

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Parts 25 and 195**

[Docket ID OCC–2018–0008]

RIN 1557–AE34

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 345**

RIN 3064–AF22

**Community Reinvestment Act Regulations**

**AGENCY:** Office of the Comptroller of the Currency, Treasury and Federal Deposit Insurance Corporation.

**ACTION:** Joint notice of proposed rulemaking; request for comment.

**SUMMARY:** Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) propose regulations that could encourage banks to provide billions more each year in Community Reinvestment Act-qualified lending, investment, and services by modernizing the Community Reinvestment Act (CRA) regulations to better achieve the law's underlying statutory purpose of encouraging banks to serve their communities by making the regulatory framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, this proposed rule would strengthen the CRA regulations by clarifying which activities qualify for CRA credit, updating where activities count for CRA credit, creating a more transparent and objective method for measuring CRA performance, and providing for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting.

**DATES:** Comments must be received on or before March 9, 2020.

**ADDRESSES:** Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title “Community Reinvestment Act Regulations” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2018–0008” in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. For help with submitting effective comments please click on “View Commenter’s Checklist.” Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC–2018–0008” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “Commenter’s Checklist.” For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

- *Email:* [cra.reg@occ.treas.gov](mailto:cra.reg@occ.treas.gov).
- *Mail:* Chief Counsel’s Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Fax:* (571) 465–4326.

**Instructions:** You must include “OCC” as the agency name and “Docket ID OCC–2018–0008” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:*

*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter “Docket ID

OCC–2018–0008” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click “Visit New *Regulations.gov* Site” from the *Regulations.gov* Classic homepage. Enter “Docket ID OCC–2018–0008” in the Search Box and click “Search.” Click on the “Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen.” For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com). The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FDIC:** You may submit comments, identified by RIN 3064–AF22, by any of the following methods:

- *Agency Website:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency website.

- *Email:* [Comments@fdic.gov](mailto:Comments@fdic.gov). Include the RIN 3064–AF22 on the subject line of the message.

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

• *Hand Delivery*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

*Instructions*: All comments received must include the agency name and RIN 3064-AF22 for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

*OCC*: Vonda Eanes, Director for CRA and Fair Lending Policy, Bobbie K. Kennedy, Technical Expert for CRA and Fair Lending, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649-5470; or Allison Hester-Haddad, Counsel, Emily R. Boyes, Counsel, or Elizabeth Small, Senior Attorney, Chief Counsel's Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649-5597.

*FDIC*: Patricia R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6859; Cassandra Duhaney, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6804; Pamela Freeman, Senior Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898-3656; Jessica Thurman, Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898-3578; Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424; or Sherry Ann Betancourt, Counsel, Legal Division, (202) 898-6560, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Community Reinvestment Act of 1977 (CRA) encourages insured depository institutions<sup>1</sup> (banks)<sup>2</sup> to

help meet the credit needs of the local communities in which they are chartered, consistent with banks' safe and sound operations, by requiring federal banking regulatory agencies to examine banks' records of meeting the credit needs of their entire community, including low- and moderate-income (LMI) neighborhoods.<sup>3</sup> The CRA was one of several laws enacted in the 1960s and 1970s to address fairness and access to housing and credit. During this period, Congress passed the Fair Housing Act in 1968,<sup>4</sup> to prohibit discrimination in renting or buying a home,<sup>5</sup> and the Equal Credit Opportunity Act in 1974<sup>6</sup> (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide the legal basis for prohibiting discriminatory lending practices, such as redlining.<sup>7</sup>

Congress enacted the CRA with the purpose of encouraging sound lending to all areas of a bank's community. Specifically, in passing the CRA, Congress found that (1) banks are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.<sup>8</sup>

The Office of the Comptroller of the Currency (OCC) and Federal Deposit Insurance Corporation (FDIC) (together, the agencies)<sup>9</sup> as well as the Board of Governors of the Federal Reserve System (Board) previously issued regulations to implement the statute.<sup>10</sup> Since then, the agencies and the Board have issued, revised, and sought to

clarify the CRA regulations several times. The last major revisions to the regulations were made in 1995.<sup>11</sup>

During the past 25 years, technology and the expansion of interstate banking have transformed the financial services industry, how banks deliver their services, and how customers choose to bank. These changes affect banks of all sizes and are most evident in banks that have a limited physical presence or rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities have evolved beyond those that are solely identifiable by the delineated areas surrounding banks' physical locations.

At the same time, communities' needs for community development (CD) lending and investment have evolved, and the agencies have gained a greater understanding of those needs, such as the need for CD investments and loans with maturities longer than the typical CRA evaluation period and the need for equity and capital in addition to credit. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans and investments to shorter terms than otherwise may be best to meet the needs of their communities.

Over the last decade, stakeholders have called for comprehensive changes to the CRA regulatory framework to ensure that the CRA remains a relevant and powerful tool for encouraging banks to serve the needs of their entire communities, including LMI neighborhoods. In 2014, the agencies and the Board conducted a decennial review of their regulations, with input from the public, to identify outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burden on insured depository institutions—while, at the same time, ensuring the safety and soundness of these institutions and of the financial system.<sup>12</sup> In 2017, the agencies and the Board issued a report to Congress that included a summary of the public comments and recommendations to improve the CRA regulatory framework gathered during the three-year review process. Among the most frequently raised issues were (1) the assessment

<sup>3</sup> Community Reinvestment Act of 1977, Public Law 95-128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.*

<sup>4</sup> 42 U.S.C. 3601 *et seq.*

<sup>5</sup> 42 U.S.C. 3604-3606.

<sup>6</sup> 15 U.S.C. 1691 *et seq.*

<sup>7</sup> *Interagency Fair Lending Examination Procedures*, p. iv (Aug. 2009), available at <https://www.ffiec.gov/pdf/fairlend.pdf>.

<sup>8</sup> 12 U.S.C. 2901(a).

<sup>9</sup> The OCC is the primary regulator for national banks and federal savings associations. The FDIC is the primary Federal regulator for state-chartered non-member banks and savings associations.

<sup>10</sup> 12 CFR parts 25, 195, 228, and 345. The Office of Thrift Supervision and its predecessor agencies were also charged with implementing the CRA. Its powers and duties with respect to CRA were transferred to the OCC in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, 1520 (2010).

<sup>11</sup> The agencies and the Board made additional substantive changes in 2005; however, those changes were not as transformative as the 1995 revisions.

<sup>12</sup> The review is required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, Public Law 104-208, 110 Stat. 3009, 3311 (1996), *codified at* 12 U.S.C. 3311 (1996).

<sup>1</sup> 12 U.S.C. 1813(c)(2).

<sup>2</sup> As used throughout this notice, the term "bank" or "banks" also includes uninsured Federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

area definition; (2) incentives for banks to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with the recordkeeping and reporting requirements and the asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better training to ensure consistency and rigor in CRA examinations; and (5) refinement of the CRA ratings methodology.<sup>13</sup>

On April 3, 2018, the U.S. Department of the Treasury (Treasury Department) also released recommendations based on stakeholder input to modernize the CRA regulations. These recommendations included updating the definition of assessment areas, increasing the clarity and transparency of CRA ratings, improving the timeliness of evaluations, and incorporating more effective incentives to encourage banks to meet the credit and deposit needs of their communities.<sup>14</sup>

Recognizing the need for modernization, the agencies began to assess and update the CRA regulatory framework in 2018 by working together on an Advance Notice of Proposed Rulemaking (ANPR). The OCC issued the ANPR in August 2018, which reflected feedback and input from the FDIC and the Board.<sup>15</sup> The OCC received more than 1,500 comments from stakeholders and shared these comments with the FDIC and the Board. Additionally, the OCC and the Board separately engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and banks to obtain their perspectives and feedback on all aspects of the CRA and potential improvements that could be made to the regulations. Many of those comments reflected the opinion that the current CRA regulatory framework lacks objectivity, transparency, and fairness. Numerous stakeholders also commented that the framework is applied

inconsistently and is hard to understand.

The agencies' extensive engagement with stakeholders confirmed that the CRA remains a powerful tool for promoting community revitalization and increasing financial activity in neighborhoods across the country. However, stakeholders observed that the evaluation of banks' CRA-qualifying lending, investments, and services (collectively, qualifying activities or CRA activities) under the current CRA regulations—including what type of activities count, where they count, and how they count—is inconsistent, opaque, and complex.

In response to this feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. These changes would encourage banks to serve their entire communities, including LMI neighborhoods, more effectively through a clearer set of CRA activities and would provide clarity for all stakeholders.

The agencies' proposal would establish a regulatory framework with the goal to encourage banks to conduct more CRA activities and to serve more of their communities, including those areas with the greatest need for economic development, investment, and financing needs, such as urban and rural areas and opportunity zones, that may be underserved by the current regulations.

## II. Background

Prior to drafting this proposal, the agencies invited and considered input from a wide range of stakeholders, through a variety of channels. That input included the strengths, weaknesses, and challenges of the current framework, as well as ideas for, and the advantages and disadvantages of, alternative frameworks.

In 2018, the OCC held numerous meetings with community groups, non-profit and civil rights organizations, legislators, regulators, bankers, and other stakeholders to discuss and solicit input on how to improve the current framework. During this same period, the Treasury Department invited a diverse

group of stakeholders to provide feedback on how the CRA regulations could more effectively encourage economic growth in the communities that banks serve. As discussed above, in April 2018, the Treasury Department released its findings and recommendations for how to modernize the CRA regulatory framework, which are consistent with the four components of modernization outlined in this proposal.<sup>16</sup>

In August 2018, the OCC issued an ANPR inviting public input on how best to improve the CRA regulatory framework to generate more local and national CD and economic development activities—and thus promote economic opportunity—by encouraging banks to engage in more lending, investments, and services that benefit targeted populations (such as LMI individuals, small farms, and small businesses) and areas in need of financial services (including LMI communities, rural and urban areas, and areas targeted by a Federal, state, local, or tribal government for development). The ANPR sought comment on (1) clarifying, expanding, and listing the types of activities that qualify for CRA credit; (2) revisiting how to delineate the areas in which qualifying activities receive credit; (3) establishing objective ways to evaluate CRA performance; (4) improving the timeliness of regulatory decisions related to the CRA; and (5) reducing the cost and burden, and improving the timely completion, of CRA evaluations.

During the summer of 2019, the OCC engaged in nationwide outreach with community advocates, CD professionals, civil rights organizations, and bankers to discuss opportunities to bring more CRA investment, lending, and services to underserved areas. This outreach included visits to rural and urban areas and Indian country. The tours provided opportunities for the agency's senior leadership to hear CRA success stories and how the agencies could help CRA work better for everyone. While these conversations confirmed that CRA has been a force for good for the past 40 years, they also highlighted the need to strengthen the regulatory framework to encourage greater CRA activity and to more effectively reach underserved communities.

The most consistent feedback that the agencies and the Treasury Department have received in response to their outreach efforts is that the current CRA

<sup>13</sup> See Federal Financial Institutions Examination Council, *Joint Report to Congress. Economic Growth and Regulatory Paperwork Reduction Act*, pp. 41–48 (March 2017), available at [https://www.ffiec.gov/pdf/2017\\_FFIEC\\_EGRPRA\\_Joint-Report\\_to\\_Congress.pdf](https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf).

<sup>14</sup> See Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, *Community Reinvestment Act—Findings and Recommendations* (April 3, 2018) available at <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf>.

<sup>15</sup> See OCC News Release 2018–87 (Aug. 28, 2018); 83 FR 45053 (Sept. 5, 2018).

<sup>16</sup> Press Release, U.S. Department of the Treasury, Treasury Releases Community Reinvestment Act Modernization Recommendations (April 3, 2018), available at <https://home.treasury.gov/news/press-releases/sm0336>.

framework has not kept pace with changes in banking or technology and that the CRA regulations and guidance have become cumbersome, outdated, and complex. Moreover, stakeholders conveyed that the lack of clarity and transparency of the current framework has restricted lending and investments in communities across America. For example, stakeholders expressed concern and frustration that under the current system:

- Ambiguity over what types of activities qualify for CRA consideration discourages certain types of CRA activity in high-need areas;
- “CD” and “economic development” are narrowly defined, and the current definitions provide little incentive for banks to engage in many of the loan products, investments, and services that could help their communities;
- Assessment areas that are only delineated around banks’ physical locations result in geographies where banks do not engage in or engage in only limited CRA activities (CRA deserts) and fail to incentivize CRA activity in many rural areas;
- Assessment areas have not kept pace with how consumers bank and how banking services are delivered today;
- Performance evaluations and ratings are subjective and inconsistent; and
- Publication of a bank’s CRA performance evaluation, following its CRA evaluation, is often delayed, which can result in a significant gap between publication of consecutive evaluations.

The feedback also provided valuable insight from stakeholders and revealed broad support for modernizing the CRA regulations by clarifying what type of activities count, updating where CRA activities count, making performance evaluations more objective, and improving reporting.<sup>17</sup> For example, of those ANPR commenters who addressed the issues below:

- The vast majority do not think the current framework is objective, fair, or transparent;
- The vast majority think the current framework is applied inconsistently;
- The vast majority say the current framework is hard to understand;

<sup>17</sup> For example, comments on the ANPR came from a variety of stakeholders, including banks and banking industry trade associations; community, civil rights, and advocacy groups and community trade associations; CD funds and organizations; academia; CRA consultants; governmental entities; and the general public. The OCC also met with commenters to discuss issues related to the ANPR. Summaries of these meetings, as well as all comments received on the ANPR, are available at <https://www.regulations.gov/docket?D=OCC-2018-0008>.

- The vast majority support publishing a list of eligible activities;
- The majority support objective measurement of CRA performance, although they oppose a single metric;
- Many support retaining performance context; and
- The majority support expanding assessment areas.

As discussed below, the changes outlined in this proposal focus on many of these stakeholders’ concerns with the current framework. The proposed rule is designed to achieve the following positive outcomes desired by many stakeholders:

- *Create incentives to do more*—By establishing clear benchmarks based on historical performance, the proposed rule would allow regulators to set benchmarks at levels high enough to increase the level of qualifying lending, investment, and services and adjust those benchmarks on a periodic basis.
- *Reduce CRA deserts*—By clarifying how banks can achieve a satisfactory or an outstanding in their assessment areas and expanding when banks can receive credit beyond the immediate areas surrounding bank branches, the new rule would incent greater CRA activity in areas currently in need of financial resources, including rural areas, areas identified for aid, distressed areas, and Indian country.
- *Limit CRA hotspots*—By clarifying and expanding when banks can receive credit beyond the immediate areas surrounding bank branches, the proposed rule would relieve pressure in overheated markets where banks are already meeting community needs.
- *Reduce activity uncertainty*—By providing clear standards and an illustrative list of qualifying activities, the proposed rule would reduce uncertainty regarding what counts for CRA credit and give banks and stakeholders greater ability to plan reinvestment activities without the risk of activities not receiving credit. The rule would also provide processes for confirming an activity would receive CRA credit.
- *Reduce delays in Performance Evaluation (PE) publication*—By making the evaluation of CRA performance more objective and improving reporting, the revised rule would reduce the time required to conduct CRA evaluations and produce PEs, improving transparency and increasing regulatory efficiency.
- *Improve the quality of PEs*—By making evaluation of CRA performance more objective and standardized, the proposed rule would help make PEs more useful, comparable across banks, and meaningful for stakeholders.

- *Increase small business lending*—By increasing the loan size for small loans to business, which was last updated 25 years ago, and increasing the revenue size threshold for small businesses, the proposed rule would encourage economic development and job creation.

• *Increase small farm lending*—By increasing the loan size for small loans to farms, which was last updated 25 years ago, and increasing the revenue size threshold for small farms, the proposed rule would encourage economic development and job creation and help the U.S. agricultural industry survive.

• *Promote capital and investment in Indian country*—By providing credit for retail and community development activities in Indian country, the proposed rule would help incent more investment and lending in Indian country. This would help fight persistent poverty and support basic infrastructure and needs such as housing, technology, and healthcare.

• *Encourage long-term commitment to community reinvestment*—By refocusing on ongoing commitment to lending and investment through evaluating on-balance sheet activities, the proposed rule would reduce the current churn and short-term focus of CRA activities, providing banks more incentive to engage in long-term investments and loans, which would, in turn, provide community developers and advocates greater stability and more incentive to engage in longer term strategic initiatives.

• *Reduce displacement by refocusing on LMI individuals and activities*—By emphasizing lending and services provided to or benefiting LMI individuals, the proposed rule would avoid giving credit for activities that may contribute to displacement.

• *Preserve the importance of branches*—By requiring banks to designate assessment areas surrounding branches, headquarters, and deposit taking ATMs and including a measure of a bank’s distribution of branches when assessing the impact of CRA activities, the proposed rule would maintain the importance of branches in assessing a bank’s record of serving its communities.

• *Preserve community voices*—By retaining performance context and a means for community stakeholders to share comments and concerns with examiners about assessment area needs and opportunities, the proposed rule would preserve community voices and help encourage banks to meet the needs of their entire communities, including LMI neighborhoods.

- *Reduce inconsistent application of the rule*—By clarifying what counts and increasing the objectivity of CRA performance evaluations, the proposed rule would make performance evaluations more consistent over time and across regions.

- *Provide greater flexibility for community banks*—The proposed rule also would provide an opt in for small banks with assets of \$500 million or less to allow the bank to determine whether to be evaluated under existing performance standards or the revised framework based on their unique business models.

### III. Overview of Proposed Rule

The proposed rule builds upon the outreach efforts that have been underway for several years and reflects the agencies' collaborative process to find solutions to mutually recognized problems. To improve the current CRA regulatory framework and promote increased lending and investment consistent with stakeholder feedback, the agencies propose to make changes in four key areas: (1) Clarifying and expanding what qualifies for CRA credit; (2) expanding where CRA activity counts; (3) providing an objective method to measure CRA activity; and (4) revising data collection, recordkeeping, and reporting. The following sections provide a brief overview of the proposal's significant changes in those areas.

#### A. Clarifying and Expanding What Qualifies for CRA Credit

The proposal would (1) establish clear criteria for the type of activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA but may not qualify under the current CRA framework; (2) require the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities; and (3) establish a process for banks to seek agency confirmation that an activity is a qualifying activity.<sup>18</sup>

These changes would address current impediments to engaging in CRA activities and provide banks with greater certainty and predictability regarding whether certain activities qualify for CRA credit. Specifically, by

providing banks with greater confidence that activities qualify for CRA credit before they invest time and resources in those activities, the proposed rule would incentivize banks to more readily engage in innovative projects that have a significant impact on the community. Moreover, by allowing stakeholders to confirm that activities qualify, the proposal would eliminate the uncertainty in the current regulations that potentially limited the scope and type of banks' CRA activities that will benefit banks' communities, particularly LMI individuals and areas.

In addition to providing transparency, the proposed qualifying activities criteria would expand the types of activities that qualify for CRA credit to recognize that some banks are currently serving community needs in a manner that is consistent with the statutory purpose of CRA but are not receiving CRA credit for those activities. This expansion would ensure that banks help meet the needs of their entire communities, particularly LMI neighborhoods and other areas and populations of need. The expanded qualifying activities criteria would focus on economically disadvantaged individuals and areas in banks' communities. For example, the proposed qualifying activities criteria would expand the activities that qualify in areas that have traditionally lacked sufficient access to financial services, such as (1) distressed areas; (2) underserved areas, including areas where there is a great need for banking activities but few banks that engage in activities (known as banking deserts); and (3) Indian country. Moreover, to maintain a focus on LMI individuals, the proposal would, for example, no longer permit a mortgage loan to a high-income individual living in a low-income census tract to qualify for CRA credit.

#### B. Expanding Where CRA Activity Counts

The proposal would preserve assessment areas surrounding banks' facilities and expand where CRA activity counts to help banks meet the needs of their communities. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would still be required to delineate assessment areas around their main office, branches, or non-branch deposit-taking facilities as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as "facility-

based" assessment areas. In addition, to recognize the evolution of modern banking (including the emergence of internet banks), the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas, and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits,<sup>19</sup> the proposed rule would require banks to delineate additional, non-overlapping "deposit-based" assessment areas where they have significant concentrations of retail domestic deposits. Specifically, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas would be required to delineate deposit-based assessment areas where it receives five percent or more of its total retail domestic deposits, based on the physical addresses of its depositors.

