BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DATE: April 26, 2022

TO: Board of Governors

FROM: Staff[1]

SUBJECT: Notice of Proposed Rulemaking – Community Reinvestment Act (Regulation BB)

ACTION REQUESTED: Approval to publish in the Federal Register the attached draft notice of proposed rulemaking (proposal) in connection with the Board's regulations that implement the Community Reinvestment Act (CRA), to seek comment on proposed revisions to the Board's CRA regulatory and supervisory framework. The proposed rule would be published jointly with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC), with comments due by August 5, 2022. Staff also requests authority to make technical, non-substantive changes to the attached draft proposal prior to publication in the Federal Register.

EXECUTIVE SUMMARY:

The CRA is a seminal piece of legislation that helps to address inequities in credit access for low- and moderate (LMI) individuals and communities. It is designed to encourage regulated banks to help meet the credit needs of the local communities in which they are chartered. The Board, the FDIC, and the OCC implement the CRA through their CRA regulations, which establish the framework for how the agencies assess a bank's record of helping to meet the credit

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[1] Mr. Belsky, Mr. Firschein, Ms. Johnson, and Mr. Patel (Division of Consumer and Community Affairs); Mr. Van Der Weide, Mr. Winerman, Mr. Smith, and Mr. Gaffney (Legal Division).

needs of the communities that they serve, including LMI neighborhoods, consistent with safe and sound operations.

The agencies recognize that the CRA regulations must evolve to address the significant changes in the banking industry that have taken place since the last substantive updates to the CRA regulations in 1995 and 2005. To this end, the agencies sought feedback from stakeholders, including through an earlier proposal issued by the Board in October 2020, on ways to update the CRA regulations. The Board's 2020 proposal solicited feedback on improving the CRA framework by strengthening, clarifying, and tailoring the CRA regulations to reflect the current banking landscape and better meet the core purpose of the CRA; and on ways to evaluate how banks meet the need of LMI communities and address inequities in credit access.

The draft proposal – which the agencies would issue jointly – seeks comment on revising the agencies' CRA regulations to achieve the following objectives:

(1) Strengthen the achievement of the purpose of the statute. The CRA should continue to be a strong and effective tool to support a robust and inclusive financial services industry. To achieve this objective, the draft proposal evaluates bank engagement across geographies and activities, and promotes financial inclusion and transparency by providing enhanced data disclosures.

(2) Adapt to changes in the banking industry, including the expanded role of mobile and online banking. There have been significant changes in how banking services are delivered, including through the use of internet and mobile banking and hybrid models that combine physical footprints with online lending. To achieve this objective, the proposal updates assessment areas while maintaining a focus on branch-based assessment areas and proposes a tailored assessment area approach.

(3) Provide greater clarity and consistency in the application of the regulations. The proposal addresses feedback on the need for more clarity and consistency in the application of CRA regulations. To achieve this objective, the proposal introduces the use of standardized metrics in CRA evaluations for certain banks and clarifies eligible CRA activities focused on LMI communities and non-metropolitan communities.

(4) Tailor performance standards to account for differences in bank size, business model, and local conditions. The agencies seek to tailor the CRA framework to recognize differences in bank size and business models. To achieve this objective, the proposal tailors performance standards for small (less than $600 million in assts), intermediate ($600 million to $2 billion in assets), and large banks (more than $2 billion in assets).

(5) Tailor data collection and reporting requirements and use existing data whenever possible. The proposal seeks to strike an appropriate balance between providing greater clarity and consistency in how banks are assessed by establishing the use of standardized metrics and tailoring the associated data collection and reporting requirements.

(6) Promote Transparency and Public Engagement. The proposal recognizes that transparency and public engagement are fundamental aspects of the CRA evaluation process.

(7) Confirm that CRA and fair lending are mutually reinforcing. The agencies are invested in ensuring that banks meet the credit needs of their communities and do so in a fair and equitable manner, and the agencies seek to coordinate CRA and fair lending examinations where feasible to do so.

(8) Create a consistent regulatory approach that applies to banks regulated by all three agencies. The proposal reflects a unified proposal to apply to banks regulated by all three

agencies, and reflects feedback from stakeholders as provided in meetings, roundtables, and comment letters on prior agency actions.

DISCUSSION:

I. CRA Statutory Purpose and History

Congress enacted the CRA in 1977 to help address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other systemic inequities. Inequitable access to credit and other financial services – due in large part to a practice known as "redlining" – along with a lack of public and private investment, greatly contributed to the economic distress experienced by these communities.

The CRA statute directed the agencies to encourage their supervised banks to meet the credit needs of the communities that they serve, including LMI neighborhoods, in a safe and sound manner and evaluate their record of doing so; take this record into account when evaluating certain banking applications; and report to Congress the actions they have taken to carry out their CRA responsibilities.

II. Current CRA Regulations and Interagency Guidance

In 1978, the agencies issued the first set of regulations to implement the CRA, which have been significantly revised by the agencies twice – in 1995 and 2005 – with the most substantive interagency update occurring in 1995. In addition, the agencies have periodically published Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions and Answers) to provide guidance on the CRA regulations to agency personnel, banks, and the public.

