Modernization of the Community Reinvestment Act

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SUMMARY

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Darryl E. Getter
Specialist in Financial Economics

The Community Reinvestment Act (CRA: P.L. 95-128, 12 U.S.C. §§ 2901-2908) addresses how banking institutions meet the credit needs of the areas they serve, particularly in low- and moderate-income (LMI) neighborhoods. The federal banking regulatory agencies—the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC)—currently implement the CRA. The CRA does not define specific loan types or impose lending quotas on banks. Instead, regulators issue performance ratings to banks for their activities—such as mortgage, consumer, and business lending; community investment; and low-cost services that would benefit LMI areas and entities—that occur within their designated assessment areas during specified periods. CRA ratings are subsequently taken into account when banks apply for new branch openings, mergers, and acquisitions, among other things.

Congress passed CRA because of its concern with the geographical mismatch of deposit-taking and lending activities. As more states began to allow bank holding companies to acquire out-of-state subsidiaries during the late 1970s and early 1980s, Congress grew concerned with the extent banks were using deposits collected from local neighborhoods to fund out-of-state as well as various international lending activities at the expense of addressing the local areas' housing, agricultural, and small business credit needs. Another motivation was to discourage redlining practices, referring to situations when some applicants—even if they are creditworthy—are unable to obtain credit based on the neighborhoods where they live, perhaps due to discrimination.

Since its enactment in 1977, the CRA has been revised several times by both Congress and the bank regulators due to criticisms such as being ineffective and subjective. For example, some community groups have viewed CRA as being ineffective at expanding credit access, particularly given that many banks receive ratings of satisfactory or better, which arguably illustrates that the examination process is not sufficiently rigorous. Some banks have indicated that policy guidance may be unclear and that, in some circumstances, obtaining CRA consideration for lending activities depends upon examiners' judgments. More recently, various stakeholders expressed concerns that the CRA's geographical-based framework was becoming less suitable for evaluating banking activities that are increasingly occurring online. Thus, some banks may be engaging in CRA lending activities that are not being counted toward their CRA ratings. Furthermore, some stakeholders are concerned that the CRA may encourage higher-risk lending to borrowers likely to have repayment problems. However, the banking regulators, which are responsible for enforcing prudential regulation and consumer protection, are unlikely to encourage lending practices that would result in large concentrations of high-risk loans. Instead, the CRA may encourage banks to make loans, such as those smaller in size or for borrowers who may need guidance qualifying for lending programs with federal guarantees, which arguably require greater administrative costs and may not generate as much interest income.

On October 24, 2023, the federal banking regulators finalized significant changes to the CRA framework seeking to address these and other concerns. The definition of CRA assessment areas has been updated and expanded to allow more activities that occur outside of a bank's primary assessment area to be evaluated. The definition of *community development* has been expanded to clarify the eligibility of product and service activities as well as to encourage partnerships with various financial entities that promote greater access of traditionally underserved populations and geographies to financial products and services. For large banks, the CRA examination will become more rigorous, adopting various metrics and benchmarks to gauge performance relative to peers. (Smaller banks will continue to be evaluated under the current CRA regulatory framework.) Given the new requirements that include data collecting, the final rule that took effect on April 1, 2024, will have staggered compliance dates of January 1, 2026 and January 1, 2027.

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Introduction

Congress passed the Community Reinvestment Act of 1977 (CRA; P.L. 95-128, 12 U.S.C. §§2901-2908) in response to concerns that federally insured banking institutions were not making sufficient credit available in the local areas in which they were chartered and acquiring deposits. According to some in Congress, the granting of a public bank charter should translate into a continuing obligation for that bank to serve the credit needs of the public where it was chartered.[1] Consequently, the CRA was enacted to "re-affirm the obligation of federally chartered or insured financial institutions to serve the convenience and needs of their service areas" and "to help meet the credit needs of the localities in which they are chartered, consistent with the prudent operation of the institution."

The CRA requires federal banking regulators to conduct examinations to assess whether banks are meeting local credit needs. Specifically, banks are evaluated on their undertaking of *qualifying activities*—such as mortgage, consumer, and business lending; community investments; and low-cost services that benefit low- and moderate-income (LMI) individuals or entities—within geographically designated areas where they collect deposits. Under the current regulatory approach, a bank's primary regulator awards CRA credit (i.e., nonmonetary acknowledgement translated into points) that is used to support one of four composite performance ratings: outstanding, satisfactory, needs to improve, or substantial noncompliance. Federal bank regulators are required to take CRA ratings into account when institutions apply for branches, mergers, acquisitions, or seek to take other actions that require regulatory approval.

Prior to passage of the CRA, Congress became concerned with the geographical mismatch of deposit-taking and lending activities for a variety of reasons.[2] One motivation for congressional action stemmed from how banks may have been using their deposits, a primary source of borrowed funds that are subsequently used to provide consumer and business loans. The specific concern had to do with the extent banks were using deposits collected from local neighborhoods to fund out-of-state as well as various international lending activities at the expense of addressing local housing, agricultural, and small business credit needs. This concern emerged as U.S. banks began expanding their operations across designated geographical boundaries.[3] Another motivation

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[1] See U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Community Credit Needs*, S. 406, 95th Cong., 1st sess., March 23-25, 1977, pp. 1-429. For more information about bank charters, see CRS Report R47014, *An Analysis of Bank Charters and Selected Policy Issues*, by Andrew P. Scott.

[2] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing and Community Development Act of 1977*, report to accompany S. 1523, 95th Cong., 1st sess., May 16, 1977, Report No. 95-175 (Washington: GPO, 1977), pp. 33-35.

[3] For example, large regional banks in the 1960s and 1970s expanded their lending operations internationally and, in some cases, established foreign branches. During the 20th century, the U.S. banking system was also transitioning from a system characterized primarily by unit banking—in which a small, independent bank operated solely in one state with no branches—to interstate banking. Interstate banking and branching allows a bank to conduct activities (e.g., accepting deposits, lending) across geographical (state) boundaries, forgoing the need to establish separate subsidiaries for each locality in which it operates and, therefore, having to duplicate the operating costs and capital requirements in each subsidiary. See James V. Houpt, "International Activities of U.S. Banks and in U.S. Banking Markets," *Federal Reserve Bulletin*, September 1999, pp. 599-615, http://www.federalreserve.gov/pubs/bulletin/1999/0999lead.pdf; Frederick R. Dahl, "International Operations of U.S. Banks: Growth and Public Policy Implications," *Law and Contemporary Problems*, Winter 1967, pp. 100-130; David L. Mengle, "The Case for Interstate Branch Banking," Federal Reserve Bank of Richmond, *Economic Review*, vol. 76 (November 1990), http://www.richmondfed.org/publications/research/economic_review/1990/pdf/er760601.pdf; Michelle Clark Neely, "Going Interstate: A New Dawn for U.S. Banking," *Regional Economist*, July 1, 1994, https://www.stlouisfed.org/publications/regional-economist/july-1994/going-interstate-a-new-dawn-for-us-banking; and Susan McLaughlin, "The Impact of Interstate Banking and Branching Reform: Evidence from the States," Federal Reserve Bank of New York, *Current Issues in Economics and Finance*, vol. 1, no. 2 (May 1995), http://www.ny.frb.org/research/current_issues/ci1-2.pdf.

was to discourage *redlining* practices. One type of redlining can be defined as the refusal of a bank to make credit available to all neighborhoods in its immediate geographical range, including LMI neighborhoods where it may have collected deposits. This type of redlining pertains to circumstances in which a bank refuses to serve all of the residents in an area. A second type of redlining is the practice of denying a creditworthy applicant a loan specifically for housing located in a certain neighborhood even though the applicant may qualify for a similar loan in another neighborhood, perhaps due to illegal discrimination. The CRA, therefore, can also be used alongside other legislative actions to redress systemic redlining.[4]

The CRA applies only to banking institutions with deposits insured by the Federal Deposit Insurance Corporation (FDIC), such as national banks, savings associations, and state-chartered commercial and savings banks.[5] The CRA does not apply to credit unions, insurance companies, securities companies, and other nonbank institutions given the differences in their financial business models.[6] The Office of the Comptroller of the Currency (OCC), the Federal Reserve System, and the FDIC administer the CRA, which is implemented via Regulation BB.[7]

Notably, Regulation BB does not impose lending quotas or benchmarks on banks. Instead, it provides banks with a wide array of qualifying CRA activities to serve the needs of their assessment areas.[8] If the federal banking regulatory agencies conclude that the activities of their regulated entities effectively meet the credit needs within their designated assessment areas—including LMI neighborhoods—in a manner consistent with the federal prudential regulations for *safety and soundness*,[9] they can award CRA credit that is converted into rating points, which are subsequently used to determine a bank's composite CRA rating.

This report discusses recent changes to the CRA framework finalized by the three banking regulators on October 24, 2023.[10] It begins with an overview of various key CRA implementation

[4] After being established by the National Housing Act of 1934 (P.L. 73-479), the Federal Housing Administration (FHA) discussed in its 1938 Underwriting Manual the negative impact of the "infiltration of inharmonious racial groups" on property values and implemented eligibility requirements that institutionalized redlining. For more information, see Federal Reserve History, "Redlining," https://www.federalreservehistory.org/essays/redlining. FHA's 1938 Underwriting Manual can be found at https://fraser.stlouisfed.org/title/underwriting-manual-6279/underwriting-manual-602319. For a description of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, P.L. 90-284, 42 U.S.C. §3601 et seq.), see Federal Reserve, *Federal Fair Lending Regulations and Statutes: Fair Housing Act*, http://www.federalreserve.gov/boarddocs/supmanual/cch/fair_lend_fhact.pdf. For more information about the Fair Housing Act, see CRS Report 95-710, *The Fair Housing Act (FHA): A Legal Overview*, by David H. Carpenter; and CRS Report R44557, *The Fair Housing Act: HUD Oversight, Programs, and Activities*, by Libby Perl.

[5] See Office of the Comptroller of the Currency (OCC), *Community Reinvestment Act*, March 2014, http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-reinvestment-act.pdf.

[6] For example, credit unions have membership restrictions and can lend only to their members. However, a credit union may get permission to lend outside of its membership if it wants to operate in an underserved area. See CRS In Focus IF11048, *Introduction to Bank Regulation: Credit Unions and Community Banks: A Comparison*, by Darryl E. Getter. Insurance and securities companies do not hold federally insured deposits and are not subject to the CRA.

[7] The OCC is the primary regulator for national banks. The Federal Reserve is the primary regulator for bank holding companies and some state banks. The FDIC is the primary regulator for state banks not under the Federal Reserve. For more information, see CRS In Focus IF10035, *Introduction to Financial Services: Banking*, by Raj Gnanarajah and David W. Perkins. Several states also have separate community reinvestment laws applicable to banking institutions under their supervision. Regulation BB, 12 C.F.R. Part 25, 228, 345 (2024).

[8] See OCC, *CRA: Community Development Loans, Investments, and Services*, March 2014, http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-loans.pdf.

[9] *Safety and soundness regulation* refers to banks maintaining prudent loan underwriting standards and sufficient regulatory capital to buffer against default risks and prudently underwriting CRA-qualified loans.

[10] See OCC, Federal Reserve System, FDIC, "Agencies Issue Final Rule to Strengthen and Modernize Community Reinvestment Act Regulations," joint press release, October 24, 2023, https://www.federalreserve.gov/newsevents/ (continued...)

developments since 1977 to provide context for the most recent changes. Next, highlights of the final rule are presented, including revised definitions and quantitative and qualitative benchmarks used in bank CRA examinations going forward to generate *conclusions* that will support composite performance ratings. The last section of the report summarizes policy issues regarding the effectiveness, risks, and cost of CRA lending activities. An **Appendix** provides computational details pertaining to the revised CRA examination.