Banks would receive CRA credit for qualifying activities conducted in their facility-based assessment areas and deposit-based assessment areas at the assessment area level and at the bank level, consistent with the applicable performance standards discussed below. In addition, the proposal would permit banks to receive CRA credit for qualifying activities conducted outside of their assessment areas at the bank level. Under this approach, banks would still be encouraged to meet local community needs where they have branches and depositors but would be given flexibility to serve other communities with distinct needs as these activities would be considered when calculating the overall dollar value of their qualifying activities under the proposed rule. This flexible framework could reduce the number of areas where there are more banks that want to engage in CD activities than there is need for those activities (known as CD hot spots) and areas where there is a great need for CD activities but few banks that engage in those activities (known as CD deserts).

#### C. Providing an Objective Method To Measure CRA Activity

Consistent with the current CRA framework, the proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the proposed rule, would continue to be evaluated under the small bank performance standards currently applicable to small banks that are not

<sup>18</sup> As discussed below, the agencies are proposing to retain for certain banks the small bank performance standards applicable to small banks that are not intermediate small banks in the current regulations. 12 CFR 25.26, 195.26; 345.26. The agencies intend for these standards to be applied consistent with the current regulations except as discussed in this notice of proposed rulemaking.

<sup>19</sup> See, e.g., 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

intermediate small banks.<sup>20</sup> The proposed rule also would establish new general performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards.

The new general performance standards would assess two fundamental components of a bank's CRA performance: (1) The distribution (*i.e.*, number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies and (2) the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits. Both components would be compared to specific benchmarks and thresholds that would be established prior to the beginning of a bank's evaluation period. Banks evaluated under the general performance standards would also be required to meet a minimum CD lending and investment requirement in each assessment area and at the bank level to achieve a satisfactory or outstanding rating.

The distribution component builds on ideas shared with the agencies by the Board that provide a quantifiable method to assess what portion of a bank's major retail lending activities are targeted to LMI individuals or in LMI areas. The impact component responds to stakeholder comments about the need for more lending and investment in areas served by CRA and provides a transparent means of evaluating those activities and setting benchmarks sufficiently high enough to incent more CRA activities.

By providing a transparent and objective way to evaluate a bank's CRA performance that banks would either be subject to or may opt into, the proposed rule would incentivize banks to engage in qualifying activities in their assessment areas and other communities with identified needs, such as distressed and underserved areas, including rural and urban areas and Indian country. Moreover, greater certainty about how engaging in specific qualifying activities would affect bank-level ratings would enable banks and other stakeholders to monitor CRA performance on an ongoing basis. It would also enable banks to target areas of need within their communities, potentially engage in more qualifying activities, and provide a positive benefit to more communities.

In addition, the proposal would preserve and standardize consideration of performance context, which would

allow the agencies to recognize and account for specific facts and circumstances relating to a bank's CRA capacity and opportunities in a transparent manner.

Finally, the proposed regulations would include a strategic plan option for all banks. This option would address the unique needs of banks with business models that could not be effectively evaluated under the proposed objective framework reflected in the general performance standards or the small bank performance standards, such as banks that do not have retail domestic deposits or small banks that do not originate retail loans. Taken together, these features would appropriately differentiate banks based on their size, location, and business model.

#### *D. Revising Data Collection, Recordkeeping, and Reporting*

The proposal would require banks evaluated under the small bank performance standards to collect and maintain, but not to report, data related to their retail domestic deposits so that the agencies could validate their deposit-based assessment area delineations, as applicable. Banks evaluated under the general performance standards would be required to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, and assessment areas. Those banks would also be required to use that information to make the calculations necessary to determine their ratings, based on the application of the performance standards in the proposal. Prior to a CRA performance evaluation, the evaluating agency would validate the data used in determining a bank's ratings. The agencies would provide additional guidance on the data that banks need to collect and maintain under the proposed rule that would standardize the information collected and help banks ensure that they meet the requirements of the rule.

The agencies believe that access to the standardized information required by the proposed rule would help them to better measure, assess, and understand CRA activity across various areas and across the industry and over time. The proposal's requirements also would provide the agencies with a better, more comprehensive understanding of an individual bank's CRA activity. In addition, industry-wide reporting would enable more effective stakeholder dialogue regarding the distribution and volume of CRA activity. The agencies expect that these changes would result in timelier and more efficient CRA

evaluations, which, among other things, would bring greater predictability to agency actions that consider CRA performance. Moreover, the use of the objective measures described above would allow performance evaluations to be written in standardized forms and captured in shorter narratives, which would contribute to more timely and useful public reporting.

## **IV. Section-by-Section Discussion**

### *A. Qualifying Activities*

*Overview.* Under the current regulatory framework, only certain—and relatively few—bank activities qualify for consideration in CRA performance evaluations. Whether a bank's activities qualify for consideration generally depends not only on the characteristics of the activities but also on where the activities took place. As a general matter, the types of activities that currently qualify for CRA consideration fall into two categories: (1) Retail banking activities and (2) CD activities.

Under the current framework, retail banking activities generally include (1) retail loans (*i.e.*, home mortgage loans, small business loans, small farm loans, and consumer loans) and (2) retail banking services (*i.e.*, the range of retail deposit services and credit services, branch distributions, the record of branch openings and closings, and the availability and the effectiveness of alternative delivery systems serving LMI individuals and areas). For retail lending, loan originations and purchases are considered. CD activities generally include those that finance or support (1) affordable housing for LMI individuals; (2) economic development by financing small businesses or small farms; (3) community services for LMI individuals; and (4) the revitalization or stabilization of LMI census tracts, distressed nonmetropolitan middle-income census tracts, underserved nonmetropolitan middle-income census tracts, and designated disaster areas. For CD activities, activities conducted or originated during the current evaluation period are considered. For CD investments, prior period outstanding investments are also considered. Banks also have the option of receiving consideration for retail and CD activities conducted by an affiliate, third party, or consortium. In evaluating a bank's CRA performance, the agencies assess certain factors including (1) the level of relevant retail lending activity and the geographic and borrower distribution of that retail lending activity and (2) the level, responsiveness, innovativeness, complexity, and flexibility of CD activities.

<sup>20</sup> The proposed rule would define a small bank as a bank that had assets of \$500 million or less in each of the previous four calendar quarters.

The feedback that the agencies received on the current framework demonstrates that banks often are uncertain about whether a CD activity will qualify for CRA consideration until their supervisory agency makes a determination in a CRA evaluation, often years after the banks engaged in the activities. Feedback also revealed that many banks and other stakeholders view the process by which the agencies decide whether a CD activity qualifies for CRA credit as opaque and inconsistent from evaluation-to-evaluation, agency-to-agency, and year-to-year. In addition, stakeholders expressed that the current definition of CD can be limiting and does not capture many activities that respond to community needs, including the needs of LMI individuals and neighborhoods. These concerns create a disincentive for banks to undertake certain activities or explore new and potentially beneficial activities, even when these activities would serve the needs of LMI populations and other communities with needs. The agencies propose to address these issues in four ways.

*Qualifying activities criteria.* First, the proposal would clarify the activities that qualify for CRA credit. The clarifying criteria would generally apply to all banks subject to the agencies' CRA regulations. Consistent with the intent of the CRA statute, the proposed rule would define a "qualifying activity" as an activity that helps meet the credit needs of a bank's community, particularly those individuals, areas, and populations with needs. The proposal would also provide clearly defined qualifying activities criteria that identify the types of activities that meet the credit needs of banks' communities and, thus, would be considered qualifying activities. These criteria would both encompass the many activities that currently qualify for CRA consideration and include additional activities that meet the credit needs of economically disadvantaged individuals and areas in banks' communities.

Under the proposal, the qualifying activities criteria would include activities conducted by a bank. The agencies recognize that there are limited instances where the bank is substantively engaged in an activity, but the activity is done in the name of another party, such as an affiliate. In these situations, the bank provides the economic resources, and the agencies' current practice is to recognize these activities as being conducted by the bank, at the bank's option. Under the proposed rule, the agency would recognize activities substantively

conducted by the bank. The proposed qualify activity criteria would be:

- A retail loan (defined to include home mortgage loans, small loans to businesses, small loans to farms, and consumer loans<sup>21</sup>) provided to:
  - An LMI individual;
  - A small business; or
  - A small farm;
- A retail loan provided in Indian country.
- A retail loan that is a small loan to a business or a small loan to a farm located in a low- or moderate-income census tract.
- A CD activity that provides financing for or supports:
  - Affordable housing that partially or primarily benefits<sup>22</sup> LMI individuals or families or middle-income individuals or families in high-cost areas;
  - Another bank's CD loan, CD investment, or CD service;
  - Community support services that partially or primarily serve LMI individuals or families;
  - Essential community facilities that partially or primarily benefit or serve LMI individuals or areas of identified need;
  - Essential infrastructure that benefits or serves LMI individuals or areas of identified need;
  - Family farms;
  - Government programs, projects, or initiatives that partially or primarily benefit LMI individuals (e.g., a program that supports urban renewal), small businesses, small farms, and areas of identified need;
  - Financial literacy programs or education or homebuyer counseling;
  - Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;
  - Qualified opportunity funds that benefit LMI opportunity zones;
  - A Small Business Administration Certified Development Company (SBDC), Small Business Investment Company (SBIC), New Markets Venture Capital company, qualified Community Development Entity, or U.S. Department of Agriculture Rural Business Investment Company (RBIC);
  - Technical assistance and supportive services for small businesses or small farms; or

<sup>21</sup> Under the proposal, a "consumer loan" would be defined with reference to the Call Report and would include credit cards, other revolving credit plans, automobile loans, and other consumer loans.

<sup>22</sup> Under the proposal, a bank would receive credit for the full dollar value of certain CD activities that primarily benefit a specified population or area. For those CD activities that only partially benefit a specified population or area, a bank would receive *pro-rata* credit for the dollar value of the activity equal to the portion that benefited the specified population or area.

- A capital investment, loan participation, or other venture undertaken by a bank in cooperation with a minority depository institution, women's depository institution, CDFI, or low-income credit union that helps to meet the credit needs of the institution's or credit union's local communities, including through activities that indirectly help to meet community credit needs by promoting the institution's or credit union's sustainability and profitability.<sup>23</sup>

Regarding CD activities, the phrase "provides financing for or supports" would be interpreted broadly to include all lending, investment, and service activities that are related to the CD qualifying activities criteria. For example, activities that finance the development, rehabilitation, improvement, or maintenance of affordable housing or essential community facilities, such as a public hospital that serves the entire community including the community's LMI residents, would be qualifying activities because the activities provide financing for or support the housing or hospital. The rehabilitation, improvement, or construction of affordable housing, essential community facilities, or essential infrastructure may include (1) renewable energy, energy-efficiency, or water conservation equipment or projects associated with affordable housing, essential community facilities, or essential infrastructure or (2) the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, lead pipes (such as those used in antiquated water supply systems), asbestos, mold, or radon that is present in the housing, facilities, or site where the housing or facilities are located. An activity that meets more than one of the criteria would be treated as a single qualifying activity.

*Scope of qualifying activities.* Second, the proposed criteria would expand the scope of the activities that qualify for CRA credit. This expansion is intended to recognize the many ways banks may meet the credit needs of their communities, particularly LMI communities, through activities that are consistent with the statutory purpose of the CRA. Under the proposal,

<sup>23</sup> For example, a cooperative venture would include donating, selling on favorable terms, or making available on a rent-free basis a branch of a bank that is in a primarily minority census tract to a minority depository institution or women's depository institution. A cooperative venture would also include a bank that is not a minority depository institution, women's depository institution, CDFI, or low-income credit union making a deposit at one of these types of institutions.

expansions to the retail lending criteria would include:

- Home mortgage loans and consumer loans provided in Indian country. The agencies received feedback from commenters on the ANPR and during outreach that emphasized the lack of access to cost-effective capital and banking services in Indian country. Providing CRA credit for home mortgage loans and consumer loans in Indian country helps to address these critical needs.

- Small loans to businesses and small loans to farms provided to (1) small businesses or small farms in census tracts of all income levels or (2) businesses or farms in LMI census tracts. The proposal would increase the size thresholds for a small loan to a business and a small loan to a farm to \$2 million or less. Consistent with the current regulations' definitions of small business loan and small farm loan, the proposed definitions are based on the size of the loan to the business or farm. Loans of \$2 million or less to a business or farm would be considered qualifying activities if they (1) are provided to small businesses or small farms or (2) are located in LMI census tracts. The increase would, in part, account for inflation since the \$1 million loan limit for loans to small businesses and \$500,000 for loans to small farms were established in 1995. The proposal would include a provision for adjusting these loan limits for inflation going forward.

The proposal would define home mortgage loans with reference to the Call Report instead of the Home Mortgage Disclosure Act (HMDA). As a result of this revision, construction loans for 1–4 family residential properties would be included as home mortgage loans. Consumer loans would also be defined with reference to the Call Report and included in all CRA evaluations. In addition, the small business and small farm revenue thresholds would be increased to \$2 million in part to account for inflation since the revenue size limits were established. As with the size thresholds for a small loan to a business and a small loan to a farm, the proposal would include a provision for adjusting the revenue limits for inflation going forward.

Under the proposal, expansions to qualifying CD activities would include:

- Expanding the affordable housing criterion by clarifying that it:
  - Encompasses “naturally occurring affordable housing” (e.g., unsubsidized rental housing with rents that are affordable to LMI individuals and families). The current regulations could

be interpreted to provide consideration these types of activities; however, the regulations do not expressly include these activities as qualifying CD activities and the CRA guidance is not sufficiently clear about whether they receive CRA credit. The proposal would clarify the criteria to incentivize banks to meet the affordable housing needs of their communities through a variety of activities; and

- Includes rental housing for low-, moderate-, and middle-income individuals in high-cost areas. The Interagency Questions and Answers Regarding Community Reinvestment (Interagency Questions & Answers)<sup>24</sup> explain that examiners can account for conditions in high-cost areas in banks' CRA evaluations. The proposal would clarify the criteria to incentivize banks to meet the affordable housing needs of their communities through a variety of activities including workforce housing that would allow public employees, such as teachers, police officers, and firefighters, to live close to the communities they serve.

- Adding a criterion for activities that help finance or support another bank's CD loans, CD investments, or CD services. Including this criterion and expanding the definition of CD loan and investments to include certain commitments to lend and invest, discussed below, would address the fact that community banks understand community needs best but often are unable to provide the necessary funding or service alone. In these cases, large banks may finance the project, benefitting from community banks' efforts to identify areas of need. This criterion would address stakeholders' recommendations that the CRA regulatory framework do more to encourage inter-bank collaboration and allow community banks to remain involved in projects that they identified and enabled.

- Adding a criterion for essential community facilities, such as schools and hospitals, that benefit or serve LMI individuals, LMI census tracts, or other targeted areas of need, such as distressed areas or Indian country. Under the current regulation, the Interagency Questions & Answers regarding activities that revitalize or stabilize underserved nonmetropolitan middle-income census tracts reference essential community needs, which include certain essential community facilities or infrastructure projects;

however, activities that finance or support these projects may also meet other CD definitions. By adding a criterion for essential community facilities, the proposal would also clarify when these activities receive credit and incentivize banks' lending and investment activities related to these facilities.

- Adding a criterion for essential infrastructure, such as roads, mass transit, or water supply and distribution, that benefits or serves LMI individuals, LMI census tracts, or other targeted areas, such as Indian country. As discussed above, certain essential infrastructure projects may receive credit under the current CRA regulations as CD activities. The addition of the essential infrastructure criterion would acknowledge the importance of these types of projects to communities by ensuring that essential infrastructure activities receive CRA credit if they include some benefit for LMI individuals, LMI census tracts, or other areas of need (e.g., an investment in a mass transit project that serves the public, including LMI individuals, would be a qualifying activity).<sup>25</sup> The addition also would recognize that essential infrastructure projects are often community-wide projects for which it is not feasible to allocate the benefit to specific populations or areas.

- Adding a criterion for federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit LMI individuals, small businesses, small farms, LMI census tracts, or other targeted areas of need, such as distressed or underserved areas. Although many programs, projects, or initiatives covered by this criterion would qualify under the current CD definitions, this new criterion would ensure that all activities that meet this definition receive CRA credit. As previously indicated, the agencies believe that, in many circumstances, communities are in the best position to identify their needs and design projects, programs, and initiatives that help to address those needs. This criterion would ensure that activities related to both existing and future programs that benefit certain populations and areas of need will receive CRA credit, even if the activities do not meet one of the other CD criteria, such as affordable housing. Including this criterion would reduce the circumstances in which sections or subsections of the regulations become obsolete due to the inclusion of specific

<sup>24</sup> The agencies have published the Interagency Questions and Answers Regarding Community Reinvestment in the **Federal Register**. 81 FR 48506 (July 25, 2016).

<sup>25</sup> In contrast, a loan supporting the infrastructure necessary to connect an upper-income housing development to a water main line would not meet this criterion, if there were no LMI residents in the development.



programs that expire or are repealed. For example, the CD definition in the CRA regulations previously included qualifying Neighborhood Stabilization Program (NSP)-related activities that benefit low-, moderate-, and middle-income individuals and geographies in NSP-target areas. These references have since been removed because, after March 2016, NSP-eligible activities no longer received consideration as CD activities under the CRA.

- Adding a criterion for family farm purchases or leases of farm land, equipment, and other inputs or the sale and trade of family farm products, as well as for technical assistance and supportive services. The agencies believe that this criterion would benefit communities that banks serve because a healthy farm economy supports many rural and regional economies.

- Adding a criterion for financial literacy programs or education or homebuyer counseling that benefits individuals of all income levels. The agencies believe that financial literacy is an important issue irrespective of income level. Moreover, some stakeholders expressed support for providing CRA credit for financial literacy programs for all individuals. These stakeholders cited high levels of student and credit card debt and a lack of retirement and other savings as reasons for providing broader consideration of financial literacy-related activities.

- Adding a criterion for owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country. This criterion would address concerns expressed by stakeholders about the significant housing needs in Indian country that affect individuals of all income levels.

- Adding a criterion for qualified opportunity funds, as defined in 26 U.S.C. 1400Z-2(d)(1), that benefit qualified opportunity zones in LMI tracts, as defined in 26 U.S.C. 1400Z-1(a). This criterion would incentivize banks to help meet the needs of LMI individuals and tracts located in opportunity zones, which are communities the federal government has identified as needing economic development and job creation.

- Adding CDFIs to the criterion for ventures undertaken by a bank in cooperation with a minority depository institution, women's depository institution, or low-income credit union. The proposal would include CDFIs in this criterion to recognize that the goal of these institutions is to expand economic opportunities in low-income

communities by providing access to financial products and services for local residents and businesses.

In addition to these expansions, the affordable housing criterion would include activities that finance or support owner-occupied housing purchased, refinanced, or improved by LMI individuals or families, except for home mortgage loans provided directly to LMI individuals or families. This aspect of the criterion would encompass, for example, an investment provided to a non-profit that constructs or rehabilitates affordable housing for purchase by LMI individuals. In addition, this aspect of the criterion would capture mortgage-backed securities (MBS) while excluding retail home mortgage loans. Although these activities receive credit under the current regulation, this aspect of the criterion would ensure that they continue to receive credit under the more detailed qualifying activities criteria in the proposal.

Furthermore, the proposal would clarify and expand the type of activities that qualify for CRA credit through revisions to the definitions used in the qualifying activities criteria. The proposal would revise the definitions of CD loans and CD investments<sup>26</sup> to include commitments to lend and invest, respectively, that are reported on the Call Report, Schedule RC-L, and meet the CD activities criteria.<sup>27</sup>

Loan participations that have a primary purpose of CD currently qualify and would continue to qualify. To further support collaboration between large banks and community banks, the proposal would provide credit for a bank's allowance for credit losses that are reported on the Call Report, Schedule RC-G, if the bank commits to provide additional funding as required in certain contingencies. For example, a large bank would receive credit if it committed to financing potential cost overruns, the threat of which could cause the community bank to avoid the project entirely.<sup>28</sup> Similarly, a project may require a bank to commit funds in advance but because banks face investment limitations,<sup>29</sup> advance commitments, though often necessary to a project, can be restrictive, particularly

<sup>26</sup> The proposal would replace the term "qualified investment" in the current regulation with the term "CD investment."

<sup>27</sup> The Call Report, Schedule RC-L, covers contingent and legally binding commitments to lend and invest, respectively.

<sup>28</sup> Banks would continue to receive CRA credit for the funded portions of lines of credit but generally would not receive CRA credit for other legally-binding commitments to lend, such as revolving credit lines and letters of credit.

<sup>29</sup> See, e.g., 12 CFR part 24.

for community banks. The proposal would provide credit for the dollar value of legally-binding commitments to invest that meet the CD criteria.