A. CRA Performance Evaluation Framework

Under the current CRA framework, the agencies use different methods to assess CRA performance for banks based on asset size and business model. For example, current rules provide a streamlined assessment method for small banks (defined as those with assets less than $346 million) that emphasizes lending performance; a hybrid assessment method for intermediate small banks (defined as those with assets of at least $346 million, but less than $1.384 billion) that combines a lending test with a community development test; and a more in-depth assessment method for large banks (defined as those with assets of more than $1.384 billion) that focuses on three separate performance measures: lending (to assess retail and community development loans), investment (to assess qualified investments), and service (to assess retail and community development services). As an alternative, the rules give banks of any size the choice to be evaluated under a strategic plan, which is a plan that must set out measurable, annual goals for lending, service and investment activities, and be developed with community input and approved by the respective bank regulator.

To facilitate the evaluation of a bank's CRA performance, banks must delineate one or more assessment area(s) where their main offices, branches, and deposit-taking automated teller machines (ATMs) are located, as well as surrounding geographies where a substantial portion of their loans are originated or purchased. This approach reflects the prevailing business model for financial services delivery when the CRA was first enacted.

The CRA rules also currently delineate the type of activities that are eligible for consideration in the evaluation of a bank's CRA performance. For example, certain banks are subject to a performance test that includes a review of their retail lending (*e.g.*, home mortgage loans, small business loans, small farm loans, and/or consumer loans) and, if applicable, retail banking service activities. Banks subject to a performance test that includes a review of their community development activities are assessed with respect to community development lending, qualified investments, and community development services.

The agencies also currently consider applicable performance context information to inform their analysis and conclusions when conducting CRA evaluations. Performance context includes a broad range of economic, demographic, and institution- and community-specific information that examiners review to calibrate a bank's CRA evaluation to its local communities.

B. CRA Performance Conclusions and Ratings

Under the CRA, each agency must prepare a written evaluation of a bank's record of meeting the credit needs of its entire community, including LMI neighborhoods, at the conclusion of its CRA examination. This performance evaluation is made public and contains the agency's conclusions regarding a bank's overall performance for each assessment factor identified in the CRA rules, as well as the bank's CRA rating and the basis for the rating.

III. Recent Rulemaking Efforts to Modernize the CRA Framework

On September 5, 2018, the OCC published an advanced notice of proposed rulemaking (ANPR) to solicit ideas for building a new CRA framework. On December 12, 2019, the FDIC and the OCC issued a proposal to revise and update their CRA regulations. Subsequently, on May 20, 2020, the OCC individually issued a CRA final rule. On September 21, 2020, the Board individually issued an ANPR to obtain public comment on ways to reform the Board's CRA regulations. On July 20, 2021, the agencies announced their commitment to work together to strengthen and update the CRA regulations and achieve a more consistent framework across all banks. On December 15, 2021, the OCC rescinded and replaced its 2020 final rule with a final rule based on the version adopted jointly by the agencies in 1995, as revised, to facilitate interagency work to reform the CRA regulatory framework and promote consistency for all banks.

IV. Description of the Draft Notice of Proposed Rulemaking (NPR)

This section describes the key proposals, informed by stakeholder feedback provided through meetings, roundtables, and comment letters.

A. Community Development Definitions

Under the current CRA rule, in evaluating a bank's CRA performance, the agencies consider (and give CRA "credit" for) a bank's community development lending, investments, and services under various tests. The draft NPR proposes to revise the community development definitions to clarify eligibility criteria for a broad range of community development activities and incorporate certain guidance currently provided through the Interagency Questions and Answers. The proposed definitions emphasize activities that are responsive to the needs of LMI individuals and communities, certain distressed or underserved non-metropolitan census tracts, and small businesses and small farms.

The draft NPR also proposes that the agencies develop and maintain a publicly-available illustrative and non-exhaustive list of examples of activities that qualify for CRA consideration, and to establish an interagency process for considering eligibility. These provisions are intended to increase certainty regarding what activities qualify for CRA credit.

1. Primary Purpose of Community Development

The draft NPR proposes standards for determining whether an activity has a "primary purpose" of community development and thus would qualify for CRA consideration. To determine whether an activity has a primary purpose of community development, the draft NPR proposes to apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the defined community development activities, then the activity would meet the requisite primary purpose.

Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the entire activity may still receive CRA credit if the agencies determine that the activity has a *bona fide* intent, purpose, or likely outcome of accomplishing a community development purpose.

As an exception to the above framework, the draft NPR also proposes to allow for partial (rather than full) consideration of certain qualified affordable housing activities.

2. Community Development Definitions

The draft NPR proposes to expand the definitions for qualifying activities to provide more clarity on the types of activities that are eligible as community development and to reflect the community development needs of LMI individuals and communities, distressed and underserved non-metropolitan communities, small businesses, and small farms. The proposed community development definitions are discussed in further detail below:

Affordable Housing: The draft NPR proposes a revised definition for affordable housing to provide greater clarity on and update the qualification of affordable housing activities.