Evolution of CRA Implementation

Since initial passage of the CRA in 1977, Congress and the federal bank regulators have made various amendments and modifications.[11] Dissatisfaction with CRA in the late 1980s and early 1990s set the stage for previous revisions.[12] For example, community groups viewed CRA as ineffective at expanding credit access.[13] Banks indicated that policy guidance from the regulators at the time was unclear. Furthermore, banks viewed early CRA examination processes as placing too much emphasis on documentation and paperwork and too little emphasis on performance. These and other concerns led to various developments:

- The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73, 103 Stat. 183) required public disclosure of bank CRA ratings. It also established a four-tiered system of descriptive overall (composite) performance levels: outstanding, satisfactory, needs to improve, or substantial noncompliance.[14]
- The FDIC Improvement Act of 1991 (P.L. 102-242) required regulators to include banks' CRA examination data when determining their CRA ratings.[15]
- The Resolution Trust Corporation, Refinancing, Restructuring, and Improvement Act of 1991 (P.L. 102-233), as amended by the Housing and Community Development Act of 1992 (P.L. 102-550), allowed CRA consideration for banks that (1) donate, sell on favorable terms, or incur loss when transferring ownership of branches to minority-owned depository institutions (MDIs) or women-owned depository institutions (WDIs) or (2) make available on a rent-free basis branches located in predominantly minority neighborhoods.[16] P.L. 102-550 also allowed

pressreleases/files/frn-cra-20231024.pdf. The final rule was published on February 1, 2024 (89 *Federal Register* 6574-7222).

[11] See Federal Reserve, "Community Reinvestment Act (CRA): History of the CRA," https://www.federalreserve.gov/consumerscommunities/cra_history.htm.

[12] Michael S. Barr, "Credit Where It Counts: The Community Reinvestment Act and Its Critics," *New York University Law Review*, May 2005, pp. 110-112.

[13] Factors such as the savings and loan crisis, however, translated into tight credit and fewer banks looking to expand their operations, which may have reduced the focus on CRA objectives. For more information about the crisis, see CRS Report R46499, *The Federal Home Loan Bank (FHLB) System and Selected Policy Issues*, by Darryl E. Getter.

[14] See OCC, "Community Reinvestment Act," 56 *Federal Register* 26899-26901, June 12, 1991; Federal Reserve System, "Community Reinvestment Act," 56 *Federal Register* 26901-26902, June 12, 1991; and FDIC, "Community Reinvestment Act," 56 *Federal Register* 26903-26904, June 12, 1991, https://www.fws.gov/sites/default/files/federal_register_document/FR-1991-06-12.pdf.

[15] See OCC, "Reforming the Community Reinvestment Act Regulatory Framework," 83 *Federal Register* 45054, September 5, 2018.

[16] See FDIC, "Community Reinvestment—12 USC Chapter 30," https://www.fdic.gov/regulations/community/community/12c30.html; and Carole M. Foley, "The Community Reinvestment Act and Minority-Owned Financial Institutions," *Consumer Compliance Outlook*, Fourth Quarter 2008, https://www.consumercomplianceoutlook.org/2008/fourth-quarter/q4_04/.

CRA consideration for joint lending activities (e.g., loan participations) with MDIs, WDIs, or low-income credit unions (LICUs).

- Following President Clinton's call for reform in 1993, the regulatory agencies issued a joint final rule in 1995.[17] Among the various revisions, the term *service area* was replaced with *assessment area*, referring to the geographic location where a bank's lending activities would be evaluated. This location included the bank's main office, branches, and deposit-taking automatic teller machines (ATMs), as well as surrounding areas where the bank originates and purchases a substantial portion of loans.[18] In addition, the CRA examination was customized to account for differences in bank sizes and business models. The definition of *community development* was also expanded beyond economic needs to include the promotion of community welfare. The community development definition also clarified *small businesses* and *small farms* definitions covered by the rule.[19]
- The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328, 108 Stat. 2338)—also known as the Interstate Banking Act that overrode long-standing state prohibitions against branching across state lines—required bank regulators to consider banks' CRA ratings when determining whether to approve interstate branching activities.[20] Moreover, Section 109 of this act instructed the federal bank regulators to calculate state loan-to-deposit (LTD) ratios to ensure that banks seeking to engage in banking activities outside of their home states are primarily meeting the credit needs of the communities they serve.[21]
- The Gramm-Leach-Bliley Act of 1999 (P.L. 106-102) mandated CRA examinations for smaller banks with assets of $250 million or less.
- In 2005, the bank regulators exempted small banks (defined as having assets between $250 million and $1 billion) from CRA loan data collection and reporting obligations.[22] These small banks were also made eligible for evaluation under a small bank lending test (as opposed to all three lending, investment, and service tests applied to larger banks). Bank size definitions were also indexed to the Consumer Price Index. In addition, the term *community development* was

[17] See OCC, Federal Reserve System, FDIC, Office of Thrift Supervision, "Community Reinvestment Act Regulations and Home Mortgage Disclosure; Final Rules," 60 *Federal Register* 22156-22223, May 4, 1995.

[18] Service areas were defined using the *equidistance principle*, which required a bank to serve areas that were uniformly equidistant from its branches and deposit-taking ATMs. The equidistant principle, however, was deemed inappropriate because it did not align with many banks' business models. The assessment area concept was adopted to allow banks to establish boundaries that were in better alignment with the locations that it reasonably expected to serve, including allowing for more contiguous political subdivisions.

[19] The 1995 rule harmonized the definition of *small businesses* and *small farms* as activities that promote economic development and meet the size eligibility standards consistent with the Small Business Administration's size limitations for its 504 Certified Development Company program and Small Business Investment Company program. For more information, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by R. Corinne Blackford and Anthony A. Cilluffo.

[20] See Board of Governors of the Federal Reserve System, *Regulation H: Section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act*, Supervision Manual, https://www.federalreserve.gov/boarddocs/supmanual/cch/sec109.pdf; and OCC, "Agencies Issue Host State Loan-to-Deposit Ratios," press release, May 19, 2023, https://www.occ.gov/news-issuances/news-releases/2023/nr-ia-2023-47.html.

[21] A loan-to-deposit (LTD) ratio is a ratio of a bank's total loans (in the numerator) over its total deposits (in the denominator). State LTD ratios are used to evaluate compliance with Section 109. See Federal Reserve, *Regulation H*.

[22] OCC, Federal Reserve, and FDIC, "Community Reinvestment Act Regulations," 70 *Federal Register* 44256-44270, August 2, 2005.

expanded to include activities to revitalize and stabilize distressed or underserved rural areas and designated disaster areas.

- The Financial Services Regulatory Relief Act of 2006 (P.L. 109-351) reduced the frequency of on-site CRA examinations for smaller banking institutions.[23]
- The Higher Education Opportunity Act of 2008 (P.L. 110-315) allowed CRA consideration for *low-cost education loans provided to low-income borrowers*. Low-cost education loans are those originated by banks for students who attend institutions of higher education (as defined by legislation and regulations implemented by the U.S. Department of Education) with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education.

Various stakeholders—both community groups and banks—have supported further revisions to CRA regulations. For example, the financial industry's adoption of digital technologies has implications for *financial inclusion* (i.e., the increased access of traditionally underserved populations and markets to affordable financial services and products). On one hand, as banks conduct more digital payments and online transactions, populations that are marginally attached to the economy might be excluded.[24] On the other hand, electronic and digital financial products and services may benefit a broader community outside of a branch and arguably lessen the importance of delineated geographical assessment areas—but it may not automatically receive community development CRA credit.[25] Consequently, some banks may have received CRA credit while others may not for various activities (e.g., delivering financial products electronically rather than at a brick-and-mortar location, partnering with some nonprofit organizations for various community activities) depending upon a CRA examiner's interpretation. Inconsistencies in awarding CRA credit increase uncertainty about eligible CRA activities and standards. For these and other concerns, the three banking regulators jointly finalized a rule to modernize CRA regulations, discussed in the next section.[26]

Highlights of the Final Rule

This section provides more detail about key revisions in the final rule released on October 24, 2023.[27] These revisions include changing the *assessment area* and *community development*

[23] The OCC conducts CRA examinations of national banks every three years. See OCC, "CRA Questions and Answers," https://www.occ.treas.gov/topics/compliance-bsa/cra/questions-and-answers.html. For banks supervised by the Federal Reserve, see Federal Reserve, "Consumer Compliance and CRA Examination Mandates," https://www.federalreserve.gov/supervisionreg/caletters/Attachment_CA_13-20_Frequency_Guidance.pdf. For more information, see FDIC, "Consumer Compliance Examinations—Examination and Visitation Frequency," https://www.fdic.gov/regulations/compliance/manual/2/ii-12.1.pdf.

[24] See Raphael Bostic et al., *Shifting the Focus: Digital Payments and the Path to Financial Inclusion*, Federal Reserve Bank of Atlanta, September 30, 2020, https://www.atlantafed.org/-/media/documents/promoting-safer-payments-innovation/publications/2020/09/30/shifting-the-focus-digital-payments-and-the-path-to-financial-inclusion/Shifting-the-Focus-Digital-Payments-and-the-Path-to-Financial-Inclusion.pdf.

[25] See American Bankers Association, "CRA Modernization: Meeting Community Needs and Increasing Transparency," December 2017, https://www.aba.com/-/media/documents/white-paper/cra-whitepaper2017.pdf.

[26] On June 5, 2020, the OCC published a final rule updating its CRA framework that would have applied only to the banks it directly supervises. On May 18, 2021, the OCC announced that it would reconsider the rule. For more information, see CRS In Focus IF11865, *Implementation of the Community Reinvestment Act by the Office of the Comptroller of the Currency*, by Darryl E. Getter.

[27] OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024.

definitions, incorporating greater use of data and documentation, and a new methodological framework for determining CRA credit and overall CRA rating.

Under the revised CRA framework, the following bank definitions apply:

- *Small banks* are those with assets of less than $600 million as of December 31 in either of the prior two calendar years.
- *Intermediate banks* are those with assets of at least $600 million but less than $2 billion as of December 31 in either of the prior two calendar years.
- *Large banks* are those with assets of at least $2 billion as of December 31 in both of the prior two calendar years.[28]
- *Limited purpose banks* are those that do not extend to retail customers the loan types evaluated under the CRA retail lending test (discussed in the "Retail Lending Test" section) except on an incidental or accommodation basis.[29]

These bank definitions will be used throughout this report unless otherwise specified.[30] The four CRA performance tests and the CRA composite ratings, which are referenced throughout the remainder of this report, are discussed in greater detail in the section entitled "CRA Performance Tests and Statutory Composite Ratings."

New Assessment Area Definitions

As previously stated, CRA compliance requires banks to delineate *assessment areas*, the geographically designated areas where they predominantly collect deposits and in which their primary regulators will conduct CRA examinations to assess the extent credit needs are being served in those localities.[31] The final rule expands the definition of (or replaces the term) *assessment area* with new delineations:

- The *facility-based assessment area* (FBAA) is based upon where a bank has its physical main office, branches, and deposit-taking remote service facilities.[32] Deposit-taking remote service facilities consist of ATMs and interactive or virtual ATMs. For large banks and limited purpose banks, an FBAA area must consist of a single metropolitan statistical area (MSA), one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan

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[28] The FDIC generally defines *community banks* as those having assets that do not exceed $10 billion. Banks with assets between $1 billion and $10 billion are considered to be large community banks. For more information, see FDIC, *FDIC Community Banking Study*, December 2020, https://www.fdic.gov/resources/community-banking/report/2020/2020-cbi-study-full.pdf. For this reason, *large banks* as used in the context of CRA differs from when discussed in the context of prudential regulation.