The proposal also would revise the definitions of distressed nonmetropolitan middle-income area and underserved nonmetropolitan middle-income area to include additional census tracts where there are unmet financial needs. Specifically, the requirement that a distressed area be a nonmetropolitan area would be removed to recognize that there may be urban areas that experience high rates of poverty, unemployment, or population loss and need financial resources. Although the agencies also considered lowering the poverty threshold in the definition of distressed area to as low as 15 percent, they decided to retain the 20 percent threshold because it is consistent with the threshold used in some other Federal programs that are intended to benefit low-income communities, such as the New Markets Tax Credit program. The proposal also would revise the definition of underserved area to remove the requirement that these census tracts be nonmetropolitan areas; this change would address urban banking deserts that lack access to financial services. Under the proposal, an underserved area would be a census tract with:

- A population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs; or

- a census tract that does not have a bank branch in the tract and does not have a bank branch within:

- Two miles of the center of the census tract if it contains only urban census blocks;

- five miles of the center of the census tract if it contains urban and rural census blocks;

- ten miles of the center of the census tract if it contains only rural census blocks; or

- five miles of the center of the census tract if it is an island area, as defined by the Federal Financial Institutions Examination Council (FFIEC) Census data.

Due to the lack of banking and other services in underserved areas, the agencies believe that the CRA regulations should incentivize banks to meet the retail lending and CD needs of the residents in these geographies.

In addition, under the proposal, the CRA regulations would no longer require that CD services be related to the

provision of financial services (*i.e.*, banks would receive credit for all volunteer hours, including manual labor, provided to a CD project). This expansion recognizes that support for a CD project may take many forms, all of which are required for the project to meet the needs of a community, and that all these forms of support should qualify for CRA credit, consistent with the goals of CRA. Under the proposed general performance standards, all activities conducted by the bank—including those engaged in by another party, such as an affiliate—would be considered, as opposed to a bank's option as is done under the current framework. Banks evaluated under the small bank performance standards would continue to have the option of requesting consideration for these qualifying activities.

The proposal also would expand the circumstances in which banks receive *pro-rata* credit for qualifying activities. Under the current regulations, banks receive credit for the *pro-rata* share of a loan or investment in mixed-income housing that includes a set-aside required by Federal, state, or local government for affordable housing for LMI individuals. Under the proposal, all CD activities that provide some benefit to, but do not primarily benefit, specified populations, entities, or areas would receive *pro-rata* credit equal to the partial benefit provided. This change recognizes that 100 percent of the portion of an activity that benefits LMI individuals and families, small businesses, small farms, or identified geographies would meet the CD criteria in the proposal (*i.e.*, a bank would receive credit for 40 percent of the dollar value of a grant that supports a non-profit organization which provides after care and activities to a school where 40 percent of the students are eligible for free or reduced price school lunches).

Further, as stated above, the intended effect of the proposal is to expand the type of activities that qualify for CRA credit. Although the agencies chose not to include in the proposal certain ambiguous or unclear terms used in the current regulations, the agencies do not intend to reduce the activities that qualify for CRA credit. For example, the qualifying activities criteria would no longer use the current regulatory phrase "revitalize and stabilize" to describe the activities that would qualify in targeted areas, such as distressed or underserved areas; instead, the proposal describes in greater detail the criteria for activities that would qualify in these locations. Similarly, rather than including the term "economic development," the

proposal employs more detailed CD criteria to capture the type of activities that currently qualify as economic development activities, such as activities that finance (1) SBDCs, SBICs, New Markets Venture Capital companies, qualified Community Development Entities, or RBICs; (2) businesses or farms that meet the size-eligibility standards of the SBDC or SBIC by providing technical assistance and supportive services; or (3) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit small businesses, or small farms. The proposal does not include the more general aspect of economic development that involved a bank having to demonstrate that its activities that finance businesses or farms that met the size test<sup>30</sup> support job creation, retention, and improvement for LMI individuals, LMI census tracts, and other areas targeted for redevelopment by Federal, state, local, or tribal governments. This aspect of the economic development component of the current CD definition was not retained because the agencies could not identify an objective method for demonstrating job creation, retention, or improvement for LMI individuals or census tracts or other targeted geographies, other than by determining if the activity would create additional low-wage jobs.

*Focus on ongoing commitment.* Third, the proposal seeks to address the concern that the current framework gives too much CRA credit to certain activities, such as credit for the full value of frequently traded MBS, regardless of how long they remain on a bank's balance sheet and even when they do not result in new qualifying activities. The proposal would ensure that a bank's balance sheet reflects its ongoing commitment to CRA. To accomplish this goal, the proposal would give a bank CRA credit for the average month-end outstanding amount on a bank's balance sheet (on-balance sheet) of any qualifying loan or CD investment. The proposal would credit the bank for the amount of CD services and monetary and in-kind donations made during the period. This approach would help to eliminate the apparent inflation of the level of a bank's CRA activity that results from banks

<sup>30</sup> Under the current regulations, as interpreted in the Interagency Questions & Answers, a business or farm meets the size test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the SBDC or SBIC programs or have gross annual revenues of \$1 million or less. See Interagency Questions and Answers, Q&A \_\_.12(g)(3)-1, 81 FR 48506, (July 25, 2016).

purchasing loans or investments just prior to a CRA evaluation and then selling those loans and investments when the evaluation is complete.

*Qualifying activities list.* Finally, the proposal provides that the agencies would maintain a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet the criteria in the rule, as well as examples of activities that the agencies have determined, in response to specific inquiries, do not qualify. The proposal would also establish a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity.<sup>31</sup>

The illustrative list generally would be updated each time an activity is confirmed to be or determined not to be a qualifying activity; however, depending on the circumstances, an activity may not be added to the list (*e.g.*, if it presents circumstances unique to the requesting bank or would be duplicative of an activity already on the list). If it is determined that an activity would not be added to the list, this determination would be made available to the public. The agencies anticipate that banks would use this qualifying activities confirmation process sparingly and that it would not replace a bank's ability to discuss whether an activity qualifies with its examiners or making its own determination, by applying the proposed qualifying activities criteria, that an activity qualifies for CRA credit. Banks would not be required to obtain confirmation from its appropriate Federal regulatory agency for each CRA activity, and qualifying activities would not be limited to those on the illustrative list.

In addition to updating the illustrative list on an ongoing basis, the proposal provides that the list would also be revised at least every three years, through a public notice and comment process, to add activities that meet the criteria and to remove activities that no longer meet the criteria (*e.g.*, if broadband were universally available and no longer considered to be essential infrastructure). If it were determined that an activity no longer meets the criteria, a bank with that activity on-balance sheet would continue to receive

<sup>31</sup> The agencies expect to treat the information provided to them through this process as nonpublic and to maintain the confidentiality of that information subject to applicable law. Banks and interested parties may designate information as confidential or request confidential treatment. The OCC will treat confidential commercial information submitted to the agency in accordance with 12 CFR 4.16. The FDIC will treat confidential commercial information submitted to the agency in accordance with 12 CFR 309.6.

credit if the obligation remains on-balance sheet; however, that activity would not be considered a qualifying activity for any subsequent purchasers. The agencies would consult and coordinate with each other on the content of the proposed list. The initial proposed illustrative list is available for review on the agencies' websites and in section V of this proposal.

*Summary of objectives.* Together, the proposed rule's qualifying activities provisions are intended to provide certainty and transparency about whether an activity qualifies for CRA credit prior to a bank engaging in the activity, and to ensure consistent treatment of activities across and within the agencies. By increasing the specificity used to describe qualifying activities and predictability about whether specific activities would count, these proposed provisions are also intended to encourage banks to undertake more CRA activities—including novel, complex, and innovative activities—that help meet local community needs. In particular, the qualifying activities provisions would incentivize banks to commit more financial resources to the populations and areas that need them most, such as LMI individuals, distressed areas, underserved areas, and Indian country. The agencies expect that banks would only conduct qualifying activities that are consistent with safe and sound banking practices.

**Qualifying Loans**  
on balance sheet  
for at least 90 days and **CD Investments**

*Calculating the qualifying activities value.* The current framework includes a qualitative and quantitative assessment of the dollar value and number of CRA activities, but it does not set a threshold for the total dollar volume of CRA activities in evaluating CRA performance nor does it provide a uniform method for assessing banks' performance context. Under the proposal, banks evaluated under the general performance standards would determine their presumptive ratings at the bank level and in each assessment area by first calculating their *qualifying activities values*, which are the sum of the quantified dollar value of qualifying activities that receive credit (after being adjusted by multipliers, as explained below). Qualifying activities would be quantified as follows:

- Qualifying loans and CD investments would be valued based on their average month-end on-balance sheet dollar value, except that qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25 percent of their origination value.
- Legally-binding commitments to invest that are reported on the Call Report, Schedule RC–L, would be valued based on their average month-end dollar value.
- Qualifying commitments to lend would be valued based on the average month-end dollar value of the allowance for credit losses on those commitments

Twenty five percent of the origination value of  
+ **Qualifying Loans** sold within  
90 days of origination

that are reported on the Call Report, Schedule RC–G.

- CD services and monetary or in-kind donations would be credited at the value of the monetary donation or in-kind activity or at the hourly salary as estimated by the Bureau of Labor Statistics for the job category of the service provided for the number of hours provided.

If a CD activity partially benefits the intended population or area, then the quantified value would be a *pro-rata* share of the full quantified dollar value of the activity, as described above, equal to the percentage of partial benefit.

The quantified value of qualifying activities to CDFIs, other CD investments (not including MBS and municipal bonds), and other affordable-housing related CD loans would be adjusted upward by a multiple of two to provide an incentive for banks to engage in these activities. In addition to these activities, the agencies are also considering whether to apply multipliers to smaller CD loans, such as two, which may be particularly important to small non-profits with a CD purpose.

A bank would calculate its bank-level and assessment area qualifying activities values by taking the sum of the quantified values of all qualifying activities, adjusted by any applicable multiplier, as follows:

+ **CD Services and Monetary**  
and **In – kind donations**

Although banks would still be able to make large investments in MBS under the proposal, concerns related to frequent trading of MBS under the current regulations are mitigated because banks evaluated under the proposed general performance standards would only receive credit in the calculation of their CRA evaluation measure, described below, for the dollar value of MBS for the period that the investment remains on-balance sheet. For example, if a bank purchased a qualifying MBS on January 1, 2019 and sold the MBS on February 1, 2019, the bank would receive one twelfth of the value of the MBS when it calculated its annual qualifying activities value.

*Alternatives considered.* The agencies considered additional ways to expand credit for retail lending and CD activities to individuals who, although not designated as low- or moderate-income, nonetheless have objectively

low incomes. These included providing CRA credit for retail loans and CD activities to middle-income individuals in (1) distressed areas; (2) underserved areas; (3) persistent poverty counties, which have a poverty rate of 20 percent or more over the last 30 years; and (4) any census tract where the area median income is less than the national median income. To retain the focus on LMI individuals, however, the proposal does not include these revisions.

The agencies also considered limiting the dollar value that any single transaction could contribute to the qualifying activities value to address concerns that measuring performance based on the dollar value of banks' qualifying activities could incentivize banks to engage in a small number of large dollar activities that may be less responsive to community needs than other activities. Because the proposal assesses the performance of banks that

are subject to the general performance standards by considering the distribution of retail lending activities and the dollar value of qualifying activities, as discussed below, the agencies do not believe that a single transaction limit is necessary. Moreover, a single transaction limit could have unintended consequences and discourage banks from conducting activities that would help meet the needs of a specific community. For example, competition and capacity constraints may limit the number and type of qualifying activities available to a bank.

The agencies invite comment on all aspects of the proposal related to establishing clear criteria for the type of activities that would qualify for CRA credit and determining the dollar value of qualifying activities, including with respect to the following questions:

1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA's objective of encouraging banks to conduct CRA activities in the communities they serve?

2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?

3. Under the proposal, CD activities conducted in targeted areas, such as Indian country or distressed areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?

4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to \$2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?

5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the **Federal Register**? In addition, how often should the list be updated?

6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process where an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these requests, publish the list of requested items in the **Federal Register** for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?

7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?

8. The use of multipliers is intended to incentivize banks to engage in

activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?

9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Alternatively, CD services could be valued based on a standardized compensation value for the banking industry or occupation type. For example, the median hourly compensation value for the banking industry is approximately \$36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?

10. Should the range of retail banking services provided—such as checking accounts, savings accounts, and certificates of deposit—be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g., no fee, fixed fee, low interest-bearing, high interest-bearing) be considered in performance context?

#### B. Assessment Areas

Under the current framework, a bank's CRA performance is measured within the bank's assessment areas or the greater statewide or regional area(s) that includes the bank's assessment areas. With limited exceptions, a bank is required to delineate assessment areas consisting of one metropolitan statistical area (MSA), one or more metropolitan divisions (MD), or one or more contiguous political subdivisions (e.g., counties, cities, or towns). Assessment areas must include any census tract where a bank has its main office and any census tract where it has one or more branches or deposit-taking automated teller machines (ATMs), as well as the surrounding census tracts in which the bank has originated or

purchased a substantial portion of its loans. A bank may adjust the boundaries of an assessment area to include only the portion of a political subdivision that it reasonably can be expected to serve. Finally, an assessment area must consist only of whole census tracts and not reflect illegal discrimination, arbitrarily exclude LMI census tracts, or extend substantially beyond an MSA or state boundary unless the assessment area is in a multistate MSA (MMSA).

Wholesale banks, which are banks without retail customers (e.g., home mortgage and small business customers), and limited purpose banks, which are banks that offer limited products (e.g., credit cards or automobile loans), have these same rules for delineating assessment areas, except that their assessment area delineations only include the MSAs, MDs, or whole political subdivisions that contain these banks' main office, branches, and deposit-taking ATMs. Military banks, whose business predominately consists of serving the needs of military personnel or their dependents, are not required to have geographic assessment areas and may delineate their entire deposit customer base as their assessment area.

The current method for delineating a bank's assessment areas, which is focused on the areas surrounding brick-and-mortar bank locations, is challenged by how today's consumers meet their banking needs and banks provide services. The current approach creates disincentives for banks to meet the needs of their *entire* communities or even their own customers if their communities or customers are located outside of the banks' assessment areas. These disincentives serve to create CRA deserts and promote CRA hotspots.

To address this, the proposed rule would establish a modernized and standardized process for identifying where a bank's qualifying activities receive credit that would apply to banks subject to the agencies' CRA regulations. Under the proposal, banks (except for military banks)<sup>32</sup> would be required to serve the communities where they have a physical presence and would also be required to serve the surrounding geographies where they originated or purchased a substantial portion of their loans (consistent with the current rules). In addition, to recognize changes in the banking industry—including the increasing number of banks that operate primarily through the internet or

<sup>32</sup> The proposal would retain the requirement that a military bank be evaluated based on its entire deposit customer base, regardless of geographic location.

otherwise serve customers located far from the banks' physical locations—and the statutory purpose of the CRA to help ensure that banks reinvest in the communities where they collect deposits,<sup>33</sup> the proposal would also require a bank with a significant portion of its retail domestic deposits outside of its facility-based assessment areas, such as 50 percent or more, to delineate additional assessment areas wherever it has a concentration of retail domestic deposits.

Regarding assessment areas based on physical presence, a bank would delineate a “facility-based” assessment area where it has its main office, a branch, or a deposit-taking facility, as well as any surrounding geographies where the bank has originated or purchased a substantial portion of its loans. The proposal would require a bank to delineate these facility-based assessment areas in any of the following areas: (1) An MSA; (2) the whole nonmetropolitan area of a state; (3) one or more whole, contiguous MDs in a single MSA; or (4) one or more whole contiguous counties or county equivalents in a single MSA or non-MSA area. The agencies would provide banks the option to choose the geographic level at which to delineate their facility-based assessment areas because the agencies believe that banks are in the best position to determine the areas that their facilities serve.

Beyond their brick-and-mortar locations, the proposal would require banks that receive more than 50 percent of their retail domestic deposits from outside of their facility-based assessment areas to delineate separate, non-overlapping “deposit-based” assessment areas in the smallest geography where they receive five percent or more of their retail domestic deposits. These deposit-based assessment areas would capture banks' evolving business models, address the increasing competition for deposits outside of banks' current assessment areas, and encourage banks to serve their entire communities—including where they take deposits—in harmony with the CRA statute. These deposit-based assessment areas would consist of (1) a state; (2) a whole MSA; (3) the whole nonmetropolitan area of a state; (4) one or more whole, contiguous MDs in a single MSA; (5) the remaining geographic area of a state, MSA, nonmetropolitan area, or MD other than where it has a facility-based assessment area; or (6) one or more whole, contiguous counties or county equivalents in a single MSA or non-

MSA. Unlike facility-based assessment areas where banks may choose the geographic level where they delineate their assessment areas, the agencies believe that banks should be required to delineate deposit-based assessment areas at the smallest geographic level where they receive five percent or more of their retail domestic deposits to help ensure that banks' deposit-based assessment area ratings reflect their qualifying activities in the same areas as their concentrations of deposits. For example, if a bank receives 60 percent of its retail domestic deposits from outside of its facility-based assessment area and 5 percent of these deposits come from Cook County, Illinois, which is not in a facility-based assessment area, it must delineate Cook County as a deposit-based assessment area.

In addition, the agencies recognize that there are certain communities of need where banks have a limited physical or deposit-taking presence. To help ensure that these areas are served, the proposed rule would allow banks to receive credit for qualifying activities conducted outside of their assessment areas in determining their bank-level ratings.

The proposal would allow a bank to change its assessment area delineation once during each evaluation period and would no longer permit a bank to adjust an assessment area's boundaries to include only the portion of a political subdivision that it reasonably can be expected to serve. The proposal would, however, retain the requirements that a bank's assessment areas must not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies.

*Summary of objectives.* Taken together, the proposal's assessment area provisions would create an affirmative obligation for banks to conduct CRA activity in the communities where they operate (determined by where they have a physical presence), conduct a substantial portion of their lending, or collect a substantial portion of their deposits. Through these changes, the proposed rule would both (1) preserve the important connection between a bank's physical locations and the surrounding community by addressing the CRA obligations of traditional banks, which engage in most of their business at their physical locations and (2) reflect critical changes to how customers bank in the 21st century by considering the activity of nontraditional banks, including internet banks. In addition, allowing banks to receive credit for CRA activities outside of their assessment areas when determining bank-level ratings would help to eliminate CRA hot

spots and banking deserts and incentivize investment and lending to all communities served by the bank.

*Alternatives Considered.* In developing this proposed rule, the agencies considered alternative approaches for delineating assessment areas where banks conduct a significant amount of business outside of their physical locations. For example, the agencies considered requiring banks to delineate additional assessment areas only where they have a concentration of deposits. The agencies also considered adopting a hybrid approach that would have required delineation of assessment areas where banks derive a significant concentration of deposits and conduct a significant amount of lending. Because a deposit-based approach closely aligns with the CRA statute—to address the harm caused by banks taking deposits from certain communities and investing them elsewhere—the proposal includes the approach based on deposits.<sup>34</sup> However, to maintain consistency with the current framework and recognize the importance of evaluating a bank's lending in the areas surrounding its facilities where it has originated or purchased a substantial portion of its retail lending, the proposal also would require a bank to delineate a facility-based assessment area around areas where it has a main office, a branch, or a deposit-taking facility *as well as* the surrounding areas where it has originated or purchased a substantial portion of its retail lending.

Regarding the assessment area thresholds, the proposed rule requires banks that receive 50 percent or more of their retail domestic deposits from outside of their facility-based assessment areas to delineate deposit-based assessment areas where they receive five percent or more of their retail domestic deposits. The agencies are considering a range around those thresholds; specifically, the agencies are considering a range between 40 and 60 percent for the percentage of retail domestic deposits outside of banks' facilities-based assessment areas and between two and eight percent for the percentage that determines where banks would delineate their deposit-based assessment areas.

<sup>34</sup> See, e.g., 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs) (“I am talking about the fact that banks . . . will take their deposits from a community and instead of reinvesting them in that community . . . they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood.”)

<sup>33</sup> See, e.g., 123 Cong. Rec. 17630 (1977).