Economic Development: The draft NPR proposes several revisions to the economic development criteria to encourage activities supportive of small businesses and small farms while also improving the overall transparency of eligibility criteria by including in the regulation some activities that are currently addressed in guidance.

Community Supportive Services: The draft NPR proposes replacing the term "community services" in the current CRA rule (which refers to a type of activity that has a community development purpose) with a new term, "community supportive services." Community supportive services would be defined as general welfare activities including, but not limited to, childcare, education, workforce development and job training programs, health services, and housing services programs that have a primary purpose of serving LMI individuals.

Place-Based Activities: The draft NPR proposes replacing the revitalization and stabilization activities component of the current rule with six new categories of activities to provide more clarity and to better tailor the types of activities that qualify in different targeted geographies. Each of the categories focuses on place-based activities that benefit residents of targeted geographic areas (primarily, LMI census tracts and distressed or underserved non-metropolitan communities): (1) revitalization activities undertaken in conjunction with a government plan, program, or initiative; (2) essential community facilities; (3) essential community infrastructure; (4) recovery activities that support the revitalization of a designated disaster area; (5) disaster preparedness and climate resiliency; and (6) qualifying activities in Native Land Areas.

Mission-Driven Financial Institutions: The draft NPR proposes to strengthen existing CRA provisions to recognize the unique role played by minority depository institutions (MDIs), women's depository institutions (WDIs), low-income credit unions (LICUs), and Community Development Financial Institutions (CDFIs) certified by the U.S. Department of the Treasury in meeting community credit needs. The agencies propose options to recognize investments in and partnerships with these mission-driven financial institutions consistent with the CRA statute (12 U.S.C. § 2903(b)). The agencies propose two changes to the regulation involving MDIs, WDIs, LICUs, and CDFIs. First, investments, loan participations, and other ventures, undertaken by any bank, including by MDIs and WDIs, in cooperation with MDIs, WDIs, or LICUs, would be considered. Second, loans, investments, and services undertaken by any bank in cooperation with Treasury Department-certified CDFIs would automatically qualify for favorable community development consideration.

Financial Literacy: The draft NPR proposes a separate community development prong for activities that assist individuals and families, including LMI individuals and families, to make informed financial decisions regarding managing income, savings, credit, and expenses, including with respect to homeownership. Under the proposed rule, a bank would receive consideration for these activities without regard to the income level of the beneficiaries.

Activities in Native Land Areas: The draft NPR proposes a new community development definition to qualify activities related to revitalization, essential community facilities, essential community infrastructure, and disaster preparedness and climate resiliency that are specifically targeted to and conducted in Native Land Areas. The proposed definition would make eligible for consideration a range of place-based community development activities that reflect the economic needs of residents in these commonly economically disadvantaged geographic areas.

3. Qualifying Activities Confirmation and Illustrative List of Activities

To provide stakeholders with additional certainty when determining what community development activities qualify for CRA credit, the draft NPR proposes that the agencies maintain a publicly-available illustrative, non-exhaustive list of activities eligible for CRA consideration and a process for the agencies to update the list periodically. In addition, the draft NPR proposes a process by which banks could confirm eligibility of community development activities for CRA consideration ex ante.

4. Impact Review of Community Development Activities

The current CRA rule does not provide clear standards for how agencies consider the impact of a bank's community development activities. To promote clearer and more consistent evaluation procedures, the draft NPR proposes to include in regulation specific factors (called "impact review factors") that would inform the agencies' evaluation of the impact and responsiveness of a bank's activities under the proposed Community Development Financing Test, the Community Development Financing Test for Wholesale and Limited Purpose Banks, and the Community Development Services Test. The agencies would evaluate qualifying activities that meet the impact review factors for each of these tests. Incorporating specific impact factors into the qualitative evaluation is meant to result in a more standardized application of qualitative factors compared with current practices.

B. <u>Assessment Areas and Community Development Activity Areas</u>

1. Facility-Based Assessment Areas

The draft NPR proposes to maintain facility-based assessment areas as the cornerstone of the CRA evaluation framework. As under the current CRA rule, banks would continue to delineate facility-based assessment areas where they have their main offices, branches and deposit-taking remote service facilities (a term proposed to replace the current term "deposit-taking ATM").

The draft NPR proposes to tailor the geographic requirements for delineating facility-based assessment areas by bank size (as described below). For large banks, wholesale or limited purpose banks, facility-based assessment areas would be required to consist of: (1) one or more

Metropolitan Statistical Areas (MSAs) or metropolitan divisions; or (2) one or more contiguous counties within an MSA, metropolitan division, or the nonmetropolitan area of a state. The draft NPR proposes to allow small and intermediate banks to delineate facility-based assessment areas that include a partial county, consistent with current practice and reflecting their smaller service area(s). In all cases and for all bank categories, the draft NPR proposes to retain the requirement that assessment areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts.