[29] In the final rule, the definition of *limited purpose banks* is revised and combines both the *limited purpose* and *wholesale* bank definitions given in the proposed rule. The term *wholesale bank* is not referenced in the final rule.

[30] The definitions of *small bank*, *intermediate bank*, and *large bank* exclude *limited purpose banks*. The banking regulators are to adjust and publish the asset-size thresholds definitions annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.

[31] See Kenneth Benton and Donna Harris, "Understanding the Community Reinvestment Act's Assessment Area Requirements," Federal Reserve Bank of Philadelphia, *Consumer Compliance Outlook*, First Quarter 2014, https://consumercomplianceoutlook.org/2014/first-quarter/understanding-cras-assessment-area-requirements/.

[32] Large banks may have multiple FBAAs. Loan production offices—facilities where banks may assemble credit information and process loan applications—do not constitute FBAAs.

area of a state.[33] Intermediate and small banks, however, may continue to use partial county destinations given that they have smaller service areas. Delineated FBAAs may not reflect illegal discrimination or arbitrarily exclude LMI census tracts. The applicable CRA performance tests will be applied to facility-based assessment areas when CRA examinations are conducted.

- A *retail lending assessment area* (RLAA) must be delineated if a *large* bank has a lending volume—in each year of the prior two calendar years—of either at least 150 closed-end home mortgage loans (open-end home mortgage loans are excluded) or at least 400 small business loans outside of its FBAAs in any MSA or nonmetropolitan areas of any state, excluding counties that are part of a bank's FBAA. Only the retail loans triggering delineation of an RLAA will be evaluated under the retail lending test. A large bank is exempt from having to delineate an RLAA if more than 80% of its lending occurs within its FBAA. Small and intermediate banks are not required to delineate RLAAs.
- Large banks, certain intermediate banks, and those small banks opting to be evaluated under the retail lending test may also establish *outside retail lending areas* (ORLAs) for any retail lending that occurs outside of all FBAAs and RLAAs. This category captures any LMI lending that is too geographically dispersed to satisfy the requirements for creating a more distinctive assessment area. A large bank delineates an ORLA if at least 15% of a major loan product line occurs outside any of its FBAAs and RLAAs. Delineation of ORLAs for intermediate banks (and small banks that opt in) occurs if at least 50% of retail lending occurs outside of FBAAs. In addition, a bank's purchases of loans provided to LMI borrowers that it did not originate may be evaluated in this category. For these reasons, this category may reduce uncertainty about the eligibility for CRA consideration of community development activities that occur outside of a bank's customary assessment areas.

In other words, banks can delineate additional assessment areas (i.e., RLAAs, ORLAs) to allow any eligible CRA activities that occur outside of their primary FBAAs to be evaluated. In addition, a bank may receive permission from its primary regulator to delineate its assessment areas under the *strategic plan* option, which can be approved for banks engaged in activities that require a more customized CRA framework.[34] Furthermore, the final rule clarifies that *all* activities meeting the definition of *community development* (discussed in the next section) are eligible for CRA consideration regardless whether they occur in delineated assessment areas. The final rule also affirms that these additional assessment areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts.

[33] The CRA statute defines the term *metropolitan statistical area* to mean a region consisting of a city and surrounding communities with social and economic ties as delineated by the Director of the U.S. Office of Management and Budget. The U.S. Census Bureau defines a *census tract* as a statistical subdivision of a county that, if it consists of fewer than 1,200 inhabitants, may be merged with a neighboring tract or, if it exceeds 8,000 inhabitants, split into two or more tracts. (Except for significant population changes, census tracts are designed to be permanent over time for the sake of comparison of census data from decade to decade.) In the CRA final rule, the term *geography* is replaced with the term *census tract*.

[34] For example, a limited purpose bank may request a strategic plan option, which would customize its CRA examination.

Community Development (CD) Definition

The final rule expands the *CD definition* to clarify the eligibility of product and service activities as well as to encourage partnerships with various financial entities that promote greater access of traditionally underserved populations and geographies to financial products and services. Specifically, the final rule groups the CD activities—deemed *responsive* to community needs and, therefore, eligible for CRA consideration—into the following 11 categories:[35]

1. *affordable housing*, which has five components: (1) rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy; (2) multifamily rental housing with affordable rents; (3) one-to-four family rental housing with affordable rents in a nonmetropolitan area; (4) affordable owner-occupied housing for LMI individuals; and (5) mortgage-backed securities (MBSs) that finance affordable housing;[36]
2. *economic development*, which includes (1) direct loans to small businesses and small farms that meet a size and purpose test defined in the final rule; or (2) loans, investments, and services undertaken in conjunction or in syndication (i.e., multiple entities) with government programs (e.g., activities with a Small Business Development Center, Small Business Investment Company, New Markets Venture Capital Company, Community Development Entity, Department of Agriculture Rural Business Investment Company) or intermediaries (e.g., community development corporations, impact financial institutions) as well as other forms of assistance (e.g., financial counseling, administrative assistance, shared space, technology) to small businesses and small farms;[37]
3. *community supportive service* that serves or assists LMI individuals (e.g., childcare, education, workforce development, job training programs, health services, housing services);
4. *revitalization or stabilization activities* that occur in targeted census tracts (undertaken with a federal, state, local, or tribal government plan, program, or initiative), including reuse of vacant or blighted buildings, or activities consistent with a plan for a business improvement district;
5. *essential community facilities* that benefit or serve residents of targeted census tracts (e.g., schools, libraries, childcare facilities, parks, hospitals, health care facilities);
6. *essential community infrastructure* that benefits or serves residents of targeted census tracts (e.g., broadband, telecommunications, mass transit, water supply and distribution, sewage treatment and collection systems);

[35] Instead of *innovative* or *flexible* as discussed in previous CRA regulations, the regulators state that *responsiveness* better captures the focus on community credit needs.

[36] For more information on multifamily housing, see CRS Report R46480, *Multifamily Housing Finance and Selected Policy Issues*, by Darryl E. Getter. For more information on MBSs, see CRS Report R46746, *Fannie Mae and Freddie Mac: Recent Administrative Developments*, by Darryl E. Getter.

[37] For more information on community development corporations, see CRS Report R43520, *Community Development Block Grants and Related Programs: A Primer*, by Joseph V. Jaroscak. For more information on Small Business Administration programs, see CRS Report RL33243, *Small Business Administration: A Primer on Programs and Funding*, by Robert Jay Dilger, R. Corinne Blackford, and Anthony A. Cilluffo. For more information on the Rural Business Investment Program, see CRS Report, An Overview of USDA Rural Development Programs, by Tadlock Cowan.

7. *recovery activities* that support revitalization in designated disaster areas, typically subject to a Major Disaster Declaration administered by the Federal Emergency Management Agency (with certain exceptions as determined by the Federal Reserve, the FDIC, and the OCC);
8. *disaster preparedness and climate resiliency activities* that benefit or serve residents of targeted census tracts with the preparation for natural and weather-related disasters or climate-related risks;
9. *qualifying activities in Native Land Areas* that benefit or serve residents, including LMI residents;
10. *activities undertaken with impact financial institutions*, such as MDIs, WDIs, LICUs, and community development financial institutions (CDFIs);[38] and
11. *financial literacy programs*, including housing counseling.

The final rule supplements the CD definition with *specific standards* and *size and purpose standards*. First, the *specific standards* clarify the eligibility for full and partial consideration for CRA credit with respect to housing finance activities.[39] Loan, investment, or service activities will receive full consideration for CRA credit under the following four circumstances.

1. The activities meet the *majority standard*, meaning that the majority of funds, beneficiaries, or housing units is allocated toward activities described in one or more of the 11 categories in the above CD definition.
2. The activities meet the *bona fide intent standard*, meaning those that expressly intend to address the objectives represented by at least one of the 11 CD categories. The bona fide intent standard applies to situations when meeting the majority standard is difficult—for example, when the proportion of dollars necessary to meet the majority standard is not reasonably quantifiable.
3. The activities are conducted with MDIs, WDIs, LICUs, and CDFIs.
4. The activities involve the use of low-income housing tax credits.[40]

Other banks' affordable housing projects may be eligible for partial or pro rata credit consideration if they do not meet the criteria for full consideration. Some projects must still be considered individually given the wide variability in scope and target even when developed in conjunction with federal housing subsidies or by community-based development organizations.[41] For example, some mixed-income rental housing projects may not set aside a majority of units

[38] For more information about MDIs and WDIs, see FDIC, "Minority Depository Institutions Program," https://www.fdic.gov/regulations/resources/minority/mdi.html; and Federal Reserve, "SR 21-6/CA 21-4: Highlighting the Federal Reserve's Partnership for Progress Program for Minority Depository Institutions and Women's Depository Institutions," https://www.federalreserve.gov/supervisionreg/srletters/SR2106.htm. For more information about LICUs, see National Credit Union Administration, "Low-Income Designation," https://ncua.gov/support-services/credit-union-resources-expansion/field-membership-expansion/low-income-designation. For more information about CDFIs, see CRS Report R47217, *Community Development Financial Institutions (CDFIs): Overview and Selected Issues*, by Darryl E. Getter; and CRS Report R47169, *Community Development Financial Institutions (CDFI) Fund: Overview and Programs*, by Donald J. Marples and Darryl E. Getter.

[39] The *specific standards* approach replaces the *primary purpose* standard discussed in the proposed rule.

[40] See CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley.

[41] Community-based development organizations—defined in Title 24, Section 570.204(c), of the Code of Federal Regulations at https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570/subpart-C/section-570.204#p-570.204(c)—are private organizations that receive funds from large cities and urban counties to carry out activities funded by the Community Development Block Grant Program. For more information, see CRS Report R47287, *Community Development Block Grant Public Service Expenditure Cap: In Brief*, by Joseph V. Jaroscak.

that would be affordable for LMI individuals. However, financing this activity may still be eligible for partial CRA consideration.

Next, the *size and purpose standards* pertain to direct lending to small businesses and small farms for CRA consideration. The size standard is met if it satisfies the eligibility standards of an applicable government program, plan, or initiative. The size standard can also be met if the small business or small farm has gross annual revenues of $5 million or less. The purpose standard is met if the loans, investments, or services promote permanent job creation or retention for LMI individuals or LMI census tracts.

For more clarity, the agencies are to maintain and update a publicly available illustrative list of qualified CD activities.[42] The agencies also allow banks to confirm in advance the eligibility of potential CD activities.

Impact and Responsiveness Review Factors for the CD Financing and CD Services Performance Tests

The regulators have established 12 *impact review factors* for evaluating the impact and responsiveness of a bank's qualifying activities, particularly for the CD Financing and CD Services performance tests discussed in the next section. These factors apply to projects that:

1. serve persistent poverty counties;[43]
2. serve census tracts with poverty rates of 40% or higher;
3. serve geographic areas with low levels of community development financing;
4. support MDIs, WDIs, LICUs, or CDFIs;
5. serve LMI individuals and families;
6. support small businesses or small farms with gross annual revenues of $250,000 or less;
7. directly facilitate the acquisition, construction, development, preservation, or improvement of affordable housing in high opportunity areas;[44]
8. benefit Native American communities;
9. are qualifying grants or donations;
10. invest in projects financed with low-income housing tax credits (LIHTCs) or New Markets Tax Credits (NMTCs);[45]

[42] For example, see OCC, "CRA Illustrative List of Qualifying Activities," https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf; FDIC, Federal Reserve, OCC, "Agencies Release Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment," November 15, 2013, http://www.federalreserve.gov/newsevents/press/bcreg/20131115a.htm.

[43] *Persistent poverty county* is defined as any county, including county-equivalent areas in Puerto Rico, or any other territory or possession of the United States that has had 20% or more of its population living in poverty over the past 30 years, as measured by the U.S. Census Bureau.