The agencies invite comment on all aspects of the proposal related to establishing a modernized and standardized process for identifying a bank's community—i.e., assessment area(s)—in which the bank's qualifying activities receive credit, including with respect to the following questions:

11. *Are the proposed methods for delineating assessment areas clear, simple, and transparent?*

12. *The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with a significant portion, such as 50 percent or more, of their retail domestic deposits outside of their facility-based assessment areas to delineate their deposit-based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposits. The requirement to designate deposit-based assessment areas would impact internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility-based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit-based assessment in that area, or should some other threshold be implemented? If so, why?*

13. *The deposit-based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit-based assessment area in less populous areas or states, despite having a significant market share in those areas (although banks with branches in those areas would be required to delineate facility-based assessment areas and banks may receive credit for qualifying activities outside of their assessment areas conducted in these areas or states). Does this framework provide sufficient incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non-overlapping assessment areas in each state, MSA, MD, or county*

*or county equivalent in which they have at least a certain percentage of the deposit market share—regardless of what percentage of the bank's retail domestic deposits are derived from a given area—and, if so, what should the percentage of the deposit market share be?*

### *C. Objective Method To Measure CRA Performance*

**Overview.** The current CRA regulations provide different methods to evaluate a bank's CRA performance depending on the bank's asset size and business strategy. For each type of bank, the agencies evaluate all or a portion of its retail and CD activities. For example, in 2019, banks with less than \$321 million in assets in either of the two prior calendar years were evaluated under a retail lending test, and various types of CD activities also may be considered. For banks evaluated in 2019 with \$1.284 billion or more in assets in 2017 or 2018, all CD lending and investments and all retail and CD services are evaluated. Based on the agency's evaluation of the bank's relevant qualifying activities, its performance context, and evidence of discriminatory and other illegal credit practices, a bank receives a rating of outstanding, satisfactory, needs to improve, or substantial noncompliance.

Because of the subjective nature of the current framework, exactly how an agency determines the appropriate rating is at times opaque, complex, and inconsistent. Although the current framework describes in general terms the parameters that an agency uses to weigh and score a bank's relevant qualifying activities, important terms in the parameters are undefined and the processes are unspecified. For example, the agencies are required to assess the geographic distributions of loans. For banks other than small banks and intermediate small banks, as those terms are defined under the current regulations, an "excellent" geographic distribution correlates with an "outstanding" rating, and a "good" distribution correlates with a "satisfactory" rating—but both "excellent" and "good" are undefined. Similarly, under the current regulations, the undefined term "reasonable geographic distribution" equates to satisfactory performance for small banks and intermediate small banks. Furthermore, there is no stated quantity of CRA activities that correlates to a particular rating category. With respect to qualifying services, the current framework does not quantify their value, and the agencies undertake a

qualitative analysis of the range of such services.

To achieve the goal of providing a method of assessing CRA performance that would be more objective, clear, and consistent and facilitate banks' ability to engage in qualifying activities in communities that need it the most, the proposed rule would establish new general performance standards used to evaluate banks that are not small banks. The proposal would allow small banks to opt into the general performance standards as described below; those that do not opt in would be evaluated under small bank performance standards consistent with the current regulations. The new general performance standards would evaluate banks' CRA activities by assessing two fundamental components: (1) The appropriate distribution (i.e., number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies in a community and (2) the impact (i.e., quantified value) of a bank's qualifying activities.

To ensure that the distribution of the number of CRA retail loans and the total value of qualifying activities would be captured and assessed, the proposed rule would provide that the ratings for a bank evaluated under the general performance standards would be based on a combination of approaches. Specifically, to receive a presumptive rating of satisfactory or outstanding at the assessment area level, (1) banks would be required to meet the minimum thresholds for performance on the applicable retail lending distribution tests in that assessment area for each major retail lending product line with at least 20 loans in that assessment area and (2) the average of banks' CRA evaluation measures (described in more detail below) for an evaluation period would have to meet the associated empirical benchmark. By only evaluating a bank's distribution of retail loans in areas where the bank has at least 20 loans in a major retail lending product line, this approach would be tailored to a bank's business strategy and product offerings at the bank and assessment area level.

At the bank level, a bank's presumptive rating would be based on the comparison of its average bank-level CRA evaluation measure to the established empirical benchmark, except that a bank could not receive a satisfactory or an outstanding unless it also received that rating in a significant portion, such as more than 50 percent, of its assessment areas and in those assessment areas where it holds a significant amount of deposits, such as more than 50 percent. At both the bank

and assessment area level, banks evaluated under the general performance standards would also be required to meet minimum CD lending and investment requirements to achieve a satisfactory or outstanding rating. This method of evaluation would incentivize banks to increase the dollar volume of their CRA activities, ensure that banks that are retail lenders are distributing their retail loans to LMI individuals, small farms, small businesses, and farms and business in LMI communities, and recognize the importance of CD lending and investments to LMI individuals and communities.

The proposal would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1, of the Call Report, but exclude brokered deposits. This proposed definition would exclude municipal deposits and deposits from foreign governments or entities and thus would be more reflective of a bank's

capacity to engage in CRA-qualifying activities. By further excluding brokered deposits, which are not associated with any individual or community, this definition would refine the Call Report definition to more accurately reflect the deposits a bank collects from identifiable individuals and communities. Additionally, this definition would leverage an existing Call Report definition of deposits to lessen associated data collection, recordkeeping, and reporting burdens.

Under this proposal, for a bank evaluated under the general performance standards to meet the outstanding or satisfactory presumptive rating categories in an assessment area: (1) Its performance on the geographic and borrower lending distribution tests would have to meet or exceed the established thresholds for performance for each of its major retail lending product lines with at least 20 loans in that assessment area and (2) the average of its annual assessment area CRA

evaluation measures would have to meet or exceed the established benchmarks.

The chart below illustrates possible ways to achieve each presumptive ratings category associated with the statutory rating categories in a given assessment area. The agencies included specific empirical benchmarks for each rating category in the proposed rule that they believe would help achieve the positive outcomes intended by this rulemaking (*i.e.*, an empirical benchmark of (1) 11 percent for outstanding, (2) six percent for satisfactory, (3) three percent for needs to improve, and (4) less than three percent for substantial noncompliance). The agencies selected the specific empirical benchmarks from within ranges for each rating category that reflect the agencies' analysis of the available lending and investment data, discussed below.

CRA evaluation	Retail lending distribution tests	CD minimums	Presumptive rating category
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 11 percent (selected from a range of 10 to 15 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, <i>divided by</i> the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Outstanding.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 6 percent (selected from a range of 5 to 10 percent).	A bank meets the established thresholds for all the retail lending distribution tests for its major retail lending product lines in that assessment area.	The quantified value of community development loans and community development investments in the assessment area, <i>divided by</i> the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.	Satisfactory.
The average of a bank's annual assessment area CRA evaluation measures meets or exceeds 3 percent (selected from a range of 2 to 5 percent).			Needs Improvement.
The average of a bank's annual assessment area CRA evaluation measures is less than 3 percent (selected from a range of 0 to 5 percent).			Substantial Non-compliance.

The bank-level presumptive rating under the general performance standards would be determined by comparing the average of a bank's average bank-level annual CRA evaluation measures to the established empirical benchmarks for the statutory rating categories and determining if the bank had a satisfactory or outstanding in a significant portion, such as more than 50 percent, of its assessment areas, and in those assessment areas where it holds a significant amount of deposits, such as more than 50 percent. In addition, the bank would be required to meet the

minimum requirements for CD lending and investment at the bank level.

As discussed below, the proposed rule would establish empirical benchmarks for the average of a bank's annual CRA evaluation measures for each rating category and the thresholds for the retail lending distribution tests. A bank would use the empirical benchmarks and thresholds in effect on the first day of its evaluation period for the duration of its evaluation period. Because the proposed evaluation method would be sufficiently flexible to account for different bank sizes and

business models, it would not include different tests for different types and sizes of banks.

The proposal identifies the rating resulting from the comparison of the bank's CRA evaluation measure to the corresponding empirical benchmarks and geographic and borrower distribution tests as "presumptive" because this rating could be adjusted based on consideration of performance context and discriminatory or other illegal credit practices. These possible adjustments are discussed below. Following any adjustments, the agency

would determine a bank's assigned rating in each of its assessment areas and at the bank level.

Twelve U.S.C. 2906(d) of the CRA statute requires the agencies to provide a written evaluation, including a rating, for banks with interstate branches at the state level, MMSA level, or both, as applicable. The content of that written evaluation must (1) state conclusions for each assessment factor (*i.e.*, the small bank performance standards for small banks and the borrower and geographic distribution tests, CRA evaluation measure comparison, and CD minimums for banks subject to the general performance standards); (2) discuss the facts and data supporting conclusions; and (3) contain the rating and a statement describing the basis for the rating.<sup>35</sup> For these banks, the state or MMSA level rating is the lowest rating assigned to a significant number of its assessment areas within that state or MMSA.

Section 2906(b)(1)(B) of the CRA statute also requires the agencies to conclude, but not rate, at the MSA and nonmetropolitan area level. Under this proposal, the agencies' conclusion at these levels would be the lowest rating assigned to a substantial portion of assessment areas in that MSA or nonmetropolitan area.

*Applying the retail lending distribution tests.* The retail lending distribution tests would apply to banks evaluated under the general performance standards. The retail lending distribution tests would be applied at the assessment area level to a bank's major retail lending product lines with at least 20 originations in the

assessment area during the evaluation period. A major retail lending product line is defined at the bank level and is any retail lending product line that composes at least 15 percent of the bank's overall dollar volume of retail loan originations during the evaluation period. The agencies would require at least 20 originations in an assessment area before applying a retail lending distribution test to ensure that the rule only evaluates a bank's retail lending distribution in markets where it is engaged in retail lending beyond lending done on an accommodation basis. Under the proposal, banks would apply the retail lending distribution tests, and the agencies would validate their performance.

The retail lending distribution tests would evaluate the bank's originations in each assessment area during the review period using both a geographic distribution test and a borrower distribution test for small loans to businesses and small loans to farms and a borrower distribution test for home mortgage and consumer lending. The geographic distribution test assesses a bank's distribution of lending in LMI areas while the borrower distribution test assesses a bank's distribution of lending to LMI borrowers or small businesses or small farms. A bank can pass either test by meeting or exceeding a threshold associated with the demographic comparator, which is based on the demographics of the given assessment area, or a threshold associated with the peer comparator, which is based on peers' performance in the given assessment area.

Although the agencies remain committed to encouraging banks to meet the credit needs in LMI areas, for banks evaluated under the general performance standards, the proposal would not apply a geographic distribution test to a bank's consumer and home mortgage product lines. Under the geographic distribution test in the current CRA framework, banks receive positive consideration for home mortgage and consumer loans made in LMI areas, even if they are made to middle- or upper-income individuals or families. Unlike small loans to businesses and small loans to farms in LMI areas that may result in additional job creation or other positive effects for

the larger community, home mortgage and consumer loans to middle- or upper-income individuals and families in LMI areas are generally not as beneficial to LMI communities and may result in displacement. Accordingly, this proposal would not apply the geographic distribution test to these banks' home mortgage and consumer product lines. The result of this is that under the proposal, a mortgage loan to a high-income individual living in a low-income census tract would no longer qualify for CRA credit. The agencies' commitment to encouraging banks to meet the credit needs in LMI communities and neighborhoods is reflected in the proposal's retention of the geographic distribution test for small business and small farm product lines. However, because the agencies would apply the small bank performance standards consistent with the current regulations, small banks would continue to be evaluated based on the geographic distribution of their home mortgage loans and consumer loans, as applicable.

Under the proposal, a bank subject to the retail lending distribution tests would not be able to achieve a presumptive rating of satisfactory or outstanding without passing all applicable distribution tests for all major retail lending product lines in that assessment area. To pass a distribution test, a bank would have to meet or exceed the minimum thresholds for either the demographic comparator or the peer comparator. For example, if the threshold for the demographic comparator is set at 55 percent of the relevant demographic comparator and the threshold for the peer comparator is set at 65 percent of the relevant peer comparator, a bank would be required to meet either the 55 percent demographic comparator threshold or the 65 percent peer comparator threshold to pass the distribution test. In other words, to pass the geographic distribution test using the demographic comparator, the percentage of a bank's small loans to businesses (SLB) that are in LMI census tracts in the assessment area (AA) *divided by* the percentage of businesses in LMI census tracts in the assessment area would have to be *greater than or equal to* 55 percent, which would be calculated as follows:

<sup>35</sup>The CRA statute provides:

States: For a bank that maintains domestic branches in 2 or more states, the appropriate Federal financial supervisory agency must prepare—(A) a written evaluation of the entire bank's record of CRA performance, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906 and (B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the bank's record of CRA performance within such state, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906. *See* 12 U.S.C. 2906(d)(1).

MMSAs: For a bank that maintains domestic branches in 2 or more states within an MMSA, the appropriate Federal financial supervisory agency must prepare a separate written evaluation of the bank's record of CRA performance within such MMSA, as required by subsections (a), (b), and (c) of 12 U.S.C. 2906. *See* 12 U.S.C. 2906(d)(2).



$$\frac{\# \text{ of Bank SLBs in LMI census tracts in AA} / \# \text{ of Bank SLBs in AA}}{\# \text{ of businesses in LMI census tracts in AA} / \# \text{ of businesses in AA}} \geq 55 \%$$

Alternatively, to pass the geographic distribution test using the peer comparator, the percentage of a bank's small loans to businesses that are in LMI census tracts in the assessment area *divided* by the percentage of all banks' small loans to businesses in LMI census tracts in the assessment area would have to be *greater than or equal to* 65 percent, calculated as follows:

$$\frac{\# \text{ of Bank SLBs in LMI census tracts in AA} / \# \text{ of Bank SLBs in AA}}{\# \text{ of all banks' SLBs in LMI census tracts in AA} / \# \text{ of all banks' SLBs in AA}} \geq 65 \%$$

To pass the borrower distribution test by using the demographic comparator, the percentage of a bank's small loans to businesses made to small businesses in the assessment area *divided by* the percentage of small businesses in the assessment area would have to be *greater than or equal to* 55 percent, calculated as follows:

$$\frac{\# \text{ of Bank SLBs made to SBs in AA} / \# \text{ of Bank SLBs in AA}}{\# \text{ of SBs in AA} / \# \text{ of businesses in AA}} \geq 55 \%$$

Alternatively, to pass the borrower distribution test by using the peer comparator the percentage of a bank's small loans to businesses made to small businesses in the assessment area *divided by* the percentage of all banks' small loans to businesses made to small businesses in the assessment area would have to be *greater than or equal to* 65 percent, calculated as follows:

$$\frac{\# \text{ of Bank SLBs made to SBs in AA} / \# \text{ of Bank SLBs in AA}}{\# \text{ of all banks' SLBs made to SBs in AA} / \# \text{ of all banks' SLBs in AA}} \geq 65 \%$$

The agencies would collect and provide public data that would allow banks to apply the borrower distribution tests for home mortgage and consumer loans, small loans to businesses, and small loans to farms, and the geographic distribution test for small loans to farms and small loans to businesses. However, the agencies recognize that, even if the proposal were implemented, the available data for the small loans to businesses and small loans to farms borrower distribution tests may be insufficient and, therefore, banks may need to rely on private datasets. Because banks may have to purchase access to these datasets, the agencies invite comment on options for tailoring this requirement by, for example, allowing banks below a certain asset size to use publicly available data as a proxy.

*Calculating the CRA evaluation measure.* The CRA evaluation measure would be applicable to banks subject to the general performance standards. The CRA evaluation measure would be an objective measure of a bank's ongoing commitment to CRA and would be determined annually at the bank level and for each of its delineated assessment areas, as defined above.<sup>36</sup> A bank would initially calculate its CRA evaluation measure by taking the sum of (1) a bank's qualifying activities value, as described above, *divided by* the average of its quarterly retail domestic deposits and (2) a calculation that accounts for a bank's branch

<sup>36</sup> A bank's assessment area CRA evaluation measures are used to reach a conclusion in each MSA where the bank has deposit-taking facility or main office, as required by the CRA statute.

distribution. The agencies would validate that calculation.

The first portion of the CRA evaluation measure reflects a bank's ongoing commitment to CRA by measuring the value of qualifying activities as a proportion of total retail domestic deposits. The second portion of the CRA evaluation measure accounts for the social value and economic impact of bank branches in LMI areas, Indian country, underserved areas, and distressed areas by measuring a bank's proportion of branches in those areas. Specifically, the number of the bank's branches located in LMI census tracts, Indian country, underserved areas, and distressed areas during the same annual period used to calculate the qualifying activities value would be *divided by* the bank's total number of branches in that annual period and *multiplied by* .01.

This calculation would quantify a bank's distribution of branches and increase a bank's CRA evaluation measure by up to one percentage point based on the proportion of a bank's

branches in those specified areas. The agencies believe that valuing branch distribution at up to one percentage point of the CRA evaluation measure accounts for the significance of branches

to these areas while placing primary emphasis on the qualifying activities that banks conduct in their communities. The CRA evaluation measure would be calculated as follows:

$$\frac{\text{Qualifying Activities Value}}{\text{Average quarterly Retail Domestic Deposits}} + .01 \left( \frac{\text{Branches in Specified Areas}}{\text{Total Branches}} \right)$$

*Empirical benchmarks, thresholds, and the definition of a major retail lending product line.* The proposal would establish the thresholds for the demographic and peer comparators for each of the geographic distribution and borrower distribution tests. The proposal would also establish the empirical benchmarks for the average CRA evaluation measure<sup>37</sup> associated with each rating category. These empirical benchmarks and thresholds are, and would be, based, in part, on the agencies' analysis of the currently available historical data. Specifically, the agencies reviewed the FFIEC CRA data, HMDA data on home mortgages to LMI borrowers, Call Report data on-balance sheet value of home mortgages, consumer loans, small business and small farm loans, and credit bureau data on the outstanding balances of consumer loans. Although these data sources have some limitations,<sup>38</sup> by using all the sources together, collecting additional information about CD investments from historical performance evaluations,<sup>39</sup> and making a limited number of assumptions (described below), the agencies were able to estimate what each bank's average CRA evaluation measure would have been

<sup>37</sup> The "average CRA evaluation measure" generally refers to the average of the annual assessment area or bank-level CRA evaluation measures for an evaluation period.

<sup>38</sup> For example, under the current CRA regulations, only banks that are above the small bank asset size threshold, which is \$1.284 billion for 2019, are required to report CRA data to the FFIEC and not all banks are HMDA reporters. 12 CFR 25.12(u)(1), 195.12(u)(1), 345.12(u)(1). Additionally, both the CRA FFIEC data and the HMDA data look at originations and purchases and not the on-balance sheet value of loans or investments. Although the Call Report and credit bureau data do provide the outstanding amount of loans and investments, those data sources do not identify which balances are related qualifying activities. Moreover, the proposal would expand the criteria for qualifying activities in a number of ways, including by increasing the loan size threshold for small loans to businesses and small loans to farms from \$1 million to \$2 million. Accordingly, the currently available data on CRA qualifying activities would not fully capture all activities that would be qualifying under the proposal.

<sup>39</sup> The agencies used a sample of performance evaluations completed between 2011 and 2018. The sample contained data from over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is \$1.284 billion for 2019.

from 2011–2017 under the framework in the proposal for all banks that filed a Call Report.

Since the CRA evaluation measure would generally focus on the on-balance sheet value of qualifying loans and investments, the agencies first identified the categories on the Call Report that could include qualifying loans and investments and then used additional data sources such as the existing FFIEC CRA, HMDA, and credit bureau data to estimate what portion of the activity reported on the Call Report would be qualifying activities under the proposal. To estimate the dollar volume of on-balance sheet activity that would be qualifying activity the agencies did the following:

- For home mortgage loans, by bank and year, the agencies identified all HMDA reportable loans originated and held within the calendar year to LMI individuals,<sup>40</sup> and then divided the sum of the dollar volume of those loans by the bank's total dollar volume of loans originated and not sold within that calendar year. This provides an estimate of a bank- year-specific proportion of identified qualifying loans that was used to calculate the bank's proportion of on-balance sheet qualified home mortgage loans. For banks that are not HMDA filers, the agencies used the median proportion of qualifying home mortgage loans of all HMDA filers for that year.<sup>41</sup> Note that the estimated proportions are based on the proportion of qualifying originations, not on the proportions of qualifying on-balance sheet loans. As such, to the extent that these proportions differ, the estimate of the on-balance sheet value of qualifying mortgage loans may be an over- or underestimate.