2. Retail Lending Assessment Areas

To better assess non-branch-based retail lending, the NPR would propose that large banks establish retail lending assessment areas where a bank has concentrations of home mortgage or small business lending outside of its facility-based assessment areas. Large banks would be evaluated only under the Retail Lending Test, and not under other performance tests, in these retail lending assessment areas. Under this proposal, a large bank would be required to delineate retail lending assessment areas in any MSA or combined non-MSA areas of a state, respectively, in which it originated in that geographic area, at least 100 home mortgage loans, or 250 small business loans, outside of its facility-based assessment areas. To appropriately tailor the approach based on bank size, capacity, and constraints, small banks and intermediate banks would not be required to delineate retail lending assessment areas.

3. Outside Retail Lending Areas

The draft NPR proposes that retail loans located outside of any facility-based assessment area or retail lending assessment area for a large bank, including a large bank under an approved strategic plan, and outside of any facility-based assessment area for intermediate banks with substantial outside assessment area lending, would be evaluated on an aggregate basis at the institution level as part of the Retail Lending Test. The inclusion of lending outside a bank's facility-based assessment areas or retail lending assessment areas, described as outside retail lending areas, would allow for a comprehensive assessment of a bank's lending to low- and moderate-income individuals and communities.

4. Areas for Eligible Community Development Activity

The draft NPR proposes to evaluate the community development performance of a large bank, including a large bank under an approved strategic plan, a wholesale and limited purpose bank, and an intermediate bank that elects evaluation under the Community Development Financing Test within each facility-based assessment areas. The draft NPR also proposes to consider any additional qualifying activities that banks elect to conduct outside of facility-based assessment areas, referred to as "areas for eligible community development activity." Currently, community development activities outside of facility-based assessment areas can qualify under certain circumstances but stakeholders have raised concern that it is often unclear whether and where such activities will be considered. The draft NPR proposes that a bank receive consideration for any qualified community development activity, regardless of location, in its overall rating, while separately assessing its performance in each of its facility-based assessment areas. This approach is intended to create additional flexibility for banks to conduct qualifying activities outside of facility-based assessment areas, while also more directly emphasizing facility-based assessment area performance.

C. Performance Tests, Standards, and Ratings

1. Performance Tests, Tailoring to Bank Size, and Asset Thresholds

Performance Tests: The draft NPR proposes an evaluation framework that includes a Retail Lending Test, a Retail Services and Products Test, a Community Development Financing

Test, and a Community Development Services Test. The proposal would evaluate large banks under all four tests. In addition, a tailored Community Development Financing Test would apply for wholesale and limited purpose banks. The proposal would preserve the current lending test for small banks and the community development test for intermediate banks without significant changes.

Tailoring to Bank Size: Recognizing different levels of bank capacity and resources, the draft NPR proposes to tailor the CRA evaluation based on bank size and business model:

- Large banks (those with assets of at least $2 billion) would be evaluated under all four tests. The proposal would tailor the approach for large banks with assets of over $10 billion, considering their greater capabilities and resources relative to large banks with assets of $10 billion or less. Specifically, large banks with assets of over $10 billion would be required to collect and report additional data under the proposal for the Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, and Community Development Services Test;
- Intermediate banks (those with assets of at least $600 million and less than $2 billion) would be evaluated under the Retail Lending Test and under the current community development test or, at the bank's option, the proposed Community Development Financing Test;
- Small banks (those with assets of less than $600 million) would be evaluated under the current small bank lending test or, at the bank's option, the proposed Retail Lending Test.
- Wholesale and limited purpose banks would be evaluated under a modified Community Development Financing Test; and
- Banks of all sizes would retain the option to request approval to be evaluated under an approved strategic plan.

The agencies would assign conclusions for each performance test, as applicable, with respect to a bank's facility-based assessment areas, states, multistate MSAs, and at the institution level.

2. Affiliate and other Considerations

The draft NPR proposes requiring the inclusion of a bank's "operations subsidiaries" or "operating subsidiaries" (referred to collectively as "bank subsidiaries") in the evaluation of the institution's CRA performance, and maintaining the current flexibility for banks to choose to include or exclude the relevant activities of other bank affiliates. The agencies believe that where banks exercise a high level of ownership, control, and management of their subsidiaries, the activities should reasonably be attributable to the bank. Moreover, the agencies believe that evidence of discriminatory or illegal practices by these bank subsidiaries should be factored into a bank's performance evaluation, because their activities would be considered to be a component of the bank's own operations.

3. Institution Performance Score and Assigned Ratings

Institutions Performance Score: The draft NPR proposes an evaluation approach that would result in conclusions for a bank for each applicable performance test at each applicable level. The agencies propose five performance conclusions: "Outstanding," "High Satisfactory," "Low Satisfactory, "Needs to Improve," and "Substantial Noncompliance." Conclusions would be assigned for each applicable performance test at the assessment area level, as well as the state, multistate MSA, and institution levels.