[44] A *high opportunity area* is defined as either (1) an area designated by the Department of Housing and Urban Development as a *Difficult Development Area* during any year covered by an Underserved Markets Plan (sponsored by either Fannie Mae or Freddie Mac) in the year prior to its effective date whose poverty rate falls below 10% for metropolitan areas or 15% for nonmetropolitan areas or (2) an area designated by a state or local Qualified Allocation Plan as a high opportunity area whose poverty rate falls below 10% for metropolitan areas or 15% for nonmetropolitan areas.

[45] The Tax Reform Act of 1986 (P.L. 99-514) created the LIHTC program to encourage the development and rehabilitation of affordable rental housing. For more information, see CRS Report RS22389, *An Introduction to the Low-Income Housing Tax Credit*, by Mark P. Keightley. The NMTC was established as part of the Community Renewal Tax Relief Act of 2000 (P.L. 106-554). For more information, see CRS Report RL34402, *New Markets Tax Credit: An Introduction*, by Donald J. Marples. An entity that receives, from the Community Development Financial Institutions Fund, certification as a Community Development Entity is eligible for the NMTC. For more information, see CRS Report R47169, *Community Development Financial Institutions (CDFI) Fund: Overview and Programs*, by Donald J. Marples and Darryl E. Getter.

11. reflect bank leadership through multifaceted or instrumental support; or
12. result in new CD financing products or services that address needs for LMI individuals and families.

CRA Performance Tests and Statutory Composite Ratings

The final rule adopts a new framework for determining CRA ratings consisting of four performance tests:

1. *Retail lending test.* All banks—except for those small banks opting to be evaluated under the current CRA framework—are evaluated under the retail lending test. The retail lending test focuses on lending by product line. For three of the product lines—closed-end residential mortgages, small business loans, and small farm loans—the retail lending test is performed if the *major product threshold* standard is met, meaning that, based upon a *combination of loan dollars and loan counts*, a product line comprises 15% or more of a bank's total retail loans across all product lines in its FBAAs, RLAAs, and ORLAs.[46] The fourth product line, automobile loans, is performed for those banks in which these loans comprise the majority of their lending or for banks opting to have their automobile loans evaluated.[47] Although the bank regulators recognize that the banking industry's percentage of automobile lending activities is small (relative to those of other nonbank lenders), the inclusion of this product line in CRA evaluations, whenever possible, reflects its importance for both LMI customers and those banks with significant shares of their overall retail lending portfolios concentrated in this product line.
2. *Retail services and products test.* The retail services and products test evaluates the delivery systems for both retail banking services and retail banking credit products. This test focuses particularly on the availability and responsiveness to the needs of LMI census tracts, individuals, households, small businesses, and small farms. For example, banking services evaluated under this test may include branch accessibility and the range of services offered. Examples of responsive credit products include credit cards (which can eventually facilitate greater mortgage credit access for LMI borrowers as well as greater credit access for small businesses and small farms), lending programs conducted in cooperation with mission institutions, low-cost education loans, and special purpose credit programs. For large banks with more than $10 billion in assets, the availability and usage of their *deposit products* by LMI individuals will be evaluated.[48]
3. *CD financing test.* The CD financing test, for a large bank or an intermediate bank that opts into this test, evaluates CD financing (loans and CD investments)

[46] The *combination of loan dollars and loan counts* refers to the average of two ratios: (1) any ratio calculated using loans measured in dollars and (2) the same ratio calculated using loans measured in counts. Because automobile loans have lower dollar values compared to mortgages and business loans, for example, they would rarely meet the 15% threshold. For this reason, the regulators use both a dollar volume percentage and a loan count percentage to determine whether to evaluate a product line.

[47] Automobile loans have been introduced as a new loan product category given their importance in certain LMI credit markets. However, the automobile lending market consists of many credit unions and nonbanks, and banks frequently rely upon indirect channels via third-party partnerships for these loan originations.

[48] A bank can use supporting data such as those collected through the BankOn program. For more information, see Federal Reserve Bank of St. Louis, BankOn National Data Hub, https://www.stlouisfed.org/community-development/bank-on-national-data-hub; and Cities for Financial Empowerment Fund, BankOn, https://joinbankon.org/.

in its FBAA, plus the applicable state, multistate MSA, and institutional levels.[49] The CD financing test evaluates the dollar amounts of a bank's CD loans and CD investments in the FBAA relative to the dollar value of its deposit base in the FBAA. This test is performed on all eligible loans regardless of whether they meet the minimum threshold to be a major loan product, which is required for the retail lending test.[50] In other words, the CD financing test evaluates all lending activities—those occurring anywhere in a state or multistate MSA and at the institutional level as well as those conducted outside of a defined assessment area, which may encourage and include lending in *banking deserts*.[51]

4. *CD services test*. This test evaluates a bank's ability to foster partnerships among different stakeholders and create conditions for effective community development. For CRA consideration, the CD services test may consider metrics such as the number of LMI participants in attendance at an event, the number of organizations participating at an event, the number of sponsored events or sessions, the number of hours that staff spent at these events, or the number of hours volunteered by bank staff for activities that met a community development need related to financial services or required the knowledge and expertise of banking staff. The evaluation will also include a review for impact and responsiveness. Such activities occurring in FBAAs as well as applicable state or multistate MSAs and institution levels may be considered for CRA credit. Qualitative review will include relevant CD services data, number of activities, and total service hours pertaining to financial services or the knowledge and expertise of bank staff.

As previously stated, not all banks are required to be evaluated under all four performance exams given their variation in size, business models, and data collection requirements. If, for example, a bank receives permission from its primary regulator to delineate its assessment areas under the strategic plan option, it may be engaged in activities outside the scope of these four standardized performance tests and, therefore, may receive permission to adopt a more customized CRA framework. **Table 1** summarizes which CRA performance tests are mandatory for banks by size.

Table 1. Required CRA Performance Tests by Bank Size

Bank Definition	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
Large bank (assets totaling at least $2 billion)	Mandatory	Mandatory	Mandatory	Mandatory

[49] The terms *institutional level* or *institution levels* are interpreted as referring to the collective lending activities of the bank subsidiaries that are owned by a bank holding company.

[50] In general, a retail loan may be considered only under the retail lending test and is not eligible for consideration under the CD financing test—with the exception of multifamily loans under certain circumstances.

[51] A banking desert exists in a census tract area with no physical financial institutions, such as a credit union or bank branch, located within a 10-mile radius from the tract's center. For more information, see Drew Dahl and Michelle Franke, "Banking Deserts Become a Concern as Branches Dry Up," Federal Reserve Bank of St. Louis, July 25, 2017, https://www.stlouisfed.org/-/media/project/frbstl/stlouisfed/publications/regional-economist/2017/second_quarter_2017/bank_deserts.pdf.

Bank Definition	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test
Intermediate bank (assets of at least $600 million but less than $2 billion)	Mandatory		Mandatory option—either existing *CD test* or the *CD financing test* (finalized by October 2023 rule)[a]	
Small bank (assets totaling $600 million or less)	Mandatory option—either the existing *status quo small bank lending test* or the *retail lending test*[b]			
Limited purpose bank			Mandatory (tailored for individual business models)	

Source: OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024.

a. The existing CD test refers to the test for those banks defined as *intermediate small* that became effective September 1, 2005, discussed at FDIC, Consumer Compliance Examination Manual Chapter XI-3.1, https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/.

b. The status quo small bank lending test refers to the test for those banks defined as *small* that became effective September 1, 2005, at FDIC, Consumer Compliance Examination Manual Chapter XI-2.1, https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/.

Some performance exams, such as the retail lending test, incorporate *metrics*, *benchmarks*, and *performance range thresholds* that are subsequently used to calculate *performance scores*, defined and discussed in more detail in the **Appendix**. The performance scores are assigned to one of five *conclusions*: outstanding, high satisfactory, low satisfactory, needs to improve, or substantial noncompliance). Performance test conclusions are determined for each geographic level (i.e., state, multistate MSA, and institutions).

After generating conclusions for each applicable performance test for each geographic level, one of the four *statutory ratings* (i.e., outstanding, satisfactory, needs to improve, or substantial noncompliance) is assigned for a bank's overall CRA performance. Specifically, all performance scores for the individual performance tests are combined—using a weighted average approach that is based upon loan shares (by combination of loan dollars and loan counts) and deposits (by dollar volume)—to subsequently translate bank performance into a rating in all assessment areas and at each geographic level.

- For a large bank, the specific weights for the retail lending test, CD financing test, retail services and products test, and CD services test would be 40%, 40%, 10%, and 10%, respectively. A large bank must achieve at least a *low satisfactory* conclusion for the retail lending test to receive an overall *satisfactory* rating. A large bank with 10 or more assessment areas will not achieve a *satisfactory* rating or higher rating at the state, multistate MSA, or institution level unless at least 60% of its assessment areas have achieved at least *low satisfactory* conclusions or better performance at the corresponding level.[52]

[52] OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024. For the first CRA exam under the final rule, only the FBAAs will be evaluated. Any RLAAs will be considered in subsequent examinations.

- For intermediate banks, the retail lending test and CD lending test would both receive specific weights of 50%. Intermediate banks must achieve at least *low satisfactory* conclusion on the retail lending test
- Small banks would either receive a rating based solely upon the retail lending test or continue to follow the requirements under the current CRA framework.

Finally, the regulators affirm that any discriminatory or certain other illegal practices could adversely affect a bank's CRA ratings at all levels.

Updated Data Collection and Reporting Requirements

The final rule incorporates greater use of data and documentation to measure CRA effectiveness given the greater emphasis on quantitative metrics.

- Large banks with assets over $10 billion—for purposes of the retail lending test, the CD financing test, and tabulating aggregate performance scores—must collect, maintain, and report volume of deposit data aggregated at the county level based upon the location of the depositor. Large banks with assets of $10 billion or less may use their existing FDIC Summary of Deposits data, although in some cases, opting to voluntarily collect deposit data may result in better alignment with their FBAAs.[53] Large banks and those limited purpose banks that meet the large bank asset-size threshold must report their FBAA delineations and any applicable RLAAs.
- A bank is subject to reporting under the Home Mortgage Disclosure Act (HMDA, P.L. 94-200, 12 U.S.C. §§2801-2809) if it exceeds an asset-size threshold published annually in the *Federal Register*, has a home or branch office located in an MSA, has originated at least one home purchase or refinance home loan, is federally insured or federally regulated, and meets the mortgage volume thresholds.[54] For CRA purposes, a large bank that is already an HMDA-reporter must collect and maintain the location of each home mortgage application, origination, or purchase outside the MSAs in which the bank has a home or branch office. For large banks that are not HMDA reporters, they must collect and maintain the location of each home mortgage application, origination, or purchase during the evaluation period.
- For the retail lending test, the initial definition of *small business loans* and *small farm loans* conform to current call report definitions. However, it will transition to the definition promulgated by the Consumer Financial Protection Bureau pursuant to Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (P.L. 111-203).[55] Specifically, a small business loan is currently defined in the call report as being $1 million or less, and a small farm loan is defined as being $500,000 or less. When the final Section 1071 rule

[53] For more information about the FDIC Summary of Deposits, see FDIC, "Bank Call Report Information: SOD," https://www.fdic.gov/resources/bankers/call-reports/call-summary-of-deposits.html.

[54] The HMDA reporting thresholds for closed-end mortgages is set at 200, established by P.L. 115-174. For more information regarding HMDA reporting thresholds, see CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

[55] A call report, which is filed with the FDIC, is a quarterly report of a financial institution's condition and income. Small business and small farm loans are defined on call reports by loan sizes rather than by the gross annual revenues of the business or farm. For more information about the Section 1071 definitions of *small businesses* and *small farms*, see CRS Report R47628, *Housing Issues in the 118th Congress*, coordinated by Katie Jones.

becomes effective, the CRA definition becomes "loans to businesses or farms with gross annual revenues of $5 million or less," thus based upon the size of the businesses receiving the loans rather than upon the loan sizes.