- For small business and small farm loans, as defined under the current regulations, the agencies used the FFIEC CRA data to estimate the proportion of the bank's on-balance sheet small business and small farm loans that qualify for CRA credit because they are originated to businesses or farms with

revenues of less than \$1 million or in LMI census tracts that are less than \$1 million. Because the proposal would increase the size of small loans to businesses and small loans to farms that would be qualifying from the current small business loan threshold of \$1 million and small farm loan threshold of \$500,000 to \$2 million and banks do not separately report the on-balance sheet value of loans between the existing thresholds and \$2 million, the agencies used, based on additional data sources, a fraction of the dollar volume of loans that were reported on the Call Report as less than \$500,000 or \$1 million to estimate the dollar volume of loans that were less than \$2 million.

- For credit card,<sup>42</sup> automobile loan, and other consumer loan<sup>43</sup> balances, to estimate the proportion of a bank's on-balance sheet consumer loans that are qualifying, the agencies used credit bureau data.<sup>44</sup> The agencies combined the credit bureau data with FFIEC's demographic information at the census tract level<sup>45</sup> to identify whether a given account holder resides in an LMI census tract. Since the credit bureau data does not include income level, the agencies calculated the proportion of credit card loan balances attributable to residents of LMI tracts and used that proportion to represent the proportion of balances attributable to LMI borrowers.<sup>46</sup>

<sup>42</sup> The agencies included the following credit bureau debt categories in the credit card definition: Credit card, bank card, flexible spending card, retail lending card, and line of credit.

<sup>43</sup> The credit bureau loan categories included are: Other, personal finance, and student loan.

<sup>44</sup> The credit bureau data contain balances by debt category, along with census tract location of the borrower.

<sup>45</sup> For the period 2005–2011, FFIEC uses Census 2000 census tract definitions and demographic information based on Census 2000. For the period 2012–2016, FFIEC uses Census 2010 census tract definitions and American Community Survey (ACS) 2006–2010 data. For the period 2017–2018, FFIEC uses census tract definitions and demographics from 2011–2015 ACS. Note that this method introduces some error due to the fact that the credit bureau uses Census 2000 census tract definitions, while FFIEC uses Census 2000 or Census 2010 census tract definitions depending on the year.

<sup>46</sup> The agencies do not believe this method significantly overestimates the proportion of LMI borrowers or share of balances attributed to them because while this methodology incorrectly

- For CD Investments, the agencies relied on a sample of performance evaluations completed between 2011 and 2018. The sample contains over 200 exams for banks above the small bank asset size threshold, which adjusts yearly and is \$1.284 billion for 2019. The agencies approximated the value of investments on a bank's balance sheet by calculating the sum of the balances of prior investments as of the beginning of the evaluation period plus the average annual new investments over the evaluation period. The agencies then calculated the median investments-to-domestic-deposits ratio by asset size bucket (*i.e.*, assets greater than \$100 billion, \$5 to \$100 billion, and less than or equal to \$5 billion) for the performance evaluation sample.<sup>47</sup> This median ratio was then used to impute CD investments for all institutions subject to CRA, by multiplying a bank's deposits in a given year with the ratio corresponding to its asset size bucket. A limitation of this approach is that the median ratio by asset size used for imputation is only based on banks above the small bank asset size threshold, and it is possible that this ratio differs for smaller banks.

- For CD loans, the agencies relied on the FFIEC CRA data that contains information on the dollar amount of CD loans originated that year.

By using these estimates, the agencies were able to approximate what the CRA evaluation measure under the proposed framework would have been for all banks from 2011–2018. In addition to the data, to set the initial benchmarks for the average CRA evaluation measure and the thresholds for the retail lending distribution tests, the agencies analyzed banks' past performance evaluations, which provide qualitative information to help inform what level of performance should be required for each rating category. The agencies also considered unmet needs and opportunities, such as those in banking and CD deserts, market conditions, and the overall policy goal of increasing CRA activities. The agencies would publish the empirical benchmarks for the average CRA evaluation measures that correspond with each rating category and the thresholds for the retail

lending distribution test with the final rule.

Based on the agencies' review of these factors thus far, the agencies believe that the average CRA evaluation measure benchmarks associated with each rating category should be set at between ten and 15 percent for outstanding, five and ten percent for satisfactory, and two and five percent for needs to improve. As discussed above, the proposal would set 11 percent as the initial benchmark for outstanding, six percent as the initial benchmark for satisfactory, and three percent as the initial benchmark for needs to improve. An average CRA evaluation measure of less than three percent would be associated with the substantial noncompliance rating category.

The agencies are aware, however, that there are some limitations in the data currently available including that available data do not currently include, for example, the dollar volume of CD investments or a quantification of the dollar value of CD services. In addition, available data do not necessarily map perfectly to the configuration of assessment areas specified in this proposal. Deposit data also have limitations because the current reporting framework records deposits by attributing them to a branch location, rather than the account holder's address and uses a different definition of deposits than the proposed rule. The proposed rule would remedy these deficiencies by leveraging data that are readily available but not currently reported in an integrated and accessible manner. Over time, the data collection, recordkeeping, and reporting requirements in this proposal would remedy the current data limitations. Further, after the issuance of this notice of proposed rulemaking and prior to the issuance of any final rule, the agencies plan to request additional data through a public request for information from banks and other interested parties to supplement the currently available data.

Until the data limitations are addressed, the agencies would consider the historical data of reported lending and compare it to historical levels of total domestic deposits to determine the specific empirical benchmarks for CRA evaluation measures that are applicable at the bank and assessment area levels within the ranges set forth in the proposal. The agencies would then review and adjust these empirical benchmarks and make them available publicly to promote transparency and predictability. The agencies expect to adjust these empirical benchmarks every three years, or sooner if warranted.

The proposal also defines major retail lending product lines as any retail lending product line that composes at least 15 percent of the bank's overall dollar volume of retail loan originations during the evaluation period. Regarding this definition, the agencies reviewed HMDA and FFIEC CRA data on the dollar volume of retail loan originations along with Call Report data on the on-balance sheet value of consumer loans. Because the Call Report only includes on-balance sheet values, the agencies assumed that the quarterly change in the on-balance sheet value of consumer loans reflects new consumer loan originations.

*CD minimums.* The general performance standards would establish minimums for a bank's quantified value of CD lending and investment as compared to retail domestic deposits at both the assessment area and bank level to achieve a satisfactory or an outstanding rating. The CD minimums included in the proposal were informed by the analysis of the currently available historical data, described above. To achieve a presumptive rating of satisfactory or outstanding, the sum of the quantified value of community development loans and community development investments, *divided by* the average of the bank's retail domestic deposits would need to meet or exceed two percent. The CD minimums would apply at both the assessment area and bank level. These minimums reflect the agencies' judgment that CD lending and investment are critically important to serving banks' local communities.

*Performance context.* Under the current framework, a bank's CRA performance is judged in the context of information about a bank and its assessment area(s), including (1) relevant demographic data (*e.g.*, median income levels, distribution of household income, nature of housing stock, housing costs); (2) lending, investment, and service opportunities; and (3) the bank's product offerings and business strategy, capacity and constraints, past performance, and performance of similarly situated lenders. Under the proposed framework, performance context would remain important. The proposal sets forth performance context factors that the agencies would consider in determining a bank's assigned ratings in each assessment area and at the bank level. Banks subject to the general performance standards would submit performance context information in a standardized format using a form on the agency's website that relies on the performance context factors, discussed below. In addition, the agencies would establish examination procedures to

includes middle- and upper-income borrowers in LMI census tracts, it also incorrectly excludes LMI borrowers in middle- and upper-income census tracts. Because the two sources of error work in opposite directions, the agencies expect them to cancel each other out to a significant extent.

<sup>47</sup> Asset size buckets were determined by data explorations of the relationship between the investments-to-deposits ratio and asset size, in conjunction with sample size considerations.

help ensure that examiners apply performance context consistently.

The performance context factors focus on the capacity of the bank to engage in qualifying activities and the demand for and opportunity to engage in qualifying activities in the communities that the bank serves. In considering a bank's capacity, the agencies would assess its business strategy, size, and other factors that affect its engagement in qualifying activities, including structural or other constraints on a bank's ability to engage in the volume of CD lending and investment required to meet the CD minimums, if applicable. Regarding the demand for and opportunity to engage in qualifying activities in a bank's community, the agencies would consider public comments related to community needs and opportunities and assess the characteristics of the community served by the bank, such as economic conditions and demographics, as these factors relate to the demand for and the opportunity to engage in qualifying activities. The agencies would consider how differences between actual and expected levels in qualifying activities were affected by a bank's capacity and opportunity, including local market conditions and events during the relevant period, or bank characteristics, such as product offerings and business strategy, changes in the assessment area needs and opportunities, and bank-specific constraints such as financial condition or safety and soundness considerations. For example, consideration of performance context could be particularly important for a bank that does not engage in retail lending activities because its business model limits the range of qualifying activities in which the bank may engage. The agencies could also consider innovativeness, complexity, difficulty, or positive impact on the bank's assessment areas or significant qualifying activities, as well as differences in banks' business models that affected the volume and types of qualifying activities. Finally, the agencies could consider a bank's investments in promoting and supporting the community reinvestment expertise of its staff and the development of products and services that benefit LMI communities.

**Discriminatory or other illegal credit practices.** Under the proposal, an agency's evaluation of a bank's CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices. Specifically, in assigning a CRA rating, an agency would first evaluate a bank's performance for the applicable time

period and then make any adjustments to the presumptive rating that would be warranted based on evidence of discriminatory or other illegal credit practices, consistent with the relevant agency's policies and procedures.

**Strategic plans.** The proposal retains the option for a bank to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. Under the proposal, a bank's strategic plan would be developed with public participation and would demonstrate how the bank would help meet the credit needs—particularly the needs of LMI census tracts and individuals—of its assessment area(s) and at the bank level through qualifying activities. Today, although any bank may request to be evaluated under a strategic plan, only a limited number of banks with unique business models or other unique circumstances use them. Because the proposal would not add additional eligibility requirements for strategic plans, the agencies expect that strategic plans would continue to be used in a similar manner. For example, a de novo bank could develop goals under a strategic plan that reflect its projected branch footprint and deposit growth, its planned lending activities, and its anticipated capacity to engage in qualifying activities. Additionally, banks with no retail domestic deposits and banks evaluated under the small bank performance standards that do not originate retail loans would be required to submit a strategic plan.

**Small bank performance standards.** The current CRA regulations include specific performance evaluation standards for small banks and intermediate small banks.<sup>48</sup> Specifically, a small bank is evaluated pursuant to a lending test that considers the bank's:

- Loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;
- The percentage of loans and, as appropriate, other lending-related activity in the bank's assessment area(s);
- The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;
- The geographic distribution of the bank's loans; and
- The bank's record of taking action, if warranted, in response to written

complaints about its performance in helping to meet credit needs in its assessment area(s).<sup>49</sup>

The current regulations assign small bank ratings based on the lending test. A small bank is eligible for a "satisfactory" rating under the lending test if it demonstrates a:

- Reasonable loan-to-deposit ratio;
- Majority of its loans in its assessment area(s);
- Distribution of loans to businesses and farms of different sizes that is reasonable given the demographics of its assessment area(s);
- Record of taking appropriate action in response to written complaints, and
- Reasonable geographic distribution of loans given the bank's assessment area(s).<sup>50</sup>

A small bank that meets all of those standards and exceeds some or all of them may warrant consideration for a lending test rating of "outstanding."<sup>51</sup> To determine whether the overall performance of a small bank that is not an intermediate small bank warrants a rating of outstanding, the agency carrying out the evaluation considers the extent to which the bank exceeds the performance standards for a rating of "satisfactory" and its performance in making qualified investments and providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).<sup>52</sup> A small bank may receive an overall rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.<sup>53</sup>

Under the proposal, small banks would not be evaluated pursuant to the general performance standards that consider a bank's CRA evaluation measure and the retail lending distribution tests. Instead, small banks would continue to be evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, unless they are evaluated under an approved strategic plan or

<sup>49</sup> 12 CFR 25.26(b), 195.26(b), 345.26(b).

<sup>50</sup> 12 CFR part 25, Appendix A, paragraph (d)(1)(i), part 195, Appendix A, paragraph (d)(1)(i), part 345, Appendix A, paragraph (d)(1)(i).

<sup>51</sup> 12 CFR part 25, Appendix A, paragraph (d)(1)(ii), part 195, Appendix A, paragraph (d)(1)(ii), part 345, Appendix A, paragraph (d)(1)(ii).

<sup>52</sup> 12 CFR part 25, Appendix A, paragraph (d)(3)(ii)(B), part 195, Appendix A, paragraph (d)(3)(ii)(B), part 345, Appendix A, paragraph (d)(3)(ii)(B).

<sup>53</sup> 12 CFR part 25, Appendix A, paragraph (d)(3)(iii), part 195, Appendix A, paragraph (d)(3)(iii), part 345, Appendix A, paragraph (d)(3)(iii).

<sup>48</sup> 12 CFR 25.26, 195.26, 345.26.

elect to opt into the general performance standards. Performance context and discriminatory and other illegal credit practices would continue to be considered in evaluating a small bank's performance. In addition, under the proposed framework, small banks would continue to refer to relevant guidance in the Interagency Questions & Answers and existing policies and procedures, including with respect to state and MMSA ratings. As proposed, a small bank may choose to exercise an opt in to the proposed general performance standards and must do so at least six months before the start of its next exam cycle. Once a small bank opts in, it would be subject to the general performance standards outlined in the proposed rule for its next CRA evaluation. A small bank that has opted in may exercise a one-time opt out at the end of any CRA evaluation following the opt in and must do so six months before the start of its next exam cycle. Small banks that opt out would revert to being evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, unless they are evaluated under an approved strategic plan, until such time that they cease to be small banks based on their assets size.

The proposal would also revise the definition of a "small bank." Under the current regulations, in 2019, a small bank is a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.284 billion, and an intermediate small bank is a small bank that had assets of at least \$321 million as of December 31 of both of the prior two calendar years and assets of less than \$1.284 billion as of December 31 of either of the prior two calendar years.<sup>54</sup> These thresholds are adjusted annually based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).<sup>55</sup>

Under the proposal, a small bank would be a bank that had assets of \$500 million or less in each of the previous four calendar quarters. Like the current asset-size thresholds, the \$500 million threshold would be adjusted annually based on changes in the CPI-W. Unlike the current CRA regulations, the proposal would not include a separate category for intermediate small banks.

Although the proposed small bank performance standards would not include a CD test and small banks would not be required to engage in CD

activities, lending-related activities, including CD loans, and CD investments and services may be considered as described above. The proposal would replace references to "qualified investments" in the applicable small bank provisions of the current CRA regulations with references to "community development investments." The proposal's definitions of qualifying loans and CD services also would apply to small banks. Small banks that engage in qualifying activities as described under proposed 12 CFR 25.04 and 345.04 would receive consideration for those activities to the extent that they were consistent with the small bank performance standards and appendix A. The agencies also recognize that because the small bank performance standards would be applied consistent with the current regulatory framework, certain activities that do not meet the qualifying activities criteria in §§ 25.04 and 345.04 would receive positive consideration. In addition to the revised qualifying activities criteria, small banks also would be subject to the proposal's changes to the assessment area delineation requirements and would be required to delineate deposit-based assessment areas to the same extent as other banks.

The proposed small bank asset-size threshold and the lower burdens imposed by the small bank performance standards recognize that complying with the data collection, recordkeeping, and reporting requirements under the new general performance standards may impose a disproportionate burden on these banks. The agencies note, however, that the available data indicates that small banks may outperform larger banks if they were subject to the general performance standards.

*Summary of objectives.* Taken together, the proposed changes to how a bank's CRA activity is evaluated would reduce the subjectivity and inconsistencies in the current framework. The two components of the proposal's CRA evaluation under the new general performance standards—the CRA evaluation measure and the retail lending distribution test—would work together to encourage banks to engage in a variety of activities that provide credit to LMI individuals, small business, small farms, and in areas of need, as well as to incentivize long-term investments in these communities. The retail lending distribution tests would help ensure that banks' retail loans are appropriately distributed to areas and people in need of credit in the local areas where banks have a concentration

of depositors or in the areas surrounding bank branches. And the CRA evaluation measure's focus on the value of on-balance sheet loans and investments would encourage stable commitments to communities and disincentivize churning of activities that may not provide long-term stability.

The proposed combined objective method for measuring CRA performance and activity in conjunction with the establishment of transparent benchmarks and thresholds would reduce inconsistency and subjectivity in the current CRA framework and could incentivize more CRA activity. For example, by selecting sufficiently high empirical benchmarks for the average CRA evaluation measure—informed by historical performance levels—under the new general performance standards, the agencies could encourage more qualifying activities. The CD lending and investment minimums would recognize the importance of CD activities to serving a community's needs. Similarly, the small bank performance standards would continue to ensure that small banks' lending and lending-related activities are responsive to the needs of their communities. Furthermore, by preserving a role for performance context, the agencies would continue to consider the specific facts and circumstances that affect a bank's CRA capacity and opportunities and account for them through the consistent and transparent exercise of judgment.

In addition, the proposal would account for differences in bank size, location, and business model in several ways. As an initial matter, small banks would continue to be evaluated pursuant to performance standards designed specifically for small banks that consider their lending opportunities and business model. For banks that are not evaluated as small banks, the retail lending distribution test component of the general performance standards would account for bank size, location, and business model in two ways while assessing whether a bank is adequately serving the LMI individuals and areas in its assessment area. First, the retail lending geographic distribution test and borrower distribution test would look at a bank's geographic and borrower distributions of retail lending activities in LMI areas and to LMI individuals, small farms, or small businesses in its assessment areas, as applicable. For each type of retail activity, the distribution test would look at a bank's qualifying activities conducted as a percentage of a bank's lending in that area and, accordingly, would be scaled

<sup>54</sup> 12 CFR 25.12(u)(1), 195.12(u)(1), 345.12(u)(1).

<sup>55</sup> 12 CFR 25.12(u)(2), 195.12(u)(2), 345.12(u)(2).

automatically to a bank's presence in that market, its location, and its chosen business model. Second, a bank's retail lending geographic distribution and borrower distribution would be evaluated based on its best performance under either a demographic or peer comparator, both of which would incorporate information about a bank's location. This flexibility and focus on the distribution of the number of qualifying retail loans would help to ensure that the retail lending distribution test accounts for bank size, location, and business model. The CRA evaluation measures also would account for differences in bank size, location, and business model because these differences would be reflected in the volume of a bank's retail domestic deposits at the bank level and in each assessment area.

*Alternatives considered.* The agencies also considered other approaches to evaluating CRA performance for banks other than small banks. The agencies first considered having a performance test that would have been based solely on the total dollar volume of spending on qualifying activities. Specifically, this approach would have relied solely on a calculation that compares a bank's average CRA evaluation measure—calculated by *dividing* its yearly qualifying activities value by its average retail domestic deposits—to empirical benchmarks to evaluate a bank's CRA performance, without overlaying a retail lending distribution test. This method would have clarified how banks' CRA performance is evaluated and provided additional consistency that would have enabled banks to predict and track their performance throughout the review period. Further, this method of evaluating CRA performance could have directly achieved more CRA spending and investment in communities that need it most. However, this approach would not have accounted for a bank's distribution of the number of retail loans, which is currently an important part of evaluating a bank's CRA performance. In addition, without limits on the credit received for a single transaction, this method of evaluating CRA performance could have encouraged banks to meet their CRA obligations through a small number of large dollar retail or CD activities.

Second, the agencies considered retaining a separate CD and retail lending test. For the CD test, the agencies considered establishing empirical benchmarks for assessing performance related to a bank's on-balance sheet dollar volume of CD activities as compared to the dollar value of its retail domestic deposits. A

bank's performance on the retail lending test would have been based on its performance on geographic and borrower distribution tests in each assessment area for all major retail lending product lines. The agencies would have developed thresholds, corresponding to statutory rating categories, for a bank's performance on the retail lending distribution tests and the bank would have been required to meet the thresholds for all tests for each major retail lending product line to achieve the corresponding rating. This method of evaluating a bank's CRA performance would also have provided certainty and clarity and enabled a bank to monitor its performance throughout its review period. However, this method would not have focused on increasing the overall dollar volume of qualifying activities in the areas that need it most and would not have helped address CRA deserts and hotspots. Accordingly, to ensure that the distribution of the number of CRA retail loans and the total volume of spending on qualifying activities would be captured and assessed, the proposed rule would provide that the ratings for a bank evaluated under the general performance standards would be based on both the distribution of retail loans and impact, measured in dollars, of the bank's qualifying activities.

