass rating, and retail lending tests pass rating. We use the following rules:

(a) Lender-level presumptive rating is outstanding + CD minimum pass + retail lending tests pass = outstanding
(b) Lender-level presumptive rating is satisfactory + CD minimum pass + retail lending tests pass = satisfactory
(c) All other cases = needs to improve