- For the retail lending test, only those large banks in which automobile loans are a primary product line must collect and maintain automobile lending data, including borrowers' income levels and the census tract for each loan. Other banks may opt to have their auto loans evaluated.[56]
- For the retail services and products tests, large banks must collect and maintain data related to branches and remote service facilities. Large banks with assets over $10 billion, large banks with no branches, and any bank requesting consideration for its digital and delivery systems must collect and maintain these data.

Small banks and intermediate banks have no new data collection and reporting requirements, thus minimizing new data collection and reporting burdens.

Implementation Schedule

The final rule is implemented in stages. Although the effective date of the final rule is April 1, 2024, the bank agencies have extended the applicability date of the FBAAs to January 1, 2026.[57] Many provisions—such as definitions, new asset-size thresholds, the new performance tests, and data collection requirements—become effective on January 1, 2026. On January 1, 2027, annual data reporting requirements become effective, with annual data reporting required every April 1 starting in 2027.

Policy Issues

This section discusses various stakeholders' policy concerns. For example, some critics argue that passing CRA examinations with overall satisfactory ratings is fairly easy. Others argue that the CRA promotes risky lending. The CRA may encourage lending that is more costly to underwrite, but determining the extent that banks respond to CRA-related incentives is difficult given the existence of other credit market subsidies such as federal loan guarantees. These policy issues are discussed in this section.

Will CRA Examinations Be More Challenging Going Forward?

Some stakeholders have questioned the effectiveness of the current CRA examination given that almost all banks pass with composite ratings of satisfactory or better.[58] Without specific

[56] This is a change from the proposed rule, which would have required the collection of automobile lending data for all large banks with assets of over $10 billion.

[57] See OCC, Federal Reserve, FDIC, "Agencies Extend Applicability Date of Certain Provisions of Their Community Reinvestment Act Final Rule," press release, March 21, 2024, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20240321a.htm. This extension also applies to initially finalized public file provisions, which require a bank to include past written comments received from the public related to its performance in helping meet community credit needs, any of its responses to those comments, and a list of branches opened or closed. These disclosures apply to the current year and each of the prior two calendar years. For the first CRA exam under the final rule, only the FBAAs will be evaluated. Any RLAAs will be considered in subsequent examinations.

[58] See "Figure 1, Summary of Annual CRA Examinations: Number of Banks Examined and Average Composite Ratings: 2006-2018" in CRS Report R43661, *The Effectiveness of the Community Reinvestment Act*, by Darryl E. Getter.

definitions of criteria or quotas, the current CRA examination was considered subjective, generally relying on examiners' judgments. The updated CRA examination, however, incorporates formal data metrics and benchmark comparisons to attain performance conclusions, thus raising the question of whether future CRA examinations will be more challenging for banks to pass.

Going forward, fewer banks may receive *outstanding* composite ratings, but many banks are likely to continue receiving *satisfactory* composite ratings. Given the increased quantitative rigor of the examination, achieving *outstanding* retail lending performance test conclusions will likely become more difficult for banks especially as asset sizes increase, which appears consistent with regulators' simulations presented in the proposed rule.[59] Consequently, composite ratings of *outstanding* are likely to become more difficult to obtain. The regulators' simulation found that most banks received *high satisfactory* and *low satisfactory* retail lending test conclusions. In addition, regulators have incorporated *calibrated benchmarks* in various quantitative evaluations to lessen the possibility that achieving CRA objectives would be unattainable for some banks at the expense of others over time.[60] Furthermore, no banks received *substantial noncompliance* conclusions in the retail lending test simulation.[61] For these reasons, the *high satisfactory* and *low satisfactory* performance test conclusions are likely to result in *satisfactory* composite ratings for most banks under the updated CRA examination, similar to outcomes observed under the current CRA examination framework.[62]

Does CRA Encourage Higher-Risk Lending?

Because the CRA encourages lending to LMI individuals, concerns have been raised about whether banks are, therefore, encouraged to make higher-risk loans (perhaps under the presumption that LMI individuals are less creditworthy relative to higher-income individuals). Although lending to higher-risk borrowers has increased since passage of the CRA, this development could be due to a variety of factors that are unrelated to CRA. Specifically, innovations such as credit scoring and automated underwriting have facilitated credit access to both high credit quality and credit-impaired individuals. Credit-impaired borrowers can be charged higher interest rates and fees than those with better credit histories to compensate lenders for taking on greater amounts of credit or default risk.[63] Nontraditional loan products (e.g., interest-only, initially low interest rate) allow borrowers to obtain lower regular payments during the early stages of the loan, perhaps under the expectation that their financial circumstances may

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[59] See "Table 9: Distribution of Reporter Banks Estimated Retail Lending Test Conclusions, by Bank Assets" in OCC, Federal Reserve, FDIC, "Agencies Issue Final Rule to Strengthen and Modernize Community Reinvestment Act Regulations," 87 *Federal Register* 33884 (at 33954), June 3, 2022, https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act.

[60] Calibrated benchmarks are defined and discussed in the **Appendix**.

[61] For banks in the simulation that did receive substantial noncompliance, they did not pass the first component of the retail lending test, referred to as the retail lending volume screen, discussed in greater detail in the **Appendix**. See "Table 10: Distribution of Estimated Retail lending Conclusions Among Banks by Asset Size, Without Applying the Retail Lending Volume Screen" in OCC, Federal Reserve, FDIC, "Agencies Issue Final Rule to Strengthen and Modernize Community Reinvestment Act Regulations," 87 *Federal Register* 33884 (at 33954), June 3, 2022, https://www.federalregister.gov/documents/2022/06/03/2022-10111/community-reinvestment-act.

[62] A large bank would generally need to receive an *outstanding* performance conclusion for one or more performance tests, including either or both of the retail lending test or the CD financing test, to possibly receive an *outstanding* composite rating. See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, p. 7030.

[63] See Wendy M. Edelberg, *Risk-Based Pricing of Interest Rates in Household Loan Markets*, Federal Reserve, December 5, 2003, http://www.federalreserve.gov/pubs/feds/2003/200362/200362pap.pdf; and Darryl Getter, "Consumer Credit Risk and Pricing," *Journal of Consumer Affairs*, vol. 40, no. 1 (Summer 2006), pp. 41-63.

improve in the later stages as the loan payments adjust to reflect the true costs. The ability to charge higher prices or offer such nontraditional loan products may have resulted in an increase in higher-risk lending. Higher-risk lending, therefore, can be attributed to innovations in loan underwriting that occurred independently of CRA implementation.

Bank regulators do not give CRA consideration for all loans provided to LMI borrowers due to consumer protection and prudential regulatory concerns.[64] To protect consumers, bank regulators are reluctant to award CRA credit for originating higher-risk loans given the scrutiny necessary to determine whether higher loan prices reflect elevated default risk levels or discriminatory or predatory lending practices.[65] Regulators are aware of practices such as improper consumer disclosure, steering, or discrimination that inflate loan prices.[66] Monitoring how well higher-risk borrowers understand the disclosures regarding loan costs and features or whether any discriminatory or predatory behavior occurred at the time of loan origination is difficult for regulators.[67] With prudential concerns in mind, bank regulators are also unlikely to encourage lending practices that might result in large concentrations of high-risk loans on bank balance sheets.[68] For these reasons, bank regulators have explicitly discouraged certain lending activities that are generally more concentrated in LMI communities, such as subprime mortgages and payday lending, as discussed in further detail in the following sections. Bank participation in subordinate financing activities, which are riskier relative to conventional lending, is also discussed.

Subprime Mortgages and the Qualified Mortgage Rule

Subprime lending, although no consensus definition exists, may generally be described as lending to borrowers with weak credit at higher costs relative to borrowers of higher credit quality.[69] Banks generally received little or no CRA credit for subprime mortgage lending. In September 2006, for example, the banking regulatory agencies issued guidance on subprime lending that was restrictive in tone.[70] The guidance warned banks of the risk posed by nontraditional mortgage loans, including interest-only and payment-option adjustable-rate mortgages. The agencies expressed concern about these loans because of the lack of principal amortization and the

[64] The Consumer Financial Protection Bureau was created by Congress in 2010 (P.L. 111-203) and given the authority over both banking and nonbanking firms that offer consumer financial products to ensure consistent application of consumer protections. However, it does not have the authority to award CRA credits to banks.

[65] See OCC, FDIC, Federal Reserve, Office of Thrift Supervision, and National Credit Union Administration, *Interagency Fair Lending Examination Procedures*, Federal Financial Institutions Examination Council, August 2009, http://www.ffiec.gov/pdf/fairlend.pdf; and OCC, "Fair Lending," http://www.occ.gov/topics/consumer-protection/fair-lending/index-fair-lending.html. Also, banks may be awarded CRA credit for making higher-risk loans insured by federal agencies, such as the FHA or the Small Business Administration.

[66] See CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

[67] See U.S. General Accounting Office, *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending*, GAO-04-280, January 2004, http://www.gao.gov/assets/160/157511.pdf. Regulators use fair lending examinations to determine whether loan pricing practices have been applied fairly and consistently across applicants or if some steering to higher-priced loan products occurred.

[68] Asset quality is one of the components of the CAMELS rating system (capital adequacy, asset quality, management capability, earnings, liquidity, and sensitivity to market risk) used when examining the financial health of U.S. banks and credit unions. For more information, see the FDIC's Risk Management Manual of Examination Policies at http://www.fdic.gov/regulations/safety/manual/.

[69] See Rajdeep Sengupta and William R. Emmons, "What Is Subprime Lending?," Federal Reserve Bank of St. Louis, *Economic Synopses*, vol. 13 (2007), https://research.stlouisfed.org/publications/es/07/ES0713.pdf.

[70] See OCC, Federal Reserve, FDIC, Office of Thrift Supervision, and National Credit Union Administration, "Federal Financial Regulatory Agencies Issue Final Guidance on Nontraditional Mortgage Product Risks," September 29, 2006, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20060929a.htm.

potential for negative amortization.[71] Consequently, a study of 2006 HMDA data reported that banks subject to the CRA and their affiliates originated or purchased only 6% of the reported high-cost loans made to lower-income borrowers within their CRA assessment areas.[72] Despite awarding little or no CRA credit for subprime mortgage *lending*, however, the federal regulators offered CRA consideration to banks that helped *mitigate the effects of* distressed subprime mortgages.[73] On April 17, 2007, federal regulators provided examples of various arrangements that financial firms could provide to LMI borrowers to help them transition into affordable mortgages and avoid foreclosure. The various workout arrangements were eligible for favorable CRA consideration.[74]

Banks are unlikely to receive CRA consideration for originating subprime mortgages going forward. The Dodd-Frank Act required lenders to consider consumers' ability to repay before extending them mortgage credit, and one way for lenders to comply is to originate *qualified mortgages* (QMs) that satisfy various underwriting and product-feature requirements.[75] QM originations give lenders legal protections if the required income verification and other proper underwriting procedures are followed. Given the legal protections afforded to QMs, some banks might show greater reluctance toward making non-QM loans, which could be construed as a reluctance to lend to LMI borrowers. The federal banking regulators, therefore, announced that banks choosing to make only or predominantly QM loans should not expect to see adverse effects on their CRA evaluations. However, the regulators did not indicate that CRA consideration would be given for non-QMs.[76] The federal banking regulators, therefore, appear less inclined to use the CRA to encourage lending that would be subject to greater legal risks.