Further, while developing this proposal, the agencies considered several possible definitions of retail domestic deposits to determine which definition would best reflect a bank's capacity to engage in qualifying activities. First, the agencies considered using total domestic deposits, as reported on Schedule RC, item 13.a, of the Call Report, which is the definition of deposits currently used in the FDIC Summary of Deposits report. This definition includes deposits from individuals, partnerships, and corporations, the U.S. government, states and political subdivisions in the United States, commercial banks and other depository institutions in the United States, banks in foreign countries, foreign governments, and official institutions, including foreign central banks. After considering this definition, the agencies determined that it could overestimate a bank's capacity to engage in qualifying activities by including municipal deposits and deposits from foreign governments and entities.

The agencies also considered using the sum of total deposits intended primarily for personal, household, or family use, as reported on Schedule RC-E, items 6.a, 6.b, 7.a(1), and 7.b(1). This could more accurately reflect a bank's

capacity to engage in qualifying activities for individuals, small businesses, and small farms; however, currently, only institutions over \$1 billion in total assets that offer one or more consumer deposit account products are required to report that information. Accordingly, the agencies did not use this definition in the proposal because using it would have created additional reporting requirements for banks not currently required to report this information. In addition, the agencies considered scaling the empirical benchmarks for the average CRA evaluation measure at the assessment area level but determined that by relying on the volume of a bank's retail domestic deposits in each assessment area, the measure already accounts for differences in bank size, location, and business model.

The agencies also considered developing a method for evaluating a bank's use of alternative delivery systems and mechanisms, such as mobile banking, for meeting the needs of LMI customers. For example, the agencies considered adding a performance standard that accounts for a bank's use of alternative delivery systems that serve LMI individuals, such as the number of a bank's LMI customers that used an alternative delivery system divided by the number of the bank's LMI customers.

The agencies invite comment on all aspects of the proposal related to the proposed method and process for objectively measuring bank CRA performance, including with respect to the following questions:

14. *The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1, of the Call Report, excluding brokered deposits. Is there another definition—including the alternatives described above—that would better reflect a bank's capacity to engage in CRA qualifying activities?*

15. *The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank's distribution of branches by increasing a bank's quantified value of qualifying activities divided by retail domestic deposits (a bank's CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank's branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if*

there are very few specified areas of need in the areas they serve. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI areas? Does it appropriately account for the value of branches in these areas?

16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail lending distribution test to only major retail lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g., if the consumer lending product line constitutes the majority of a bank's retail lending in number of originations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Is 20 loans the appropriate threshold, or should a different threshold, such as 50 loans, be used?

17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank-level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposit. Should 50 percent be the threshold used to determine "significant portion of a bank's assessment area" and "significant amount of deposits" for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?

18. Under the proposal, banks that had assets of \$500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is \$500 million the appropriate threshold for these banks? If

not, what is the appropriate threshold? Should the threshold be \$1 billion instead?

19. Under the proposal, small banks (i.e., banks with \$500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt in to the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?

#### D. Data Collection, Recordkeeping and Reporting

The current CRA framework requires banks to collect and report a variety of data on loans.<sup>56</sup> However, small banks, as defined under the current rule, generally are exempt from these requirements.<sup>57</sup> The current framework also does not collect data on all CRA activity. For example, the agencies do not currently collect data on CD investments or CD services. Deposit data that are otherwise available also have limitations because banks currently record deposits in locations other than the address of the account holder. While CRA performance evaluations may provide information on CRA activities that is not otherwise collected, that information is not reported in an accessible manner.

The proposed framework includes data collection, recordkeeping, and reporting requirements that would apply to banks. There would be separate data collection and reporting requirements for banks subject to the general performance standards and for banks subject to the small bank performance standards.

Banks evaluated under the general performance standards. Banks evaluated under the general performance standards would be required to collect and maintain their retail lending distribution tests results, CRA evaluation measures calculations, and presumptive ratings determinations. They would be required to collect and maintain data for each qualifying loan or CD investment on-balance sheet and CD services and monetary and in-kind donations that the bank provides until the completion of its next evaluation. For each qualifying activity, among other things, a bank would collect and maintain records of the dollar value of the activity, the activity location, how the activity satisfies the qualifying

activities criteria, and whether it serves a particular assessment area. For each qualifying loan and investment, a bank would collect and maintain records of the dollar value of the activity as of the close of business on the last day of each month that the loan or investment is on-balance sheet, or, in the case of a monetary or in-kind donation, its quantified value; a unique identification number or symbol; and the type of loan or investment. In addition, for qualifying loans, a bank would need to collect and maintain the date of origination or purchase; the date of sale, if sold by the bank within 90 days of origination; an indicator of whether the loan was originated or purchased; the loan amount at origination or purchase; and the income or revenue of the borrower. For each qualifying investment, a bank would need to collect and maintain the date of the investment. A bank would also collect and maintain records of descriptions of each qualifying CD service and the date on which each CD service was performed. The value of each retail domestic deposit account and the physical address of each depositor at the end of each quarter also would be collected and maintained. Banks also would be required to collect and maintain certification from each relevant party in those situations where the bank is substantively conducting qualifying activities, but the activity is nominally done by another party, such as an affiliate.

To implement the retail lending distribution tests, banks would be required to collect and maintain records of the number of all qualifying and non-qualifying retail loans at the census-tract level and report at the county or county equivalent level. Banks also would be required to collect and maintain information on home mortgage and consumer loans originations that do not qualify for CRA credit. For each of those loans, a bank would be required to collect and maintain a unique identification number or symbol, the loan type, the date of origination, the loan amount at origination, the loan location, and the income of the borrower.

For each assessment area, a bank would be required to collect and maintain a list of each county or county equivalent, metropolitan division, nonmetropolitan area, metropolitan statistical area, and state within the assessment area. Banks would also collect and maintain information indicating whether each of its facilities is a depository or non-depository facility.

<sup>56</sup> 12 CFR 25.42, 195.42, 345.42.

<sup>57</sup> *Id.*

Banks would be required to collect and maintain records of qualifying activities data at the bank level and for each assessment area. The data collected and records maintained would include information on all qualifying activities conducted by the bank.

The proposal describes how banks would determine the location of an activity. The location of retail loans would be the address of the loan, determined by the borrower's physical address for consumer loans, the address of the property that relates to a home mortgage loan, and the address of the main business facility or farm or the physical address where loan proceeds will be applied, as indicated by the borrower, for business and farm loans. A CD loan, CD investment, and CD service would be located in the census tract that includes a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project. If a bank cannot document how the funding it provided was allocated, the services or funding would be allocated across all of the bank's assessment areas and other metropolitan and non-metropolitan statistical areas served by the loan or investment according to the share of the bank's retail domestic deposits in those areas. For example, if a CD investment served an assessment area with four percent of the bank's deposits and three other metropolitan statistical areas in which the bank did not have an assessment area but did have two percent of its total deposits in each, 40 percent of the dollar value would be allocated to the assessment area and the other 60 percent would be considered in the bank-level calculation.

The proposal would require banks to collect and maintain all necessary data in machine readable form. To facilitate compliance with the data collection and recordkeeping requirements, the agencies would provide additional guidance on the specific data points that a bank would need to collect and maintain and the way the data would be recorded. The agencies would review a sample of a bank's collected data that was used to determine the presumptive rating as part of a bank's CRA evaluation. The agencies would also use this information to measure, assess, and understand bank CRA performance across the industry.

Annually, banks would report their retail lending distribution tests results, CRA evaluation measures calculations, and presumptive ratings determinations to the agencies. Banks would also provide the annual quantified value of the following activities as of the close of business on the last day of each month:

(1) Qualifying retail loans; (2) CD loans; (3) CD investments; and (4) CD services. Banks also would be required to report annually (1) information on the number of home mortgage loans, consumer loans, by product line, small loans to businesses, and small loans to farms; (2) the average monthly value of retail domestic deposits; and (3) assessment area information. For each assessment area, a bank would be required to report a list of each county or county equivalent, MSA, and state within the assessment area. Banks also would need to provide a certification from each affiliate or other third party that the qualifying activity information collected from that affiliate or other third party is true and correct and report performance context information. To reduce data collection, recordkeeping, and reporting burdens, the proposal leverages the retail domestic deposit figure reported quarterly on the Call Report for use in calculating the CRA evaluation measure, although banks would be required to subtract brokered deposits from that figure. The proposed rule would also reference a form, available on the agencies' websites, that banks could use to meet the reporting requirements to promote consistency and reduce compliance burdens.

*Summary of objectives.* While the agencies understand that the proposed data collection, recordkeeping, and reporting requirements would require upfront changes that will result in increased costs, particularly for smaller banks, the agencies believe that, over time, the benefits to transparency, simplicity, and consistency would outweigh those one-time, upfront costs. The agencies believe that the vast majority of data collection, recordkeeping, and reporting costs would decrease over time through the development and implementation of automated systems. The availability of third-party service providers that provide data-related services across many banks could help banks meet these new requirements and, because third-party service providers may be able to achieve economies of scale, could further reduce costs for smaller banks.

Certain data that the proposal would require is not currently collected or reported, but most of the information is available currently or could be obtained without undue cost going forward. The agencies believe that the benefits banks would realize from the proposal, such as certainty regarding which activities would qualify for CRA credit and where, would offset some, if not most, of the costs of the proposal. Moreover,

banks may find that the proposed requirements provide non-CRA business benefits by, for example, providing further insights into the location and potential needs of their customers.

*Banks evaluated under the small bank performance standards.* Banks evaluated under the small bank performance standards would generally be exempt from the data collection, recordkeeping, and reporting requirements of this proposal. However, these banks would be required to collect and maintain information on retail domestic deposits, based on the physical address of the depositor.

*Public disclosures.* The agencies would make certain information that banks provide publicly available, allowing stakeholders to detect trends and monitor and compare banks' CRA activities. This standardized data would allow for informed public input. In addition, the agencies would publish each bank's ratings and a list of banks rated "outstanding." A bank receiving an outstanding rating would also receive a certificate or seal to be displayed and to inform the public of its CRA performance. Moreover, banks that receive a bank-level outstanding CRA rating would be subject to a five-year CRA evaluation period unless the data reported indicates that an earlier evaluation is warranted. The agencies invite comment on other ways to incentivize banks to achieve an outstanding rating.

The proposal would also retain many of the current regulation's provisions related to the public file,<sup>58</sup> planned examination schedules,<sup>59</sup> public notice by banks,<sup>60</sup> and the CRA notice.<sup>61</sup> Banks would still need to provide public notice to the communities they serve that community members are entitled to CRA-related information. Banks would also need to provide the requested CRA-related information to the community members. CRA-related information would still include information about banks' branches, locations, and services, comments received from the public related to assessment area needs and opportunities, and responses to those comments. However, banks would not have to provide data reported through HMDA in the public file because the proposal would collect home mortgage data directly instead of relying on HMDA data.<sup>62</sup> Additionally, recognizing

<sup>58</sup> 12 CFR 25.43, 195.43, 345.43.

<sup>59</sup> 12 CFR 25.45, 195.45, 345.45.

<sup>60</sup> 12 CFR 25.44, 195.44, 345.44.

<sup>61</sup> 12 CFR part 25 Appendix B, part 195 Appendix B, part 345 Appendix B.

<sup>62</sup> HMDA data are still available to the public and can be accessed here: <https://>



the advances in technology over the past couple of decades, banks would no longer be limited to providing public notice or making available the CRA information through physical means. Instead, banks would have the option to provide public notice or make available CRA-related information on their websites. If a community member who has requested CRA-related information does not have access to the internet, banks could offer to print out the information at that person's expense, instead of copying the information from a physical file.

*CRA sunshine requirements.* In addition to the proposed data collection, recordkeeping, and reporting provisions contained in this proposal, the agencies note that Congress required the agencies to issue rules implementing the CRA Sunshine Requirements as part of the Gramm-Leach-Bliley Act of 1999.<sup>63</sup> The agencies' regulations define and address written agreements between financial institutions and nongovernmental entities or persons that are made in fulfillment of the CRA, and require that those agreements be made available to the public and the appropriate Federal banking agency.<sup>64</sup> Further, the regulations require parties to a covered agreement to file reports with the appropriate Federal banking agency for the duration of the agreement. The agencies emphasize the continued importance of complying with those regulations to ensure public awareness of the terms and conditions of covered agreements.

*Alternatives considered.* Under the proposal, small banks would be required to collect and maintain information on depositors necessary for the designation of deposit-based assessment areas. To limit the recordkeeping burdens for small banks, the agencies are considering alternatives for small bank data collection, including a full exemption from any recordkeeping requirements. For example, the agencies could exempt a small bank from any recordkeeping requirement associated with the designation of deposit-based assessment areas—which is designed to capture non-traditional business models of internet banks or other banks that have one or a few physical locations but operate on a national basis—if the bank demonstrates that it has a traditional business model to the agencies' satisfaction.

The agencies invite comment on all aspects of the proposal related to the proposed data collection, reporting, and recordkeeping requirements, including with respect to the following question:

*20. As discussed above, the proposal would require banks to collect and report additional data to support the proposed rule. Although most of this data is already collected and maintained in some form, some additional data collection may be required. For example, banks may need to gather additional data to determine whether existing on-balance sheet loans and investments are qualifying activities. Are there impediments to acquiring this data? If so, what are they?*

*21. What burdens, if any, would be added by the proposed data collection, recordkeeping, and reporting requirements?*

*a. What system changes would be needed to implement these requirements?*

*b. What are the estimated costs of implementing these requirements?*

*22. The proposal would require small banks to collect and maintain certain deposit-based assessment area data. Are there other ways the agencies can limit the recordkeeping burden associated with the designation of deposit-based assessment areas, including other ways for banks to differentiate between traditional and internet type business models?*

#### *E. Effective Date and Compliance Dates*

The agencies propose that the effective date of the final rule would be the first day of the first calendar quarter that begins at least 60 days after the issuance of the final rule. However, to reduce the compliance burden of the final rule, the proposed rule would include a transition period through varying compliance dates after the effective date to allow banks to revise their systems for collecting, maintaining, and reporting data and to establish processes for calculating their qualifying activities values and CRA evaluation measures and determining their presumptive ratings. Specifically, the proposed rule would provide a bank other than a small bank with (1) one year after the rule's effective date to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) two years after the rule's effective date to comply with the rule's reporting requirements. The proposed rule would provide small

banks with one year after the rule's effective date to comply with the rule's assessment area and applicable data collection and recordkeeping requirements. All banks would not comply with the applicable remaining requirements of the rule—and thus would not be evaluated under the new framework—until they complete their evaluation period that concludes immediately after the reporting requirements compliance date in 12 CFR 25.01(c)(4)(i)(A)(2) and 345.01(c)(4)(i)(A)(2) of the proposed rule, including any extensions approved by their relevant agencies.

To reduce the burden on small banks, the proposed rule would provide small banks that opt into the general performance standards under proposed 12 CFR 25.09(b) and 345.09(b) as of the final rule's effective date and banks that no longer meet the definition of a small bank (1) two years after the rule's effective date or after the bank no longer meets the definition of a small bank to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) three years after the rule's effective date or after the bank no longer meets the definition of a small bank to comply with the rule's reporting requirements. However, small banks that choose to opt into the general performance standards under proposed §§ 25.09(b) and 345.09(b) after the effective date would receive (1) one year after the bank opts in to comply with the rule's assessment area, data collection, and recordkeeping requirements and (2) two years after the bank opts in to comply with the rule's reporting requirements.

The agencies invite comment on all aspects of the proposal related to the proposed compliance date provisions, including on the proposed transition periods and potential reduction of small bank burden.

#### **V. Qualifying Activities Illustrative List**

This list is a non-exhaustive, illustrative list of examples of activities that would or would not qualify under proposed §§ 25.04 and 345.04. The list is intended to identify activities that would or would not meet the criteria in the proposed rule. The proposed rule contemplates that the agencies will add additional activities that meet or do not meet the qualifying activities criteria consistent with the process outlined in proposed 12 CFR 25.05 and 345.05.

Proposed qualifying regulatory criteria	Description
§§ 25.04(b) and 345.04(b) .....	<i>Retail loans. A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:</i>
§§ 25.04(b)(1) and 345.04(b)(1) .....	<i>Provided to a:</i>
§§ 25.04(b)(1)(i) and 345(b)(1)(i) .....	<p><i>Low- or moderate-income individual or family;</i></p> <p>Loan classified on the bank's Call Report as a 1–4 family residential construction loan to an LMI individual.</p> <p>Closed-end loan or open-end line of credit classified on the bank's Call Report as a loan secured by a 1–4 family residential property to an LMI individual.</p> <p>Loan classified on the bank's Call Report as secured by a multifamily residential property to an LMI individual.</p> <p>Home mortgage loan guaranteed by the Federal Housing Administration (FHA) to an LMI individual.</p> <p>Home mortgage loan guaranteed under the FHA's 203(b) Mortgage Insurance Program to an LMI individual.</p> <p>Home mortgage loan guaranteed under the FHA's Limited 203(k) Program to an LMI individual.</p> <p>Home mortgage loan guaranteed under the U.S. Department of Housing and Urban Development's (HUD) Indian Home Loan Guarantee Program (Section 184) to an LMI individual.</p> <p>Home mortgage loan guaranteed by the U.S. Department of Agriculture's (USDA) Rural Housing Service to an LMI individual.</p> <p>Home mortgage guaranteed by the U.S. Department of Veterans Affairs (VA) to an LMI individual.</p> <p>Credit card to an LMI individual.</p> <p>Low-cost education loan to an LMI individual, such as to fund school tuition and/or expenses.</p> <p>Home equity line of credit to an LMI individual, such as for home improvement.</p> <p>Non-credit card revolving credit line, such as for purchase of home appliances, to an LMI individual.</p> <p>Consumer loan to an LMI individual for purposes other than purchasing an automobile, such as to fund unexpected medical expenses.</p> <p>Automobile loan to an LMI individual to purchase a car.</p> <p>Installment loan to an LMI individual to purchase home appliances.</p>
§§ 25.04(b)(1)(ii) and 345(b)(1)(ii) .....	<p><i>Small business; or</i></p> <p>Loan or line of credit of \$2 million or less to a business with gross annual revenues of \$2 million or less when classified on the bank's Call Report as a commercial and industrial loan.</p> <p>Loan or line of credit of \$2 million or less to a business with gross annual revenues of \$2 million or less when classified on the bank's Call Report as a loan secured by nonfarm nonresidential properties.</p> <p>Loan of \$1.5 million under the U.S. Small Business Administration (SBA) Certified Development Company/504 Loan Program that covers 50 percent of the project's cost and is secured by a first lien on real property.</p> <p>Loan of \$700 thousand to a business with gross annual revenues of \$2 million or less to make improvements to its manufacturing facility under the SBA 7(a) loan program.</p> <p>Loan of \$2 million to a business with gross annual revenues of \$2 million or less to finance the purchase of machinery under the USDA's Rural Development Business and Industry Guarantee Loan Program.</p>
§§ 25.04(b)(1)(iii) and 345.04(b)(1)(iii) .....	<p><i>Small farm;</i></p> <p>Loan or line of credit of \$2 million or less to a farm with gross annual revenues of \$2 million or less when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.</p> <p>Loan or line of credit of \$2 million or less to a family farm with gross annual revenues of \$2 million or less when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.</p> <p>Loan of \$800 thousand to a family farm with gross annual revenues of \$1.5 million to finance the purchase of equipment.</p>
§§ 25.04(b)(2) and 345.04(b)(2) .....	<p><i>Located in Indian country;</i></p> <p>Loan or line of credit made in Indian country and classified on the bank's Call Report as a 1–4 family residential construction loan.</p> <p>Closed-end loan or open-end line of credit made in Indian country and classified on the bank's Call Report as a loan secured by a 1–4 family residential property.</p> <p>Loan made in Indian country and classified on the bank's Call Report as secured by a multifamily residential property.</p> <p>Home mortgage loan made in Indian country and guaranteed by the FHA.</p> <p>Home mortgage loan made in Indian country and guaranteed under the FHA's 203(b) Mortgage Insurance Program.</p> <p>Home mortgage loan made in Indian country and guaranteed under the FHA's Limited 203(k) Program.</p> <p>Home mortgage loan made in Indian country and guaranteed under the HUD's Indian Home Loan Guarantee Program (Section 184).</p> <p>Home mortgage loan made in Indian country and guaranteed by the USDA's Rural Housing Service.</p> <p>Home mortgage loan made in Indian country and guaranteed by the VA.</p> <p>Credit card to an individual in Indian country.</p> <p>Home equity line of credit extended in Indian country, such as for home improvement.</p>