Ratings: Ratings would reflect a bank's record of helping to meet the credit needs of its community, including LMI neighborhoods, consistent with safe and sound operation of a bank. The draft NPR proposes that a bank's ratings be based on combining the conclusions from its performance tests in, as applicable, states, multistate MSAs, and at the institution level. The agencies would assign a bank one of the four statutorily required ratings – "Outstanding," "Satisfactory," "Needs to Improve," or "Substantial Noncompliance."

D. Retail Lending Test

The draft NPR proposes revisions to the current Retail Lending Test to evaluate how banks are serving LMI borrowers, small businesses, and small farms in their assessment areas and (for large banks and certain intermediate banks) outside of assessment areas at the institution level. The proposal would standardize retail lending evaluations through retail lending metrics and establish performance standards based on local and tailored benchmarks. In each assessment area (or outside retail lending area, as applicable), the agencies would assess the bank's distribution of its lending using metrics that reflect a bank's relative lending to LMI census tracts (*i.e.,* its geographic distribution) and to LMI borrowers, small business, and small farm borrowers (*i.e.,* its borrower distribution). In addition, in facility-based assessment areas, the agencies would assess a bank's overall retail lending relative to its deposits using a retail lending screen. Although the relative distributions of retail lending to both LMI census tracts and borrowers are currently considered, there are no transparent standards describing how these measures are used to determine performance conclusions. The agencies propose specific thresholds for banks to meet on the Retail Lending Test's geographic and borrower distribution metrics, which reflect data specific to each assessment area and local economic conditions over time.

1. Retail Lending Test Product Categories and Major Product Lines

For all banks evaluated under the Retail Lending Test, the draft NPR proposes to establish a standard to determine when closed-end home mortgage loans, open-end home mortgage loans, multifamily loans, small business loans, small farm loans, and automobile loans would be considered a major product line and evaluated under the Retail Lending Test. The draft NPR generally proposes that if a product line constitutes 15 percent or more of the dollar value of a bank's retail lending in a particular assessment area over the evaluation period, it would be deemed a major product line. The draft NPR proposes that agencies evaluate banks' LMI performance separately with respect to each major product line.

2. Small Business and Small Farm Data

The draft NPR proposes to define the terms "small business" and "small farm" consistently with the Consumer Financial Protection Bureau's proposal under Section 1071 of the Dodd-Frank Act.[2] The CFPB proposed to define a "small business" as having gross annual revenues of $5 million or less in the preceding fiscal year. The draft NPR proposes that this definition would become operational for purposes of the agencies' CRA regulations once the CFPB has finalized its Section 1071 rulemaking, and related small business lending data is available. Until this data is available, the agencies would continue to use existing data to evaluate the distribution of business and farm lending, which includes businesses and farms with gross annual revenues of $1 million or less. The agencies are in the process of seeking approval from the U.S. Small Business Administration (SBA) to use the standard proposed by the CFPB in its Section 1071 rulemaking rather than the SBA's size standards.

[2] 86 Fed. Reg. 56356 (Oct. 8, 2021), as corrected by 86 Fed. Reg. 70771 (Dec. 31, 2021). In the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress directed the Consumer Financial Protection Bureau (the Bureau) to adopt regulations governing the collection of small business lending data. Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on applications for credit for women-owned, minority-owned, and small businesses. Like the Bureau, the agencies have engaged with the Small Business Administration to comply with the requirement to request approval to use a small business size other than what is defined by the SBA.

3. Retail Lending Volume Screen

The draft NPR proposes using a *Retail Lending Volume Screen* to ensure that an applicable bank's retail lending volume corresponds to its presence and lending capacity in each facility-based assessment area. Specifically, the draft NPR proposes to compare the ratio of a bank's retail lending to deposits to that of other banks in the same facility-based assessment area. If a large bank's ratio meets or exceeds 30 percent of the aggregate (market) ratio, the agencies would evaluate the bank's major product lines under the geographic and borrower distribution metrics approach. For large banks that do not pass the *retail lending volume screen*, examiners would review performance context information that is specific to the bank's level of retail lending in the facility-based assessment area to determine whether there is an acceptable basis for not meeting the *retail lending volume screen*. If those factors do not account for the bank's low volume of bank retail lending, the bank would only be eligible for a "Needs to Improve" or "Substantial Compliance" Retail Lending Test conclusion in a facility-based assessment area. For intermediate banks and small banks that opt to be evaluated under the Retail Lending Test, failing to pass the *retail lending volume screen* would be a qualitative consideration that could adversely impact Retail Lending Test conclusions for facility-based assessment areas.

4. Retail Lending Distribution Metrics and Additional Factors Considered

The draft NPR proposes the following distribution metrics to evaluate retail lending for each of a bank's major product lines in its facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending areas.