Small-Dollar Lending

Banks are generally discouraged from providing financial services such as small-dollar cash advances (similar to payday loans) in the form of subprime credit cards, overdraft protection services, and direct deposit advances.[77] For example, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (P.L. 111-24) placed restrictions on subprime credit

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[71] *Amortization* refers to paying down a loan's principal balance such that the amount owed decreases over time. *Negative amortization* refers to increasing a loan's principal balance such that the amount owed increases over time.

[72] See Neil Bhutta and Glenn B. Canner, "Did the CRA Cause the Mortgage Market Meltdown?," Federal Reserve Bank of Minneapolis, March 1, 2009, https://www.minneapolisfed.org/article/2009/did-the-cra-cause-the-mortgage-market-meltdown; U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on Domestic Policy, *Bank Mergers, Community Reinvestment Act Enforcement, Subprime Mortgage Lending, and Foreclosures*, testimony of Sandra Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 110th Cong., 1st sess., May 21, 2007, http://www.federalreserve.gov/newsevents/testimony/braunstein20070521a.htm; and OCC, "Comptroller Dugan Says CRA Not Responsible for Subprime Lending Abuses," press release, November 19, 2008, http://www.occ.gov/news-issuances/news-releases/2008/nr-occ-2008-136.html.

[73] Federal Reserve, U.S. Department of Housing and Urban Development, FDIC, National Credit Union Administration, OCC, and Office of Thrift Supervision, "Federal Regulators Encourage Institutions to Work with Mortgage Borrowers Who Are Unable to Make Their Payments," press release, April 17, 2007, http://www.occ.gov/news-issuances/news-releases/2007/nr-ia-2007-41.html.

[74] These workout arrangements would presumably receive CRA consideration under the lending test given that new, modified loans would be provided directly to borrowers.

[75] See CRS Report R46980, *Single-Family Mortgage Pricing and Primary Market Policy Issues*, by Darryl E. Getter.

[76] See Federal Reserve, FDIC, National Credit Union Administration, and OCC, "Interagency Statement on Supervisory Approach for Qualified and Non-Qualified Mortgage Loans," press release, December 13, 2013, http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131213a1.pdf.

[77] For more on banking products that provide equivalent payday lending services and recent regulatory developments, see CRS Report R44868, *Short-Term, Small-Dollar Lending: Policy Issues and Implications*, by Darryl E. Getter.

card lending. In addition, federal banking regulators expressed concern following the offering by some banks of deposit advance products, which have similarities to payday loans. Specifically, on April 25, 2013, the OCC, FDIC, and Federal Reserve noted that the high costs and repeated extensions of credit could add to borrower default risks and issued final supervisory guidance regarding the delivery of these products.[78] Many banks subsequently discontinued offering deposit advances.[79] Because these legislative and regulatory efforts explicitly discourage banks from offering high-cost consumer financial products, such products are unlikely to receive CRA consideration. Furthermore, the focus on mainstream credit products arguably may undermine the effectiveness of CRA should individuals choose to patronize nonbank lenders that offer financial products deemed unsound by bank regulators.

Subordinate Financing Activities

The CRA regulations allow banks to assume greater investment risks. For example, investments in Small Business Investment Corporations (SBICs) allow banks to provide subordinate financing (rather than senior debt) to businesses.[80] Senior lenders have first claims to the business's assets in case of failure. However, subordinate financiers provide funds in the form of mezzanine capital or equity, requiring a higher return because they are repaid after senior lenders. Banks are generally not allowed to act as subordinate financiers and acquire ownership interests in private equity funds unless such investments promote public welfare.[81] Participation in community development financing activities, such as SBIC investments—which represent an exemption from

[78] See OCC, "Office of the Comptroller of the Currency Releases Guidance on Direct Advance Products," press release, April 25, 2013, http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-69.html; FDIC, "FDIC Issues Proposed Guidance on Deposit Advance Products," press release, April 25, 2013, http://www.fdic.gov/news/news/press/2013/pr13031.html; and Federal Reserve, "Statement of Deposit Advance Products," April 25, 2013, https://www.federalreserve.gov/bankinforeg/caletters/CALetter13-07.pdf. The FDIC released final guidance on direct deposit advances. See FDIC, "Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products," press release, November 21, 2013, http://www.fdic.gov/news/news/press/2013/pr13105a.pdf. In addition to reminding banks of their vulnerability to various risks (e.g., credit, reputational, legal) and potential compliance violations (e.g., Truth in Lending Act, Truth in Savings Act, Equal Credit Opportunity Act, Electronic Funds Transfer Act), the agencies listed their expectations with respect to loan classification policies, underwriting and administration policies, the length of customer relationships, and customer credit histories.

[79] Offering deposit advances raises concerns related to prudential requirements—namely, whether banks are determining and holding sufficient loan loss reserves for delinquent loans. When loans become delinquent and default risks increase, depository institutions are required to treat those balances as charge-offs, meaning that the repayment obligations must be recognized as uncollectible and charged against allowances for loan and lease loss reserves. Open-ended loans, such as credit card balances, must be charged off when they become 180 days overdue. When customers fail to repay overdrafts within 60 days, depository banks and credit unions are required to charge off unpaid overdraft balances. Credit unions are also required to establish for members repayment plans that do not exceed 45 days. See Federal Financial Institutions Examination Council, "Federal Financial Institution Regulators Issue Revised Policy for Classifying Retail Credits," press release, https://www.ffiec.gov/press/pr021099.htm; and OCC, Federal Reserve, FDIC, and National Credit Union Administration, "Joint Guidance on Overdraft Protection Programs," http://www.federalreserve.gov/boarddocs/SRLETTERS/2005/SR0503a1.pdf.

[80] Banks may establish (individually or jointly with other banks) or act as limited partners with existing SBICs, which are licensed and regulated by the Small Business Administration, to provide debt or equity financing to support small businesses, including those that were recently established or trying to expand. For more information, see CRS Report R41456, *SBA Small Business Investment Company Program*, by Robert Jay Dilger and Anthony A. Cilluffo.

[81] A *public welfare investment* (PWI) promotes public welfare by providing housing, services, or jobs that primarily benefit LMI individuals. Under PWI investment authority, banks may engage in certain activities that would typically not be permitted by other banking laws so long as these activities promote the public welfare and do not expose institutions to unlimited liability. For more information, see OCC, *Public Welfare Investments*, July 2011, http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-public-welfare-investments.pdf; and 12 C.F.R. §§24.2, 24.3, and 24.6 at http://www.gpo.gov/fdsys/pkg/CFR-2013-title12-vol1/pdf/CFR-2013-title12-vol1-part24.pdf.

ordinary permissible banking activities—is eligible for CRA consideration.[82] Furthermore, SBIC assets, similar to CDFIs' assets, are more likely to be illiquid given the difficulty to obtain credit ratings for SBIC investments, meaning that they cannot be sold in secondary markets.[83] For this reason, liquidity risk increases given the difficulty to sell SBIC investments should a bank's immediate need for cash arise.[84]

The prudential bank regulators monitor banks' lending and subordinate financing activities. For example, banks must still be at least *adequately capitalized* to invest in these specialized financial institutions under public welfare investment authority.[85] Given the risk of losing the principal amount of their equity investments, banks must also perform the proper due diligence associated with prudent underwriting. These investments, in addition to receiving the same risk-based capital treatment as business and commercial loans, are subject to higher capital requirements after a certain amount, thereby tempering the amount of SBIC deals banks might be willing to do.[86] Thus, banks' CRA lending and investment activities—similar to their non-CRA activities—are still subject to prudential safety and soundness standards.

Is CRA Lending More Costly?

As previously explained, compliance with CRA does not require banks to make unprofitable, high-risk loans that would threaten the financial health of the bank. Instead, CRA loans have profit potential, and bank regulators require all loans—including CRA loans—to be prudently underwritten. However, the CRA may encourage banks to engage in *more costly* lending relative to their more standard lending activities or strategies. The bullets below provide examples of higher-cost lending activities.

- Underwriting, the process of assessing the creditworthiness of prospective (consumer or business) borrowers, is generally more expensive and time-consuming for applicants lacking sufficient credit histories, facing greater income variability, or lacking sufficient collateral for backing loans. Expensive underwriting, however, is not exclusively an LMI or CRA issue. For example, some people may pay their obligations on time but still lack a digital credit history because their wages are paid in cash (rather than direct deposit) and they engage primarily in cash transactions. Self-employed individuals may experience seasonal or unexpected income variations, which requires them to provide more evidence of their ability to repay loans. For some small businesses that provide services (e.g., accounting, legal), their valuable client lists may not be suitable

[82] Banks' SBIC investments are exempt from a bank requirement referred to as the *Volcker Rule*. For more information, see Federal Reserve, FDIC, OCC, and Securities and Exchange Commission, "Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds," 79 *Federal Register* 5536, January 31, 2014.

[83] Small LMI business start-ups that seek funding from SBICs would be unlikely to bear the expenses associated with paying for credit ratings.

[84] See OCC, "Small Business Investment Companies: Investment Option for Banks," September 2015, https://www.occ.treas.gov/publications-and-resources/publications/community-affairs/community-developments-insights/pub-insights-sep-2015.pdf.

[85] *Adequately capitalized* is one of five designations used in the bank capital regulatory framework to indicate whether a bank has sufficient capital reserves to buffer against losses associated with default risks. For more information, see CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

[86] A 100% risk weight is assigned for SBIC investments (equity exposures) that represent less than 10% of a bank's total risk-based capital. A 300% or 400% risk weight is assigned for SBIC equity exposures that are equal to or greater than 10% of total capital, depending upon whether the equity exposure is a publicly traded equity. See OCC, "Small Business Investment Companies: Investment Option for Banks."

collateral for backing small business loans. In short, some prospective borrowers—regardless of their income—are more costly for lenders to underwrite relative to more typical borrowers.

- Small-sized loans can generally be viewed as those that are unlikely to generate sufficient interest income to cover the fixed administrative costs to provide the loan.[87] Assuming that the underwriting, servicing, and compliance costs are invariable to loan size, then incurring the fixed costs for small-sized loans that generate low amounts of interest revenue may be less economical. The dollar threshold for what may be considered a small-size loan can vary among banks.[88]
- Multifamily loans that would support affordable housing are more difficult to underwrite.[89] Because LMI tenants may not be able to pay rents that would generate sufficient revenues to repay multifamily loans, developers rely upon federal subsidies to reduce costs associated with acquisition, rehabilitation, and state and local fees as well as to qualify for more favorable loan terms. However, ensuring that all eligibility requirements for multiple federal subsidies have been met increases the time and costs to underwrite.

Although some loans may be more costly to underwrite, they may also be eligible for federal guarantees and subsidies—particularly those consistent with various mission lending policy goals. For example, when federal agencies guarantee the default risks of loans that are more costly to underwrite, the banks' capital requirements are typically reduced and those loans may still receive CRA consideration. Instead of capital relief, some CRA lending activities may be eligible for other federal subsidies (e.g., LIHTC, NMTC). (By contrast, some potentially profitable loans with more typical underwriting costs may still meet the eligibility requirements for certain federal guarantees or subsidies. If borrowers opt for federally guaranteed loans with lower down payments or other amenable requirements, banks may benefit from the lower capital requirements or subsidies and possibly receive CRA consideration.) Thus, some CRA lending activities with higher underwriting costs (relative to non-CRA activities) might be eligible for offsetting capital relief or other forms of federal subsidies, which varies by particular circumstances. For this reason, determining the extent banks' decisions to participate in some higher-cost lending activities are motivated by CRA incentives, profit incentives unrelated to CRA, or both can be difficult particularly for CRA activities that are also eligible for various forms of federal credit subsidies.

[87] See W. Moore and R. Craigwell, "The Relationship Between Commercial Banks' Interest Rates and Loan Sizes: Evidence from a Small Open Economy," *Applied Financial Economics*, vol. 13 (2003), pp. 257-266.