Proposed qualifying regulatory criteria	Description
	<p>Non-credit card revolving credit line, such as for purchase of home appliances, to an individual in Indian country.</p> <p>Consumer loan made to an individual in Indian country for purposes other than purchasing an automobile, such as to fund unexpected medical expenses.</p> <p>Automobile loan to an individual in Indian country to purchase a car.</p> <p>Loan or line of credit of \$2 million or less to a business in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a commercial and industrial loan.</p> <p>Loan or line of credit of \$2 million or less to a business in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a loan secured by nonfarm nonresidential properties.</p> <p>Loan or line of credit of \$2 million made in Indian country under the SBA Certified Development Company/504 Loan Program that covers 50 percent of the project's cost and is secured by a first lien on real property.</p> <p>Loan or line of credit of \$2 million to a business in Indian country to make improvements to its manufacturing facility under the SBA 7(a) loan program.</p> <p>Loan or line of credit of \$2 million to a business in Indian country to finance the purchase of machinery under the USDA's Rural Development Business and Industry Guarantee Loan Program.</p> <p>Loan or line of credit of \$2 million or less to a farm in Indian country with gross annual revenues of any amount when classified on the bank's Call Report as a loan to finance agricultural production and other loans to farmers.</p>
§§ 25.04(b)(3) and 345.04(b)(3) .....	<p><i>A small loan to a business located in a low- or moderate-income census tract; or</i></p> <p>Loan of \$100 thousand to a business with gross annual revenues of \$1.3 million to purchase inventory for its business located in a moderate-income census tract.</p> <p>Loan of \$1.5 million to a business with gross annual revenues of \$10 million to expand its manufacturing facility located in a low-income census tract.</p>
§§ 25.04(b)(4) and 345.04(b)(4) .....	<p><i>A small loan to a farm located in a low- or moderate-income census tract.</i></p> <p>Loan of \$250 thousand to purchase farm equipment for a family farm with gross annual revenues of \$1.2 million located in a low-income census tract.</p> <p>Term loan of \$2 million to refinance a construction loan used to expand the production facilities for a dairy farm with gross annual revenues of \$15 million located in a moderate-income census tract.</p>
§§ 25.04(c) and 345.04(c) .....	<p><i>Community development loans, community development investments, and community development services. A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:</i></p>
§§ 25.04(c)(1) and 345.04(c)(1) .....	<p><i>Affordable housing, which means:</i></p>
§§ 25.04(c)(1)(i) and 345.04(c)(1)(i) .....	<p><i>Rental housing:</i></p>
§§ 25.04(c)(1)(i)(A) and 345.04(c)(1)(i)(A) .....	<p><i>That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;</i></p>
	<p>A loan to a non-profit organization for the purpose of providing affordable housing to LMI individuals where the median rents do not exceed 30 percent of 80 percent of the area median income.</p> <p>A loan to a for-profit business for the purpose of providing affordable housing to LMI individuals where the median rents do not exceed 30 percent of 80 percent of the area median income.</p> <p>A loan to a for-profit developer for construction of multi-family mixed-income rental housing, that partially benefits LMI individuals because 20 percent of the units will be offered at median rents that do not exceed 30 percent of 80 percent of the area median income.</p> <p>A loan to a non-profit developer to build multi-family rental housing guaranteed under the USDA's Section 538 Guaranteed Loan Program with all units offered at median rents that do not exceed 30 percent of 80 percent of the area median income.</p> <p>Public welfare investment, under 12 CFR part 24, that will use tax credits from the Federal Historic Tax Credit Program to finance the adaptive reuse and renovation of a hotel into rental units with median rents that will not exceed 30 percent of 80 percent of the area median income.</p> <p>A loan for a mixed-use property in an underserved area that will be used to help seasonal businesses provide affordable housing to seasonal LMI workers at rents that do not exceed 30 percent of 80 percent of the area median income.</p> <p>A loan to a for-profit developer for construction of multi-family mixed-income rental housing, with 60 percent of the units offered at median rents that do not exceed 30 percent of 80 percent of the area median income.</p> <p>Public welfare investment, under 12 CFR part 24, that will finance the company's production of cost-effective modular housing, which will be used to supply affordable housing units for rent to LMI individuals and families.</p> <p>An investment that supports the abatement of or remediation to correct lead-based paint, asbestos, mold, or radon that are present in a multi-family rental housing project with rents not greater than 30 percent of 80 percent of the area median.</p>
§§ 25.04(c)(1)(i)(B) and 345.04(c)(1)(i)(B) .....	<p><i>That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;</i></p>
	<p>Investment in a project where 30 percent of the housing units will be set aside as affordable to LMI individuals through local inclusionary zoning.</p>

Proposed qualifying regulatory criteria	Description
§§ 25.04(c)(1)(i)(C) and 345.04(c)(1)(i)(C) .....	<p>Loan to purchase a multifamily dwelling that will partially benefit LMI individuals by designating at least 40 percent of the units to renters who receive assistance under the U.S. Department of Housing and Urban Development's section 8 rental subsidy program.</p> <p>Public welfare investment, under 12 CFR part 24, that provides financing for the construction of a 102-unit rent-to-own affordable housing complex targeted to LMI individuals and families.</p> <p><i>That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;</i></p> <p>Investment in a limited partnership to develop and operate a Federal Low-Income Housing Tax Credit (LIHTC) multi-family housing project.</p> <p>Public welfare investment, under 12 CFR part 24, to finance the conversion and rehabilitation of public housing using the HUD's Rental Assistance Demonstration Program that uses a section 8 project-based contract to make the units affordable to LMI individuals and families.</p> <p>A loan to a nursing home and assisted living facility that uses the HUD Section 232 loan guarantee and is defined by HUD as multifamily housing that primarily serves or assists LMI individuals or families.</p> <p>An investment in a "green" retrofit initiative as part of an explicit local government program used to maintain the affordability of rental housing for LMI individuals through energy efficient measures.</p> <p>Loan to facilitate the purchase of existing multifamily housing using a guarantee provided under the HUD Section 207/223(f) program to make the units affordable to LMI individuals and families.</p> <p>Loan to facilitate the substantial rehabilitation of multifamily rental housing for moderate-income families, elderly and the handicapped using a guarantee provided under the HUD Section 221(d)(4) mortgage insurance program to make the units affordable to LMI individuals and families.</p> <p>Loan to a Native American tribe to purchase land and construct infrastructure and affordable rental housing, as identified in the tribe's Indian Housing Plan, using a guarantee provided under the HUD Title VI Tribal Housing Activities Loan Guarantee Program to make the units affordable to LMI individuals and families.</p> <p>Loan to a non-profit sponsor to rehabilitate multifamily rental housing for elderly persons (62 or older) and/or persons with disabilities using a guarantee provided under the HUD Program Section 231 to make the units affordable to LMI individuals.</p>
§§ 25.04(c)(1)(i)(D) and 345.04(c)(1)(i)(D) .....	<p><i>That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or</i></p> <p>An investment in a project in a high-cost area where 30 percent of the rental units are set aside as affordable to middle-income individuals through local inclusionary zoning.</p> <p>A loan to a non-profit to develop rental housing under a state tax credit program that supports workforce housing in high-cost areas where 40 percent of the units will be set-aside for middle-income individuals and families.</p>
§§ 25.04(c)(1)(i)(E) and 345.04(c)(1)(i)(E) .....	<p><i>That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or</i></p> <p>A loan to finance temporary rental housing for middle-income workers in a high-cost area in response to a local workforce housing program.</p>
§§ 25.04(c)(1)(ii) and 345.04(c)(1)(ii) .....	<p><i>Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;</i></p> <p>Investment in a mortgage-backed security (MBS) that is primarily secured by loans to LMI borrowers.</p> <p>Bank employees help to build a single-family home for a non-profit organization with an express purpose of providing affordable housing for purchase by LMI individuals or families.</p> <p>Down payment and closing cost assistance grants on home purchase loans for LMI borrowers.</p>
§§ 25.04(c)(2) and 345.04(c)(2) .....	<p><i>Another bank's community development loan, community development investment, or community development service;</i></p> <p>Bank employees volunteer to provide technical assistance to another bank to establish a loan program targeted to LMI individuals and families.</p>
§§ 25.04(c)(3) and 345(c)(3) .....	<p><i>Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;</i></p> <p>A grant to a non-profit that provides technical assistance to small businesses that meet the stated size-eligibility standards.</p> <p>Loan to a non-profit entity that provides technical assistance to small businesses that meet the size-eligibility standards for an SBA Small Business Investment Company.</p> <p>Bank employees volunteer through a local Chamber of Commerce to lead a workshop that provides technical assistance to the chamber's small business members that meet the stated size-eligibility standards.</p> <p>Providing permanent office space rent-free at a branch for use by the local economic development organization that targets small business development, predominantly among start-up and micro-businesses that meet the stated size-eligibility standards.</p>

Proposed qualifying regulatory criteria	Description
<p>§§ 25.04(c)(4) and 345.04(c)(4) .....</p>	<p><i>Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;</i>                      Public welfare investment, under 12 CFR part 24, in a fund that provides financing for a charter school that will primarily serve LMI children.                      Donation to a non-profit organization that provides transportation to medical treatments for LMI individuals.                      Grant to a non-profit organization that provides housing assistance and counseling to LMI immigrants residing in the United States.                      Providing mentoring/tutoring services to clients of a non-profit organization that serves LMI youth.                      Public welfare investment, under 12 CFR part 24, that supports a non-profit that provides general education degrees (GED) primarily to LMI individuals without a high school diploma.                      Loan to a job training center that primarily serves unemployed, LMI individuals.                      Volunteer service to serve meals at a homeless shelter.                      In-kind donation to a food pantry that provides services to unemployed, LMI families.                      Loan to acquire a child care facility that serves LMI residents of a low-income neighborhood.                      Volunteer service with a non-profit that provides income tax assistance programs for LMI individuals.                      A grant to a non-profit organization that runs a state-funded battered women’s shelter for LMI individuals in an underserved area as part of a statewide program.                      A loan, investment, or service that supports an LMI-focused alcohol and drug recovery center.                      Grant to a drug rehabilitation center that primarily services low-income individuals.                      Loan to a legal assistance program for LMI individuals.                      Grant to an organization that provides resume writing services to LMI formerly incarcerated individuals.                      Loan to an acute care hospital facility using the HUD Section 242 Hospital Mortgage Insurance Program to provide affordable child care services for LMI individuals or families.                      Grant to support a program that provides eye glasses to low-income individuals.                      In-kind contribution of rent-free office space to a local food bank.                      Provision of technical assistance on financial matters to a non-profit organization that will apply for loans or grants under the Federal Home Loan Banks’ (FHLBanks) Affordable Housing Program, specifically by serving on a loan review committee, assisting in marketing financial services, and furnishing financial services training for staff and management.</p>
<p>§§ 25.04(c)(5) and 345(c)(5) .....</p>	<p><i>Essential community facilities that partially or primarily benefit or serve:</i></p>
<p>§§ 25.04(c)(5)(i) and 345.04(c)(5)(i) .....</p>	<p><i>Low- or moderate-income individuals or families; or</i>                      A construction loan to improve a hospital that is located in a middle-income census tract adjacent to a low-income census tract that partially benefits LMI individuals who will utilize hospital services.                      Investment in a municipal bond to fund construction of a health center that will primarily serve residents of a moderate-income neighborhood.                      Purchase of a local municipal bond, the proceeds of which will be used to construct a new high school that will partially serve students from LMI families.                      Public welfare investment, under 12 CFR part 24, in a fund that finances supportive housing projects for the chronically homeless and other public funding, such as state-issued tax-exempt bonds, HUD’s Supportive Housing Program or section 8 Project-Based Rental Assistance, the FHLBanks’ Affordable Housing Program, and LIHTCs.</p>
<p>§§ 25.04(c)(5)(ii) and 345.04(c)(5)(ii) .....</p>	<p><i>Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;</i>                      Loan to construct a new fire station located in Indian country.                      Loan of \$8 million to a company to build a health clinic in an underserved area, using the USDA’s Community Facilities Guarantee Loan Program.                      Loan to build a police station in a distressed area.                      Purchase of a local municipal bond with a purpose consistent with a local disaster recovery plan, the proceeds of which will be used to construct a new high school in a disaster area.                      Loan to improve a hospital in a distressed area that serves the entire community, including LMI individuals.                      Investment in a fund that finances community facilities in Indian country.</p>
<p>§§ 25.04(c)(6) and 345.04(c)(6) .....</p>	<p><i>Essential infrastructure that benefits or serves:</i></p>
<p>§§ 25.04(c)(6)(i) and 345.04(c)(6)(i) .....</p>	<p><i>Low- or moderate-income individuals or families; or</i>                      Loan to finance construction of a road in a rural community that provides LMI residents of the area access to employment centers outside of the area.                      Investment in a local cooperative to develop broadband infrastructure and expand access to LMI residents in the area.                      Investment in a local municipal bond to improve city-wide water and waste water systems with benefit to all residents, including LMI residents.                      Loan for infrastructure improvements, including upgrading roads, water supply and sewer services, to a mobile home park that primarily rents space to LMI residents.</p>
<p>§§ 25.04(c)(6)(ii) and 345.04(c)(6)(ii) .....</p>	<p><i>Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;</i>                      Public welfare investment, under 12 CFR part 24, that will finance construction of a solar energy facility that uses federal renewable energy tax credits and will provide access to reduced cost electrical utilities to LMI census tracts.</p>

Proposed qualifying regulatory criteria	Description
	Investment in a local municipal bond to refurbish a bridge that connects a low-income neighborhood with essential services without which residents would otherwise not have access to those services.
	Investment in a state issued bond to reconstruct a tunnel in a disaster area, consistent with the area's disaster recovery plan.
	Purchase of a local municipal bond, the proceeds of which will be used to upgrade a water pipeline that serves an underserved area.
	Loan to a company to build a new flood control system as identified in the community's disaster recovery plan, such as a levee or storm drain that serves the disaster area.
	Public welfare investment, under 12 CFR part 24, to finance the construction of a broadband network to develop reliable internet access in an LMI census tract.
	Investment in a Special City Taxing District Bond with the purpose of renovating city sidewalks in a distressed area to comply with the Americans with Disabilities Act.
§§ 25.04(c)(7) and 345.04(c)(7) .....	<i>A family farm's:</i>
§§ 25.04(c)(7)(i) and 345.04(c)(7)(i) .....	<i>Purchase or lease of farm land, equipment, and other farm-related inputs;</i>
	Loan to a family-owned corn and wheat farm with gross annual revenues of \$10 million to purchase a tractor.
	Loan to a family-owned peanut farm with gross annual revenues of \$255 thousand to purchase additional land to increase production.
	Loan to a family-owned vineyard with gross annual revenues of \$4 million to purchase additional acreage.
§§ 25.04(c)(7)(ii) and 345.04(c)(7)(ii) .....	<i>Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or</i>
	Grant to a non-profit organization that provides technical assistance to family farms.
§§ 25.04(c)(7)(iii) and 345.04(c)(7)(iii) .....	<i>Sale and trade of family farm products;</i>
	Loan to a family-owned vegetable (misc. crop) farm with gross annual revenues of \$500 thousand to construct a building from which to sell produce.
	Loan to a family-owned aquaculture farm with gross annual revenues of \$3 million to market and sell their products statewide.
§§ 25.04(c)(8) and 345.04(c)(8) .....	<i>Federal, state, local, or tribal government programs, projects, or initiatives that:</i>
§§ 25.04(c)(8)(i) and 345.04(c)(8)(i) .....	<i>Partially or primarily benefit low- or moderate-income individuals or families;</i>
	Grant to a non-profit organization to provide a local government sponsored dress for success program for homeless women.
	A loan to a non-profit organization to provide a state government sponsored after-school program for students from LMI families.
§§ 25.04(c)(8)(ii) and 345.04(c)(8)(ii) .....	<i>Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or</i>
	Volunteer service providing guidance to small businesses on how to create financial statements under a state program to support statewide business development.
	Investment in a SBA Guaranteed Loan Pool Certificate.
	Loan to a small business that is a state-certified Historically Underutilized Business.
	Loan to a small business to purchase real estate related to a New Markets Tax Credit project, as provided for in 26 U.S.C. 45D.
	Grant to a non-profit that provides financing for small farms under a federal program to encourage new farm development.
	Loan to a small business incubator that primarily benefits small businesses by providing supportive services to business start-ups and that is funded in part under a state-wide CD initiative.
§§ 25.04(c)(8)(iii) and 345.04(c)(8)(iii) .....	Loan of \$3 million to a small business under a tribal government loan guarantee program.
	<i>Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;</i>
	Grant to a non-profit organization that receives funds from a statewide program to revitalize communities in Indian country.
	Contribution of other real estate owned (OREO) property to a local government-owned land bank whose primary purpose is consistent with a government revitalization plan that benefits LMI census tracts.
	Financing to support cleanup of industrial brownfields in a distressed area as part of city-sponsored revitalization program.
	Investment in a Tax Increment Financing (TIF) bond to finance infrastructure improvements consistent with a government revitalization plan in a distressed area.
	Loan through a state program to a company to purchase and replace equipment as well as rebuild the manufacturing facility that was damaged by flooding in a federally designated disaster area and supported by the community's disaster recovery plan.
§§ 25.04(c)(9) and 345.04(c)(9) .....	<i>Financial literacy programs or education or homebuyer counseling;</i>
	Financial counseling by bank employees to participants in a workforce development program.
	Bank employees conduct first-time homebuyer counseling program for bank customers.
	Bank employees teach financial education or literacy curricula at local community centers.
	Bank employees delivering the FDIC's Money Smart Program curriculum to residents at a senior living facility.
	Grant to a non-profit organization that provides financial literacy courses for a foreclosure prevention program.
	Activities supporting "train the trainer" programs that are designed to train teachers to provide financial literacy education to their students.

Proposed qualifying regulatory criteria	Description
	<p>In-kind donation of computer equipment to a non-profit that conducts personal money management courses for LMI individuals.</p> <p>Bank employees provide financial education in connection with a school savings program.</p> <p>Loan to a non-profit credit counseling organization that conducts personal money management courses.</p> <p>Donation to an organization that conducts elder financial abuse and identity theft prevention programs.</p> <p>An in-kind donation of computer equipment to a non-profit that provides financial literacy courses.</p> <p>Bank employees assist in the preparation of tax filings under the Internal Revenue Service's Volunteer Income Tax Assistance Program.</p> <p>Providing homebuyer education to potential buyers of single-family housing developed under a state program for middle-income individuals and families in high-cost areas.</p> <p>Volunteer service to open savings accounts offered through a school-based banking program to students of a K-12 school that is located in and serves residents of an LMI census tract.</p>
<p>§§ 25.04(c)(10) and 345.04(c)(10) .....</p>	<p><i>Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;</i></p> <p>Loan to develop housing in Indian Country that is guaranteed under HUD's Title VI Loan Guarantee Program.</p> <p>Loan to construct mixed-income housing under a tribal-government sponsored program, 30% of which will be set aside for middle-income teachers in Indian country.</p>
<p>§§ 25.04(c)(11) and 345.04(c)(11) .....</p>	<p>Loan to a for-profit developer to construct rental housing in Indian country.</p> <p><i>Qualified opportunity funds, as defined in 26 U.S.C. 1400Z-2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z-1(a);</i></p> <p>Investment in a qualified opportunity fund, established to finance construction of a new manufacturing facility in an opportunity zone that is also an LMI census tract.</p> <p>Investment in a qualified opportunity fund, established to finance renovation of a vacant building into a cultural arts facility, including loft space for artists and a community theater, in an opportunity zone that is also an LMI census tract.</p> <p>Investment in a qualified opportunity fund, established to finance the rehabilitation of an acute care hospital facility, including the purchase of new medical equipment, in an opportunity zone that is also an LMI census tract.</p> <p>Investment in a qualified opportunity fund, established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract.</p>
<p>§§ 25.04(c)(12) and 345.04(c)(12) .....</p>	<p><i>A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or</i></p> <p>An investment in a New Markets Venture Capital company that finances businesses that meet the SBA's size standards used to define small business concerns.</p> <p>Public welfare investment, under 12 CFR part 24, to a qualified Community Development Entity that will provide financing for a food market to build a 180,000 square foot refrigerated warehouse and food distribution facility.</p> <p>An investment in a SBA Small Business Investment Company fund to finance businesses that meet the SBIC size standards.</p> <p>An investment in a USDA Rural Business Investment Company to fund businesses and farms that meet the RBIC size standards.</p> <p>An investment in a New Markets Tax Credit-eligible Community Development Entity to fund a mixed-use project that will include affordable housing for LMI individuals and families and retail space for small businesses.</p>
<p>§§ 25.04(c)(13) and 345.04(c)(13) .....</p>	<p><i>Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.</i></p> <p>Bank employee time spent facilitating a loan participation with a minority depository institution, which will help the minority depository institution to meet the credit needs of its local community.</p> <p>Bank employees provide training to CDFI staff on underwriting small farm loans to help the CDFI expand its product offerings to its community.</p> <p>Bank provides in-kind services in the form of free or discounted data processing systems that aids a minority depository institution in serving its customers.</p> <p>Bank donates branch space on a rent-free basis to a low-income credit union to better serve the credit union's customers.</p> <p>Bank certificate of deposit in a minority depository institution.</p> <p>Loan to enable a minority- or women-owned depository institution or low-income credit union, or CDFI to partner with schools or universities to offer financial literacy education to members of its local communities in which such institutions are chartered.</p>

## VI. Regulatory Analysis

### Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the agencies are publishing an initial regulatory flexibility analysis for the proposed rule. The RFA requires an agency to provide an initial regulatory flexibility analysis with the proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The agencies are separately publishing initial regulatory flexibility analyses for the proposal as set forth in this section. The agencies welcome comment on all aspects of the initial regulatory flexibility analyses. Final regulatory flexibility analyses will be conducted after consideration of comments received during the public comment period.