- <u>*Geographic Distribution Metrics*</u>. The *geographic distribution metrics* would evaluate a bank's record of serving, respectively, low-income census tracts and moderate-income census tracts <u>Borrower Distribution Metrics</u>. The *borrower distribution metrics* would evaluate a bank's retail lending to, respectively, low-income borrowers, moderate-income borrowers, small businesses with revenues below or between certain thresholds, and small farms with revenues below or between certain thresholds *for each of bank's major product lines except for multifamily.*

To calculate these retail lending distribution metrics, the draft NPR proposes to use the number of a bank's retail loans in order to avoid weighting larger dollar value loans more heavily than smaller dollar value loans, as would occur when using dollar amounts. A bank's metrics would be measured against corresponding market and community benchmarks reflecting, respectively, aggregate retail lending in an assessment area and community characteristics. The agencies would assign a bank's recommended Retail Lending Test performance conclusion, based on application of the metrics and benchmarks, in an assessment area in conjunction with a review of a targeted set of additional factors to reach a final performance conclusion.

5. Retail Lending Test Conclusions in States, Multistate MSAs, and at the Institution Level

The draft NPR proposes a transparent and standardized approach to setting Retail Lending Test conclusions at the state, multistate MSA, and institution level. The proposed approach would leverage performance in a bank's local assessment areas. Each facility-based assessment area, retail lending assessment area, and the outside retail lending area, as applicable, would be assigned a Retail Lending Test conclusion. The agencies also propose evaluating a large bank's retail lending performance in outside retail lending areas at the institution level. This approach is intended to complement the proposed retail lending assessment areas. The agencies propose a tailored application of this approach for intermediate banks.

E. Retail Services and Products Test

The draft NPR proposes a Retail Services and Products Test for large banks that would evaluate delivery systems, and credit and deposit products responsive to LMI communities' needs. This test would use a predominantly qualitative approach, incorporating quantitative measures as guidelines. The delivery systems prong seeks to achieve a balanced evaluation framework that considers a bank's branch availability and services, remote service facility availability, and digital and other delivery systems. The credit and deposits products prong aims to evaluate a bank's efforts to offer products that are responsive to LMI communities' needs. Overall, the proposal would seek to draw on the existing approach to evaluating a bank's retail services, while also updating and standardizing the evaluation criteria and reflecting the widespread use of mobile and online banking. The agencies propose a tailored approach to the Retail Services and Products Test based on a large bank's asset size. For large banks with assets of $10 billion or less, the agencies propose making certain components optional to reduce the burden of new data collection requirements for banks within this asset category.

1. Delivery Systems

The draft NPR proposes to evaluate the full breadth of bank delivery systems by maintaining an emphasis on branch availability while also increasing the focus on the availability of digital and other delivery channels. The proposed approach for delivery systems would evaluate three components of the bank's performance: (1) branch availability and services, (2) remote service facility availability, and (3) digital and other delivery systems. For large banks with assets of $10 billion or less, only the first two components would be evaluated, unless the bank requests additional consideration of its digital and other delivery systems and collects the requisite data. The proposal would leverage quantitative benchmarks to inform the branch and remote service facility distribution analysis and provide favorable qualitative consideration for branch and remote service facility locations in certain geographies. The draft NPR also proposes to evaluate more fully digital and other delivery systems to address the trend toward greater use of online and mobile banking.

2. Credit and Deposit Products

The second prong of the Retail Services and Products Test would focus on the availability of credit and deposit products and the extent to which these products are responsive to the needs of LMI individuals, small business, and small farms, as applicable. Evaluating credit and deposit products would incorporate qualitative factors that capture a bank's commitment to serving LMI individuals, small business, and small farms. The proposal would separately evaluate the responsiveness of credit products and programs to the needs of LMI individuals, small businesses, and small farms; and deposit products responsive to the needs of LMI individuals. Both the credit product and deposit product components would be assessed at the institution level and would be required for large banks with assets of over $10 billion. For banks with assets of $10 billion or less, only the first component – the responsiveness of credit products and programs would be required.

F. Community Development Financing Test

The Community Development Financing Test would consist of a *community development financing metric*, benchmarks, and an impact review. These components would be assessed at the facility-based assessment area, state, multistate MSA, and institution levels and would inform conclusions at each of those levels. The Community Development Financing Test would not be assessed in retail lending assessment areas. The *community development financing metric* would measure the dollar amount of a bank's community development loans and community development investments, together, relative to the bank's capacity, as reflected by its dollar value of deposits. The proposed benchmarks would reflect local context, including the activities by other banks, and would be used in conjunction with the metric to assess the bank's performance. The metrics and benchmarks would be consistent across banks, providing certainty and clarity about the evaluation approach. The impact review would evaluate the impact and responsiveness of a bank's community development loan and investment activities, through the application of a series of specific qualitative factors, to provide recognition for activities that are especially impactful and responsive to community needs, including activities that may be relatively small in dollar amounts.

1. Combined Consideration of Community Development Loans and Investments

The draft NPR proposes to evaluate community development loans and investments together in the community development financing metric, in contrast to the current approach for large banks that evaluates community development loans and investments separately. The proposed approach seeks to standardize the evaluation approach while addressing concerns from some stakeholders that the current approach may favor one form of financing over another.