[88] In 2015, the Federal Reserve specifically highlighted the decline of community banks' business loans with initial principal amounts under $100,000. See Federal Reserve Governor Lael Brainard, "Community Banks, Small Business Credit, and Online Lending," https://www.federalreserve.gov/newsevents/speech/brainard20150930a.htm; FDIC, "Small Business Lending Survey," https://www.fdic.gov/resources/publications/small-business-lending-survey/index.html; Federal Reserve, "Availability of Credit to Small Business," October 2022, https://www.federalreserve.gov/publications/2022-october-availability-of-credit-to-small-businesses.htm.

[89] A multifamily mortgage is a loan secured by a residential dwelling (e.g., a traditional apartment building, independent or assisted living for seniors) with at least five or more separate units. See CRS Report R46480, *Multifamily Housing Finance and Selected Policy Issues*, by Darryl E. Getter.

Appendix. Explanation of Selected Methodological Details and Computations

This Appendix discusses the computation of *metrics*, *benchmarks*, and *thresholds* used in the revised CRA examination. The performance tests discussed in the following sections incorporate the definitions below.

- *Home mortgage loans* is defined as closed-end residential mortgages that are reportable under the HMDA.
- *Small business loans* and *small farm loans* are defined initially as those that conform to current call report definitions until transition to the definitions used in the finalized Section 1071 rule.
- *Low-income individuals, families, or households* is defined as residents with family incomes of less than 50% of the area median income.
- *Moderate-income individuals, families, or households* is defined as residents with family incomes between 50% and 80% of the area median income.
- *Low-income small businesses* or *low-income small farms* will be defined as having gross annual revenues no more than $250,000. The CRA rule transitions to the finalized Section 1071 rule definition once it becomes effective.
- *Moderate-income small business* or *moderate-income small farms* will be defined as having gross annual revenues between $250,000 and $1 million. The CRA rule transitions to the finalized Section 1071 rule definition once it becomes effective.

When applied to certain ratios used in various tests (e.g., retail lending test, CD financing test), the definition of *combination of loan dollars and loan counts* refers to the average of two ratios: (1) any ratio calculated using loans measured in dollars and (2) the same ratio calculated using loans measured in counts. Instead of separate calculations, the combination of loan dollars and loan counts approach is used to better account for differences in banks' business models, strategies, and geographic areas.

Retail Lending Test Computations

The retail lending test has three components: a retail lending volume screen test, an analysis of geographic and borrower distributions of product lines, and an assignment of conclusions.[90]

The first component, the *retail lending volume screen test*, evaluates a bank's retail lending volume in its FBAA relative to its deposit base in comparison to its peers using three metrics.[91] The first metric, the *bank volume metric*, measures, in the numerator, the annual dollar amount of retail loan originations by a bank in its FBAA and, in the denominator, the annual dollar amount of deposits collected in its FBAA.[92] The second metric, the *market volume benchmark*, is a

[90] See Independent Community Bankers Association (ICBA), "2023 CRA Final Rule Summary," https://www.icba.org/docs/default-source/icba/advocacy-documents/summaries/comprehensive-cra-final-rule-summary.pdf.

[91] The bank agencies have concluded that the CRA provides them with the authority to evaluate whether the credit needs of the local communities where banks have concentrations of retail loans are being met.

[92] This metric is analogous to Regulation H/Section 109 loan-to-deposit (LTD) ratio. If, for example, an LTD equals 1, then a bank theoretically makes 100% of its loans using 100% of its deposits. If an LTD ratio equals 80%, then a bank is lending a significant portion of its deposits while retaining 20% of deposits to meet daily cash flow needs. If, however, an LTD equals 50% (or lower), then a bank has the capacity to make more loans (beyond its cash reserves). A (continued...)

market average loan-to-deposit ratio that measures, in the numerator, the average annual dollar amount of retail originations by all large banks in an assessment area shared by all large banks and, in the denominator, the average annual dollar amount of deposits collected by those same banks in that same assessment area. The third metric, the *retail lending volume threshold*, is set at 30% of the market volume benchmark. Thus, an individual bank volume metric must be equal to or greater than the market volume benchmark multiplied by 0.3 to pass the retail lending volume screen test. A bank that does not meet or surpass 30%—and lacks an acceptable basis for failing to meet the minimum threshold—will receive a *recommended conclusion* of either "needs to improve" or "substantial noncompliance" for the retail lending volume screen test. The CRA evaluation continues if a bank passes this screen test.

The second component is a quantitative analysis of the geographic and borrower distributions of a bank's product lines. The geographic distribution tests focus on the distribution of loan products in low-income and moderate-income (separately) census tracts within a bank's FBAAs as well as applicable RLAAs and ORLAs.[93] The borrower distribution tests focus on the distribution of loan products within applicable assessment areas to the following populations: low-income households, moderate-income households, low-income small businesses, low-income small farms, moderate-income small businesses, and moderate-income small farms.

Specifically, a bank undergoing a CRA examination begins by computing individual performance metrics, a set of *geographic distribution measures* and a set of *borrower distribution measures*, to capture its assessment area(s) performance for comparison to the performance of its peers in the assessment area(s).[94] These computations are discussed below.

- The percentages of a bank's product line loans in the census tracts of interest are referred to as the *geographic bank metrics*. Up to eight metrics may be computed—based upon four product line types distributed among low-income census tracts (LICTs) and moderate-income census tracts (MICTs).[95] For the geographic bank metrics covering the evaluation period, the numerators consist of the number of reported (originated or purchased) loans in a product line in LICTs and MICTs, respectively, by a bank. The denominators consist of all reported loans in a product line made by a bank in its FBAA and applicable RLAAs and ORLAs.
- The percentages of a bank's product line loans going to traditionally underserved borrowers are referred to as the *borrower bank metrics*. Up to eight metrics may be computed—based upon four product line types distributed among at least six types of designated borrowers (low-income, moderate-income, businesses and farms with gross annual revenues no more than $250,000, and businesses and farms with gross annual revenues between $250,000 and $1 million). For the borrower bank metrics covering the evaluation period, the numerators consist of the number of reported (originated or purchased) loans in a product line made to

low LTD ratio may suggest a low demand for loans in an assessment area, a bank's anticipation of high demand for cash, or other circumstances resulting in a bank taking less lending risk.

[93] These tests will include RLAAs and ORLAs under certain circumstances such as when volume thresholds are met or when intermediate or small banks opt to have their RLAAs or ORLAs evaluated.

[94] The Summary of Calculations for Geographic Distribution Measures can be found in Tables 10, 11, 12, 13, and 14 of the final rule. The Summary of Calculations for Borrower Distribution Measures can be found in Tables 15, 16, 17, 18, 19, and 20 of the final rule.

[95] According to ICBA, many community banks are unlikely to have automobile loans as a major product line. For this reason, many banks are likely to compute six metrics. See ICBA, "2023 CRA Final Rule Summary."

designated borrowers. The denominators consist of all reported loans in a product line made by a bank in its FBAA and applicable RLAAs and ORLAs.

Table A-1 summarizes the metrics that a bank facing a CRA examination computes.

Table A-1. Individual Bank Metrics

Calculations for Percentages of a Bank's Product Line Lending to Specific Distributions

Numerator or Denominator	Geographic Bank Metrics (Percentages)	Borrower Bank Metrics (Percentages)
PRODUCT LINE: MORTGAGES		
Numerator	HMDA mortgages in LICTs	HMDA mortgages for low-income families
Denominator	HMDA mortgages in FBAA, RLAA	HMDA mortgages in FBAA, RLAA
Numerator	HMDA mortgages in MICTs	HMDA mortgages for middle-income families
Denominator	HMDA mortgages in FBAA, RLAA	HMDA mortgages in FBAA, RLAA
PRODUCT LINE: SMALL BUSINESSES		
Numerator	Number of small business loans below $250,000 (until adoption of Section 1071) in LICTs	Number of loans to small businesses with gross annual revenues below $250,000 (until adoption of Section 1071)
Denominator	Number of small business loans below $250,000 (until adoption of Section 1071) in all census tracts in FBAA, RLAA	Number of all small business loans with no gross annual revenue dollar thresholds (until adoption of Section 1071) in FBAA, RLAA
Numerator	Number of small business loans between $250,000 and $1 million (until adoption of Section 1071) in MICTs	Number of loans to small businesses with gross annual revenues between $250,000 and $1 million (until adoption of Section 1071)
Denominator	Number of small business loans between $250,000 and $1 million (until adoption of Section 1071) in all census tracts in FBAA, RLAA	Number of all small business loans with no gross annual revenue dollar thresholds (until adoption of Section 1071) in FBAA, RLAA
PRODUCT LINE: SMALL FARMS		
Numerator	Number of small farm loans below $250,000 (until adoption of Section 1071) in LICTs	Number of loans to small farms with gross annual revenues below $250,000 (until adoption of Section 1071)
Denominator	Number of small farm loans below $250,000 (until adoption of Section 1071) in all census tracts in FBAA, RLAA	Number of all farm loans with no gross annual revenue dollar thresholds (until adoption of Section 1071) in FBAA, RLAA
Numerator	Number of small farm loans between $250,000 and $1 million (until adoption of Section 1071) in MICTs	Number of loans to small farms with gross annual revenues between $250,000 and $1 million (until adoption of Section 1071)
Denominator	Number of small loans between $250,000 and $1 million (until adoption of Section 1071) in all census tracts in FBAA, RLAA	Number of all farm loans with no gross annual revenue dollar thresholds (until adoption of Section 1071) in FBAA, RLAA
PRODUCT LINE: AUTOMOBILES		
Numerator	n/a	Number of auto loans to low-income borrowers
Denominator	n/a	Number of auto loans in FBAA, RLAA

Numerator or Denominator	Geographic Bank Metrics (Percentages)	Borrower Bank Metrics (Percentages)
Numerator	n/a	Number of auto loans to moderate-income borrowers
Denominator	n/a	Number of auto loans in FBAA, RLAA

Source: CRS interpretation of information provided by the final rule. Any errors or omissions should be attributed to the author.

Notes: The numerator and corresponding denominator for each ratio appears together either in rows shaded white or together in rows shaded light gray.

The third component begins with the assignment of conclusions for the various subcategories of the retail lending test. After obtaining test results, the regulators assign *supporting conclusions* and *recommended conclusions* at the state, multistate MSA, and institution levels followed by a *retail lending test area score* for the retail lending test—all discussed in the bullets below.

- For the distribution tests, the regulators compute corresponding performance *benchmarks*: the *geographic market*, *geographic community*, *borrower market*, and *borrower community benchmarks*.[96] All benchmark percentages are computed using the *aggregate* corresponding loan numbers—in both the numerators and denominators—of reported product line activities for all banks operating within the same FBAAs and RLAAs as the individual bank undergoing the CRA examination. To evaluate a bank's performance in terms of the distribution of its loans among designated census tracts and borrowers, the individual bank metrics computed in **Table A-1** are compared to their corresponding benchmarks following a numerical adjustment, discussed in the next bullet point.
- Next, the aggregate geographic and borrower benchmarks that have been tabulated by the regulators are multiplied by numerical thresholds (established in the final rule), resulting in *calibrated benchmarks*.[97] For each of the four loan product lines, the *lesser* of the two corresponding calibrated benchmarks (i.e., calibrated *market* benchmarks and calibrated *community* benchmarks for both the geographic tests and the borrower tests) are used to establish *performance range thresholds* for the comparisons. Each individual bank metric is subsequently compared to see whether it is above or below its applicable set of performance range thresholds, linked to *supporting conclusions* (outstanding, high satisfactory, low satisfactory, needs to improve, and substantial

[96] The federal banking regulators will continually update the geographic and borrower benchmark metrics given that they depend upon the computation of aggregates of reported banks in assessment areas and the number of households, small businesses, and small farms. The primary data source used for owner-occupied housing units, which are necessary for the closed-end loans, will be the HMDA data. The primary data source for small business and farm loans will be data collected by third-party data providers. The primary data source used to obtain counts for owner-occupied housing units, which are necessary for the community benchmark metrics for closed-end mortgages and automobile loans, will be the American Community Survey.