2. Facility-based Assessment Area Community Development Financing Evaluation

The draft NPR proposes *bank community development financing metrics* and standard benchmarks to provide clear and consistent incentives for community development financing, while allowing examiners to consistently compare a bank's performance to other banks in the same area. The *bank assessment area community development financing metric* would be the ratio of a bank's community development financing dollars (the numerator) relative to deposits (the denominator) within a facility-based assessment area. The numerator would be a bank's annual average of dollars of community development financing activity in each assessment area.

This includes the value of community development loans and investments originated or purchased during the evaluation period. It also includes the annual average value of community development loans and investments that remain on a bank's balance sheet in any subsequent year after purchase or origination, to encourage patient capital.

Benchmarks: The agencies propose establishing one local and one national benchmark for each assessment area. The agencies would compare the *bank assessment area community development financing metric* to both benchmarks to help inform assessment area conclusions. These benchmarks would enable the agencies to compare an individual bank's performance to other banks in a clear and consistent manner. Both benchmarks would be based on the aggregate amount of community development financing activity relative to the aggregate level of capacity, based on deposits, of all large banks and, as applicable, intermediate banks in each bank assessment area, or nationwide.

Impact Review: To complement the community development financing metrics and benchmarks, the agencies propose to evaluate the impact and responsiveness of a bank's community development activities based on defined impact factors. This approach is intended to advance CRA's purpose by ensuring a strong emphasis on the impact and responsiveness of activities, increasing consistency in the evaluation of qualitative factors by creating clear criteria, and fostering transparency for banks and the public by providing more consistent information about the type and purpose of activities conducted.

Given the current lack of data, the agencies propose that this process would initially be primarily qualitative in nature. Under this approach, the agencies would consider the percentage of the bank's activities that meet each impact factor but would not use multipliers or specific thresholds to directly tie the impact review to specific conclusions. In the future, after additional community development data is reported and analyzed, the draft NPR notes that the agencies will consider quantitative approaches to evaluate impact and responsiveness.

Community Development Financing Test Evaluation for States and Multistate MSAs: To evaluate a bank's state and multistate MSA community development financing performance, the agencies propose to consider the bank's performance in facility-based assessment areas and in other parts of the state or multistate MSA. This approach would account for the bank's activities in the state or multistate MSA—combining activities that are inside and outside of facility-based assessment areas—relative to the bank's total capacity (deposits). Combining these would emphasize facility-based assessment areas, while also allowing banks the option to conduct and receive consideration for activities outside of facility-based assessment areas. The agencies also propose to conduct an impact review for each state and multistate MSA.

G. Community Development Services Test

The agencies propose a new Community Development Services Test that considers the critical importance of these services in fostering partnerships among different stakeholders, building capacity, and creating conditions for effective community development, including in rural areas. The proposal would consist of a primarily qualitative assessment of the bank's community development service activities. For large banks with assets over $10 billion, the agencies propose also using a metric to measure the hours of community development services activity per full time equivalent employee of a bank. The agencies propose evaluating community development services in facility-based assessment areas, in eligible states, multistate MSAs, and nationwide. Evaluating across different geographies is intended to increase clarity and consistency in evaluating the impact of bank volunteer activities through qualitative and quantitative measures.

1. Defining Community Development Service Activities

The draft NPR proposes to retain the current definition of community development services to include activities that have as their primary purpose community development and are related to the provision of financial services. Under this proposal, activities that reflect other areas of expertise of a bank's employees, such as human resources, information technology, and legal service would also be considered to be related to the provision of financial services under the proposal. Generally, community development service activities performed by members of a bank's board, executive employees of the bank, or other employees of the bank would also be considered.

The draft NPR also proposes that in nonmetropolitan areas, banks may receive community development services consideration for certain volunteer activities that meet an identified community development need, even if unrelated to the provision of financial services. The agencies recognize that banks operating in nonmetropolitan areas may have relatively fewer opportunities to provide community development services related to the provision of financial services and greater opportunities to volunteer for activities that meet a community development need not tied to the provision of financial services. Examples of qualifying activities in nonmetropolitan areas include, but are not limited to, assisting an affordable housing organization to construct homes, volunteering to serve food at a soup kitchen or assist at a homeless shelter, or volunteering at a clothing or food drive for a community service organization.

2. Community Development Services Test Evaluation

For all large banks, the evaluation would include a qualitative review of the extent to which the bank provides community development services, as well as the impact and responsiveness of these activities to community needs. The review would include consideration of any relevant information provided by the bank, including any information required to be collected for large banks.[3] A *Bank Assessment Area Community Development Service Hours Metric* would measure total hours for community development services performed by a bank in a facility-based assessment area during the evaluation period, divided by the total full-time equivalent employees in the facility-based assessment area to obtain the average number of community development service hours per employee. The agencies believe this would provide a more consistent measure of these activities for large banks with assets of over $10 billion.

H. Wholesale and Limited Purpose Banks

The draft NPR proposes that wholesale and limited purpose banks would be evaluated under a modified Community Development Finance Test, which would include an institution level-metric that measures a bank's volume of activities relative to its capacity. The draft NPR also proposes giving wholesale and limited purpose banks the option to have examiners consider community development service activities that would qualify under the Community Development Services Test.

I. Strategic Plans

The draft NPR proposes maintaining the strategic plan option as an alternative method for evaluation under the CRA. Banks that elect to be evaluated under a CRA strategic plan would be required to continue to request approval for the plan from their respective regulatory

[3] Under the proposal, this review may include consideration of one or more of the following types of information: (1) the total number of community development service hours; (2) the number of community development service activities; (3) the number of low- or moderate-income participants, organizations served, sessions sponsored; or (4) other evidence that the bank's community development services benefit low- or moderate-income individuals or are otherwise responsive to a community development need. In addition, the evaluation would include a review of the impact and responsiveness of the bank's community development service. For large banks with average assets over $10 billion, the evaluation would also use a standard quantitative measure to inform the evaluation of a bank's community development services.

banking agency. Banks approved to be evaluated under a CRA strategic plan option would have the same assessment area requirements as other banks and must submit plans that include the same performance tests that would otherwise apply. Strategic plan goals would need to be responsive to the characteristics and credit needs of a bank's assessment areas and other geographic areas served, consider public comments, and reflect the bank's capacity and constraints, product offerings, and business strategy.

J. Assigned Conclusions and Ratings

The draft NPR proposes options for greater transparency and consistency on assigning ratings for a bank's overall performance. The proposed approach would produce performance scores for each applicable test, at the state, multistate MSA, and at the institution level based on a weighted average of assessment area conclusions as well as consideration of other additional test-specific factors. These performance scores would be mapped to conclusion categories to provide test-specific conclusions for the state, multistate MSA, and institution level. The agencies propose to combine these performance scores across tests to produce ratings at the state, multistate MSA, and institution level. The draft NPR proposes an evaluation framework with specific weights attributed to each performance test which vary depending upon the asset size of the bank. In maintaining the current emphasis on retail lending in the CRA evaluation, for large banks the heaviest weight would be allocated to the Retail Lending Test (45%), with different weights attributed to the Retail Services and Products Test (15%), Community Development Financing Test (30%), and the Community Development Service Test (10%). For intermediate banks, tests would be weighted equally between the Retail Lending Test and the *status quo* community development test (or Community Development Financing Test, when selected by the bank).

K. Data Collection and Reporting

To implement the proposals in the draft NPR, the agencies have considered how to use existing data where possible and, only where necessary to permit greater consistency, the introduction of incremental data collection, maintenance, and reporting requirements. In addition to leveraging existing data, the proposal would require large banks to collect, maintain, and/or report data that would enable the agencies to implement the proposed metrics-based approaches in the Retail Lending Test and Community Development Financing Test, and collection of information to evaluate activities under the Retail Services and Products Test and Community Development Services Test. The proposal limits certain new data collection and reporting requirements only to large banks with assets of over $10 billion.

The draft NPR proposes updating the existing data collection and reporting requirements regarding the delineation of assessment areas for all large banks. It also proposes that large banks with assets of over $10 billion report the aggregate dollar amount of deposits drawn from each county, state, and multistate MSA, and at the institution level based on average annual deposits (calculated based on average daily balances as provided in statements such as monthly or quarterly statements, as applicable) from the respective geographic area. Relatedly, large banks with assets of over $10 billion would have to collect and maintain county-level deposits data based on the county in which the depositor's address is located to allow for more precise measure of a bank's local deposits by county.

The reported deposit data would inform bank metrics, benchmarks, and weighting procedures for the proposed tests. Collecting and maintaining deposits would be optional for small banks, intermediate banks, and large banks with assets of $10 billion or less. For banks that do not collect and maintain deposits data, existing Summary of Deposits data would be used for the retail lending screen and community development financing metric, as applicable.

Regarding community development financing, the draft NPR proposes that large banks and wholesale and limited purpose banks be required to collect, maintain, and report data in a format prescribed by the agencies. Intermediate banks that opt into the Community Development Financing Test would be required to collect and maintain this data in its own format. Regarding community development services, only large banks with assets of over $10 billion would be required to collect, maintain, and report this data. As described above, the draft NPR proposes leveraging CFPB Section 1071 small business lending data and would rescind existing small business and small farm reporting requirements when the CFPB data becomes available.

L. Economic Impact and Regulatory Burden:

The draft NPR proposes to request public comment on each of the proposed revisions to the CRA regulations, including regarding any potential economic effects and regulatory burden.

M. Effective Dates:

The draft NPR proposes that a final rule would have an effective date on the first day of the first calendar quarter that begins at least 60 days after publication in Federal Register. Various compliance dates are proposed in the NPR. Proposed compliance dates are intended to allow banks sufficient time to transition from the current regulations to the proposed regulations, including for collecting, maintaining, and reporting data.

RECOMMENDATION:

Based on the foregoing, staff recommends that the Board approve the attached draft NPR for publication in the Federal Register with comments due by August 5, 2022. Staff also recommends that the Board delegate to staff authority to make technical, non-substantive changes to the attached materials to prepare them for publication in the Federal Register.

Attachment