[97] The assigned thresholds used to calculate the calibrated market and calibrated community benchmarks, which are ultimately linked to the supporting conclusions, can be found in Table 24 of the final rule. Given that the geographic and borrower benchmarks can change over time, the use of calibrated benchmarks adjusts for aggregate benchmarks that could become unattainable over time for some banks if many banks attempt to exceed aggregate benchmarks. For each product line, the regulators will use the lesser of the two calibrated benchmarks for establishing the supporting conclusions such that the performance thresholds do not become too stringent in markets with fewer opportunities for lending to underserved communities or borrowers.

noncompliance).[98] (Sufficient data currently does not exist to compute robust market benchmarks for automobile loans without increasing the data reporting burden for banks.) Finally, each supporting conclusion is assigned a *performance score* (using a 10-point scale).[99]

- For each major product line, the regulators will then establish *retail lending test recommended conclusions*. The performance scores from the preceding geographic and borrower distribution test results are weighted and then averaged by product line—the results are referred to as *product line scores*.[100] Each product line score is subsequently multiplied (weighted)—based upon a combination of loan dollars and loan counts—by the ratio of loans in a product line to all of a bank's loans, resulting in the *retail lending test area score* that serves as the overall score for each major product line. The retail lending test area score is subsequently compared to numerical thresholds (established in the final rule) linked to retail lending test recommended conclusions (outstanding, high satisfactory, low satisfactory, needs to improve).[101] Finally, each recommended conclusion is assigned a performance score (using a 10-point scale).[102]

The third component also involves the development of *conclusions* for states, multistate MSAs, and institution levels. For most banks, the performance scores from the preceding retail lending test are weighted by the average of the following ratios:

- the ratio representing the share of the bank's deposits in the retail lending test area, calculated as the sum (over the years of the evaluation period) of the annual dollar volume of deposits in all retail lending test areas, divided by the sum (over the years of the evaluation period) of the annual dollar volume of deposits in all retail lending test areas in the state, in the multistate MSA, or for the institutions, as applicable; and
- the ratio representing the share of the bank's loans in the retail lending test area based on the combination of loan dollars and loan counts, calculated as the product line loans divided by product line loans for the state, in the multistate MSA, or for the institutions, as applicable.

The weighted average of the performance scores by the average of the two ratios will produce a result that is compared to conclusion thresholds established by the regulators.[103] Although the

[98] The entire process involved to obtain (aggregate) benchmarks, calibrated benchmarks, performance range thresholds, and the assignment of supporting conclusions are illustrated after Table 28 in the final rule. The steps are shown in tables labeled "Example 1a: Geographic Bank Metric," "Example 1b: Geographic Community Benchmark and Geographic Market Benchmark," "Example 1c: Calibrated Market Benchmarks," "Example 1d: Calibrated Community Benchmarks," and "Example 1e: Performance Range Thresholds." These tables illustrate that a bank with a geographic bank metric of 16% receives a supporting conclusion of "needs to improve" because its metric falls below the 18% performance range threshold necessary to receive a "low satisfactory."

[99] The point values for the performance scores are as follows: *outstanding* [10 points], *high satisfactory* [7 points], *low satisfactory* [6 points], *needs to improve* [3 points], or *substantial noncompliance* [0 points].

[100] Example A-11 in the final rule illustrates how the weights are constructed.

[101] The thresholds for the retail lending test area scores are as follows: *outstanding* [8.5 or more], *high satisfactory* [between 6.5 and 8.5], *low satisfactory* [between 4.5 and 6.5], *needs to improve* [between 1.5 and 4.5], or *substantial noncompliance* [less than 1.5].

[102] The point values for the performance scores are as follows: *outstanding* [10 points], *high satisfactory* [7 points], *low satisfactory* [6 points], *needs to improve* [3 points], or *substantial noncompliance* [0 points].

[103] The thresholds for the final conclusions are as follows: *outstanding* [8.5 or more], *high satisfactory* [between 6.5 and 8.5], *low satisfactory* [between 4.5 and 6.5], *needs to improve* [between 1.5 and 4.5], or *substantial noncompliance* [less than 1.5].

retail lending test is primarily a quantitative examination, qualitative factors will be considered. Such factors include a bank's business model and information about the community that may not be captured in the metrics.

Retail Services and Products Test

The retail services and products test has two categories. The category for retail banking services consists of the following components:

- For each FBAA, the availability of a large bank's branches will be evaluated in comparison to other bank branches in terms of their geographic distribution among census tracts, the reasonableness of branch hours, and the range of services available. CRA consideration will be allowed for those banks operating in middle- and upper-income census tracts with branches that deliver services to LMI households, distressed and underserved nonmetropolitan middle-income census tracts, and Native Land Areas. The closing of branches will be evaluated in terms of the impact it may have on the overall accessibility of retail services used by LMI households, distressed underserved rural and Native Land Areas, and component geographic distribution of branch availability.
- For each FBAA, the distribution and availability of a bank's remote service facilities (e.g., ATMs) will be evaluated in comparison to its peers.[104] The remote service facilities will be evaluated upon their distribution among low-, moderate-, middle-, and upper-income census tracts as well as their availability and usage among low-, moderate-, middle-, and upper-income households.
- The digital delivery systems (such as mobile and online banking) are evaluated only for large banks with $10 billion or more in assets.[105] These large banks must provide data illustrating the availability of retail banking services and products offered through digital delivery systems to individuals and in census tracts of different income levels.

The category for retail products has two subcategories:

- All large banks will be evaluated on the responsiveness of their *credit products* and programs for LMI communities, small businesses, small farms.[106]
- For large banks with more than $10 billion in assets, the availability and usage of their *deposit products* to LMI individuals will be evaluated. This test contributes only positively to the retail services and products test.

Finally, although the retail services and products test is primarily qualitative, quantitative benchmarks may be used to evaluate the distribution of branch and remote service facilities of a bank to its peers.[107]

[104] A *remote service facility* is defined as an automated, virtually staffed, or unstaffed banking facility owned or operated by or exclusively for a bank. Examples include ATMs, interactive teller machines, cash dispensing machines, or other remote electronic facilities capable of receiving deposits, dispensing cash, or dispersing funds already lent (e.g., cash advance).

[105] Digital delivery systems may also include telephone banking, bank-by-mail, and bank-at-work programs.

[106] Automobile loans, a form of consumer credit, would be evaluated under the retail lending test. The forms of consumer credit evaluated under the retail services and products test include, for example, credit cards.

[107] The banking regulators will provide guidance to examiners on how to consider market and demographic (continued...)

CD Financing Test

The CD financing test uses metrics to evaluate a bank's CD loan and investment activities. The numerator of these calculations includes new CD originations as well as prior CD loans that have not been fully repaid and still remain on a bank's balance sheet.[108] A bank's deposits are in the denominator.[109] Additional requirements apply for certain types of large banks:

- For banks with over $10 billion in assets, the CD investment component of the numerator excludes MBSs.[110] In addition, a qualitative evaluation of CD activities is incorporated in the CD investment test to assess the impact of small-dollar loans that may be responsive and highly impactful in LMI communities. The qualitative evaluation considers (1) the percentage of a bank's CD loans and investments that meet one or more impact and responsiveness factors (see textbox entitled "Impact and Responsiveness Review Factors for the CD Financing and CD Services Performance Tests"), (2) the dollar volume and number of CD loans that meet one or more impact and responsiveness factors, and (3) reasons for providing more or less weight to the impact and responsiveness component of the CD financing test.
- For limited purpose banks, total assets would be used in the denominator of the CD financing test rather than total deposits.

When the OCC finalized a 2020 CRA rule, a CD minimum test metric was included with a similar definition and the requirement that the final computation should not be less than 2%.[111] Under the current finalized rule, the regulators did not include explicit thresholds for the CD financing test due to current data limitations. In future rulemakings, they may consider establishing local and national benchmarks and thresholds that would allow for the comparison of a bank's activities to its peers.[112] Although the regulators have determined that the CD financing test should remain a qualitative evaluation, it should still be informed by standardized metrics and (non-finalized) benchmarks along with the impact and responsiveness review.[113] Therefore, the regulators incorporated into the final rule a *bank state community development financing test*, which includes the calculation of a *bank state community development financing metric* (CD loans and CD investments divided by retail deposits) and two benchmarks—a *state community*

benchmarks when comparing to branch distribution. See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, p. 6928.

[108] Past loan originations are allowed in the calculations to discourage *loan churning*, a practice that would allow a bank's balance sheet to reflect new loan originations solely for the purpose of obtaining CRA credit without an actual increase in lending activity. Specifically, banks may reduce the maturity of loan originations, which would cause borrowers to refinance existing loans more frequently. Banks may purchase loans from other banks to receive CRA credit even though no new loan origination has occurred. Because previous CRA lending activity would continue to be recognized in these calculations, banks would have the incentive to provide borrowers with longer-term financing.

[109] The bank assessment area CD financing metric formula is (total amount of CD loans and CD investments)/(total deposits).

[110] MBSs are still eligible for full CRA consideration if the underlying loans were not originated or purchased by the bank and are either home mortgage loans made to LMI individuals or loans financing multifamily affordable housing.

[111] See OCC, "Community Reinvestment Act Regulations," 85 *Federal Register* 34734-34834, June 5, 2020. On December 14, 2021, the OCC rescinded its 2020 CRA rule. See OCC, "OCC Issues Final Rule to Rescind Its 2020 Community Reinvestment Act Rule," press release, December 14, 2021, https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-133.html.

[112] These benchmark metrics would be established once sufficient data has been collected. See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, pp. 6957-6958.

[113] See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, p. 6978, https://www.federalreserve.gov/newsevents/pressreleases/files/frn-cra-20231024.pdf.

development financing benchmark and a more tailored *state weighted assessment area community development financing benchmark*—that would allow CRA examiners to compare a bank's state CD financing metric to its peers.[114]

CD financing test conclusions are determined for the following circumstances:[115]

- At the FBAA level, the applicable bank performance metrics are evaluated in comparison to peer FBAA market and community benchmarks. The regulators will also consider the impact and responsiveness of a bank's lending activities as well as the relevant performance context information (e.g., market opportunities, bank capacity, and constraints) of the FBAA.
- At the state and multistate MSA levels, the evaluation incorporates the weighted average of the performance in multiple FBAAs. In addition, state and multistate MSA performance is considered along with the impact and responsiveness of lending activities as well as the relevant performance context information.
- At the nationwide level, the evaluation incorporates the weighted average of the performance in multiple FBAAs. In addition, nationwide area performance is considered along with the impact and responsiveness of lending activities as well as the relevant performance context information.

For banks with multiple FBAAs—including applicable state, multistate MSA, and institution levels—that must take multiple performance tests, the regulators will average their conclusion points by type of performance test to obtain a composite score for each particular test.

Author Information

Darryl E. Getter
Specialist in Financial Economics

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[114] See OCC, Federal Reserve, FDIC, "Community Reinvestment Act," 89 *Federal Register* 6574-7222, February 1, 2024, pp. 6978-6980, https://www.federalreserve.gov/newsevents/pressreleases/files/frn-cra-20231024.pdf.

[115] See Table 43 in the final rule, "Translation of Community Development Financing Test Conclusion in Performance Scores," illustrating the CD financing test's assignment of the following conclusions and point values: *outstanding* [10 points], *high satisfactory* [7 points], *low satisfactory* [6 points], *needs to improve* [3 points], or *substantial noncompliance* [0 points].

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