OCC:

#### *A. Reasons Why the Proposal Is Being Considered by the Agencies; Statement of the Objectives of the Proposal; and Legal Basis for Proposal*

The legal basis for the proposed rule is the CRA, 12 U.S.C. 2901 *et seq.*, which charges the Federal banking agencies to encourage the institutions they supervise to help meet the credit needs of their local communities in a manner that is safe and sound. As discussed in the Supplementary Information section above, the agencies are proposing to revise their regulations implementing the CRA to (1) clarify and expand the types of activities that qualify for CRA credit; (2) update and expand the areas in which qualifying activities receive credit; (3) provide a more objective and transparent method to measure and evaluate CRA performance; and (4) revise data collection, recordkeeping, and reporting requirements to improve consistency.

#### *B. Small Entities Affected by the Proposal*

Small Business Administration regulations define “small entities,” for banking purposes, as entities with total assets of \$600 million or less.<sup>65</sup> The OCC currently supervises approximately 782 small entities. The proposal would affect approximately 749 of those entities.

#### *C. Projected Reporting, Recordkeeping, and Other Compliance Requirements of Proposal*

The proposed rule sets forth new qualifying activities criteria, assessment

area delineation requirements, general performance standards, and data collection, recordkeeping, and recording requirements. The proposal would exempt banks with assets of \$500 million or less in each of the prior four quarters (small banks) from the general performance standards. These banks would be required to comply with the current CRA small bank performance standards, new qualifying activities criteria, new assessment area delineations, and new data collection and recordkeeping requirements related to deposits. The proposal would permit these small banks to opt in to the general performance standards, which would require them to comply with all of the new data collection, recordkeeping, and reporting requirements.

To determine if the proposed rule would have a significant economic impact on small entities, the OCC compared the estimated annual cost with annual noninterest expense and annual salaries and employee benefits for each small entity. If the estimated annual cost was greater than 2.5 percent of total noninterest expense or five percent of annual salaries and employee benefits, the OCC classified the impact as significant. Based on these thresholds, the OCC concluded for purposes of this initial regulatory flexibility analysis that the proposed rule would result in a significant economic impact on a substantial number of small entities. Specifically, if all of the small banks that the proposal would exempt operated under the small bank performance standards, then the proposal would have a significant economic impact of approximately \$36 million on 72 small entities, which is a substantial number of small entities. If all of the small banks the proposal would exempt opted in to the general performance standards, then the proposal would have a significant economic impact of approximately \$375 million on 738 small entities, which is a substantial number of small entities.

#### *D. Identification of Duplicative, Overlapping, or Conflicting Federal Rules*

The OCC believes that no Federal rules duplicate, overlap, or conflict with the proposed rule.

#### *E. Discussion of Significant Alternatives to Proposal*

The agencies have sought to incorporate flexibility into the proposed rule and lessen burden and complexity for smaller banking entities wherever possible, consistent with safety and soundness and other applicable laws. In

particular, as noted above, the proposal would allow small banks to operate under the current CRA small bank performance standards and would require compliance with only the new qualifying activities criteria, assessment area delineation requirements, and data collection and recordkeeping requirements related to deposits. The new assessment area delineation requirements may not increase the compliance burden as banks may be able to demonstrate that more than 50 percent of their retail domestic deposits fall within their facility-based assessment area(s). Also, the data collection and recordkeeping requirements related to deposits would be limited to data that small banks, for the most part, already collect and maintain.

For the small banking entities that have assets between \$500 and \$600 million and small banks that opt in to the general performance standards, the proposal would reduce the compliance burden of the final rule by including a transition period with different compliance dates based on asset size after the effective date. This transition period would allow for banks to revise their systems for data collection, maintenance, and reporting and to set up processes for calculating their CRA evaluation measures and determining their presumptive ratings.

The agencies request comment on potential options for simplifying the rule and reducing burden for small banks, including whether the threshold for the small bank exemption should be set at \$500 million and whether the transition period is sufficient time for establishing the necessary systems of operation.

FDIC:

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rule, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposal on small entities.<sup>66</sup> A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined “small entities” to include banking organizations with total assets less than or equal to \$600 million.<sup>67</sup> Generally, the FDIC considers

<sup>66</sup> 5 U.S.C. 601 *et seq.*

<sup>67</sup> The SBA defines a small banking organization as having \$600 million or less in assets, where an organization’s “assets are determined by averaging the assets reported on its four quarterly financial

Continued

<sup>65</sup> See 13 CFR 121.201 (Sector 52, Subsector 522).



a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. Some expected effects of the proposed rule are difficult to assess or accurately quantify with currently available information, nevertheless the FDIC believes that the proposed rule will have a significant economic impact on a substantial number of small entities and has included an Initial Regulatory Flexibility Act Analysis in this section.

#### Reasons Why This Action Is Being Considered

As discussed in Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule, over the past two decades, technology and the expansion of interstate banking has transformed the financial services industry and how banking services are delivered and consumed. These changes affect all banks, regardless of size or location, and are most evident in banks that have a limited physical presence or that rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities are not solely identifiable by the areas that surround their physical locations. The Federal banking agencies have also gained a greater understanding of communities' needs for lending and investment, such as the need for community development (CD) investments and loans with maturities longer than the typical CRA evaluation period. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans to the length of a CRA evaluation period. Additionally, recognizing the need for modernization, the Federal banking agencies began the effort to assess and update the CRA regulatory framework in 2018 by working together on an Advance Notice of Proposed Rulemaking (ANPR). Generally, commenters supported making amendments to the CRA in

statements for the preceding year." See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

order to make it less inconsistent, opaque, and complex.

#### Policy Objectives

As previously discussed in Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule, in response to this feedback, the agencies propose to strengthen the CRA regulatory framework to better achieve the underlying statutory purpose of encouraging banks to help serve their communities by making the framework more objective, transparent, consistent, and easy to understand. To accomplish these goals, the proposal would clarify which activities qualify for CRA credit; update where activities count for CRA credit; create a more transparent and objective method for measuring CRA performance; and provide for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting. Revisions that reflect these objectives would provide clarity and visibility for all stakeholders on how a bank's CRA performance is evaluated and the level of CRA activities banks conduct. These changes also would encourage banks to serve their entire communities, including LMI neighborhoods, more effectively through a broader range of CRA activities.

#### Legal Basis

The FDIC is issuing this proposed rule under the authorities granted to it under the Community Reinvestment Act of 1977. For a more extensive discussion on the legal basis of the proposed rule, please refer to Section I. of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

#### Description of the Rule

The proposal would (1) establish clear criteria for the type of activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA, but may not qualify under the current CRA framework; (2) require the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities; and (3) establish a straightforward and transparent process for stakeholders to seek agency confirmation that an activity is a qualifying activity.<sup>68</sup> In addition to providing transparency, the proposed

<sup>68</sup> The agencies are proposing to retain for certain banks the small bank performance standards applicable to small banks that are not intermediate small banks in the current regulations. 12 CFR 25.26; 12 CFR 195.26; and 12 CFR 345.26. The agencies intend for these standards to be applied consistent with their treatment under the current regulation except as discussed below.

qualifying activities criteria would expand the types of activities that qualify for CRA credit to recognize that some banks are currently serving community needs in a manner that is consistent with the statutory purpose of CRA but are not receiving CRA credit for those activities. The proposal would expand where CRA activity counts to help banks meet the needs of their entire communities, including LMI neighborhoods. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would continue to be required to delineate assessment areas around their main office, branches, or non-branch deposit-taking facilities as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as "facility-based" assessment areas. In addition, to recognize the evolution of modern banking (including the emergence of internet banks) and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits,<sup>69</sup> the proposed rule would require banks to delineate additional, non-overlapping "deposit-based" assessment areas where they have significant concentrations of retail domestic deposits (regardless of physical presence).

Consistent with the current CRA framework, the proposed rule would include different performance standards applicable to banks of different sizes. Small banks, as defined under the proposed rule, would continue to be evaluated under the small bank performance standards currently applicable to small banks that are not intermediate small banks.<sup>70</sup> The proposed rule also would establish new general performance standards to evaluate other banks' CRA activities and the CRA activities of small banks that opt into these standards. The general performance standards would assess two fundamental components of a bank's CRA performance: (1) The appropriate distribution (*i.e.*, number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies in a community through the application of tests evaluating a bank's distribution of retail lending; and (2) the impact of a bank's qualifying activities, measured

<sup>69</sup> See, *e.g.*, 123 Cong. Rec. 17630 (1977) (statement of Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs).

<sup>70</sup> The proposed rule would define a small bank as a bank that had assets of \$500 million or less in each of the previous four calendar quarters.

by a bank's *CRA evaluation measure*, which includes the quantified value<sup>71</sup> of a bank's qualifying activities *divided* by a bank's retail domestic deposits plus a measure of branch distribution in specified areas of need.

For a more extensive description of the proposed rule, please refer to Section II. of the **SUPPLEMENTARY INFORMATION** of this proposed rule.

#### Small Entities Affected

The FDIC supervises 3,424 depository institutions, of which 2,665 are defined as small institutions by the terms of the RFA.<sup>72</sup> The proposed rule would affect all FDIC-supervised institutions, therefore the FDIC estimates that the proposed rule would affect 2,665 small, FDIC-supervised institutions. Of the 2,665 small, FDIC-supervised institutions, 2,526 currently report total consolidated assets of less than \$500 million. Therefore, the FDIC estimates that 2,526 small, FDIC-supervised institutions would be subject to the small bank performance standards of the proposed rule. Additionally, the FDIC estimated that 139 small, FDIC-supervised institutions would be subject to the new general performance standards of the proposed rule. However, because small, FDIC-supervised institutions with less than \$500 million in total consolidated assets have the option of adopting the new general performance standards of the proposed rule, the number of small, FDIC-supervised institutions who adopt the new general performance standards might be greater than the estimated amount. It is difficult to estimate this aspect of the proposed rule with the information currently available to the FDIC, because such estimates would depend on the present and future financial conditions, activities, and management decision of affected institutions.

#### Expected Effects

The new general performance standards for some small, FDIC-insured institutions in the proposed rule is likely to benefit covered institutions by establishing a more objective, clear, and consistent metric by which a covered institution is evaluated. If the proposed

general performance standards are more stringent for some institutions than the current parameters, the proposed rule could pose costs for covered institutions by potentially reducing their CRA examination rating. If the proposed general performance standards are less stringent for some institutions than the current parameters, the proposed rule could benefit covered institutions by potentially increasing their CRA examination rating. It is difficult to accurately quantify these aspects of the proposed rule with the information currently available to the FDIC.

The publicly available list of examples of qualifying activities should benefit small, covered institutions and borrowers by establishing a reference for qualifying activities. Additionally, the proposed establishment of the list and an optional process through which FDIC-insured institutions and interested third parties can seek confirmation of a particular activity and have it added to the list, will create additional compliance burden. However, the FDIC believes that small, FDIC-insured institutions and interested third parties will only incur such a burden if they believe that the benefits outweigh the costs.

Establishing a transparent methodology for calculating qualifying activities values should benefit small, covered institutions by enabling them to more effectively manage their CRA activities and compliance. Additionally, to the extent that the qualifying activities value calculation methodology overweighs some activities relative to others, the proposed rule is likely to benefit certain activities and may lead to changes in the distribution of qualifying activities by some small, covered institutions.

The proposed rule amends the calculation of qualified loans and CD investments activities from the total balance just prior to a CRA examination, to average month-end outstanding amount on a bank's balance sheet. This aspect of the proposed rule is likely to disincentivize the acquisition of qualifying activities that serve only to boost the assessed activities for small, FDIC-supervised institutions just prior to a CRA evaluation. This amendment to the calculation of these qualified activities is likely to benefit borrowers, as covered institutions seek to develop sustained efforts to conduct qualifying activities.

The proposed rule augments the current assessment area designation methodology by adding areas where a bank has a significant portion of its retail domestic deposits, outside of its facility-based assessment areas. To the

extent that small, covered institutions were already conducting qualifying activities in these areas, this aspect of the proposed rule will benefit small, covered institutions by crediting this activity towards their CRA assessment. However, to the extent that small, covered institutions were not already conducting qualifying activities in these areas, this aspect of the proposed rule would pose costs for covered institutions by compelling them to start conducting qualifying activities in these areas or negatively affecting their CRA assessment. It is difficult to accurately quantify these aspects of the proposed rule with the information currently available to the FDIC. Further, to the extent that small, covered institutions were not already conducting qualifying activities in these areas, this aspect of the proposed rule would benefit borrowers by incentivizing small, covered institutions to focus on meeting their financial service needs.

As discussed previously, the proposed rule maintains the small bank performance standards, however the rule amends the definition of "small bank" from total consolidated assets less than \$1.284 billion to \$500 million or less. Therefore, this aspect of the proposed rule may increase compliance costs for the 139 intermediate-small banks, FDIC-supervised institutions with total consolidated assets less than \$1.284 billion, but greater than \$500 million. Additionally, banks that will be subject to the small bank performance standards under the proposed rule will utilize the revised definition of qualifying activities and assessment areas. The expected effects of these aspects of the proposed rule were previously addressed in this RFA section.

As discussed previously, the proposed rule may increase compliance costs for all small, FDIC-insured institutions. The FDIC estimates that, if adopted, the recordkeeping, reporting, and disclosure burden for small, FDIC-supervised institutions associated with the Community Reinvestment Act would be 1,030 hours per year for entities subject to the small bank performance standards, and 7,361 hours per year for entities subject to the new general performance standards. Assuming that each institution utilizes labor from Executives and Managers, Lawyers, Compliance Officers, IT Specialists, Financial Analysts, and Clerical Workers in fixed proportion, the FDIC estimates that the complying with the CRA would pose \$93,000 in annual costs for small, FDIC-supervised entities subject to the small bank performance standards, and \$665,802.45

<sup>71</sup> The quantified value is the dollar value of the qualifying activity multiplied by applicable multipliers and percentages of partial benefit to the intended population or area. The specific quantified value for the different types of qualifying activities is discussed later in the preamble and explained in the regulation.

<sup>72</sup> Call Report, June 30, 2019. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not "small entities" for purposes of the RFA.

in annual costs for small, FDIC-supervised entities subject to the new general performance standards. Additionally, the proposed rule redefines loans to small business as loans with an origination balance of \$2 million or less, as opposed to the current threshold of \$1 million or less. Small, FDIC-insured institutions might incur some regulatory costs associated with making the necessary changes to their systems in order to comply with the new definition.

#### Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other federal rule.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

#### Paperwork Reduction Act of 1995

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The agencies reviewed the proposed rule and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control Nos. 1557–0160 and 3064–0092. The agencies have submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB’s implementing regulations (5 CFR 1320).

#### Current Actions

Under the proposed rule:

- Banks may request that the agency confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form. 12 CFR \_\_.05(c)(1).
- A bank must delineate one or more assessment areas within which the agency evaluates the bank’s record of helping to meet the credit needs of its community. 12 CFR \_\_.08.
- Banks that are not small banks must submit information on the Performance Context Form. 12 CFR \_\_.14(c).

- A bank must submit a strategic plan if the bank: (1) Would otherwise be evaluated under § \_\_.12 and does not maintain retail domestic deposits on-balance sheet or (2) is a small bank that does not originate retail loans. A bank not required to submit a plan may do so. 12 CFR \_\_.16.

- Banks evaluated under the general performance standards in § \_\_.12 and banks evaluated under a strategic plan under § \_\_.16, unless otherwise determined in writing by the agency, must collect and maintain the information required by 12 CFR \_\_.19. 12 CFR \_\_.19.

- Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor. 12 CFR \_\_.20.

- Banks must keep the data collected under § \_\_.19 and § \_\_.20 in machine readable form (as prescribed by the agency). 12 CFR \_\_.22.

- Banks evaluated under the general performance standards in § \_\_.12 and banks evaluated under a strategic plan under § \_\_.16, unless otherwise determined in writing by the agency, must report the information required by 12 CFR \_\_.23. 12 CFR \_\_.23.

- Banks must maintain a public file that includes: All written comments and responses; a copy of the public section of the bank’s or savings association’s most recent CRA performance evaluation; a list of the bank’s branches, their street addresses, and census tracts; a list of the branches opened or closed, their street addresses, and geographies; a list of services offered; a map of each assessment area; and any other information the bank chooses. Banks with strategic plans must include a copy of the plan. Banks with less than satisfactory ratings must include a description of their current efforts to improve their performance in helping to meet the credit needs of their entire community. Banks must make all of this information available to the public. This information must be current as of April 1 of each year. 12 CFR \_\_.25.

#### OCC

*Title of Information Collection:* Community Reinvestment Act.

*Frequency:* On Occasion.

*Affected Public:* Businesses or other for-profit.

*Estimated number of respondents:* 1,069.

*Total estimated annual burden:* 3,401,393 hours.

#### FDIC

*Title of Information Collection:* Community Reinvestment Act.

*Frequency:* On Occasion.

*Affected Public:* Businesses or other for-profit.

*Estimated number of respondents:* 3,390.

*Total estimated annual burden:* 8,702,163 hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies’ functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), Attention, Federal Banking Agency Desk Officer.

#### Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation, currently \$154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that this proposed rule is likely to result in the expenditure by the private sector of \$154 million or more. Therefore, the OCC has prepared a budgetary impact

analysis and identified and considered alternative approaches. The full text of the OCC's analyses under the Unfunded Mandates Act is available at: <http://www.regulations.gov>, Docket ID OCC-2018-0008.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The OCC invites comments that will inform its consideration of RCDRIA.

#### List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

### DEPARTMENT OF THE TREASURY OFFICE OF THE COMPTROLLER OF THE CURRENCY

#### 12 CFR CHAPTER I

#### Authority and Issuance

For the reasons discussed in the preamble, and under the authority of 12 U.S.C. 93a, the Office of the Comptroller of the Currency proposes to amend 12

CFR part 25 and remove part 195 as follows:

#### PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

■ 2. Revise subparts A through D to read as follows:

##### Subpart A—General

Sec.

25.01 Authority, purposes, and scope.

25.02 Effect of CRA performance on applications.

25.03 Definitions.

##### Subpart B—Qualifying Activities

25.04 Qualifying activities criteria.

25.05 Qualifying activities confirmation and illustrative list.

25.06 Qualifying activities quantification.

25.07 Qualifying activities value.

##### Subpart C—Assessment Area

25.08 Assessment area.

##### Subpart D—Performance Evaluations

25.09 Performance standards and ratings, in general.

25.10 CRA evaluation measure.

25.11 Retail lending distribution tests.

25.12 General performance standards and presumptive rating.

25.13 Small bank performance standards.

25.14 Consideration of performance context.

25.15 Discriminatory and other illegal credit practices.

25.16 Strategic plan.

25.17 Assigned ratings.

25.18 State/multistate metropolitan statistical area assigned rating.

##### Subpart A—General

#### § 25.01 Authority, purposes, and scope.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), Congress required each appropriate Federal financial supervisory agency to assess an institution's record of meeting the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of such institution, and take that record into account in its evaluation of an application for a deposit facility by such institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all banks as defined in § 25.03 except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) *Federal branches and agencies*—(i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance Dates*—(i) *Banks other than small banks*—(A) Banks that are not small banks must comply with the following requirements of this part on the following dates:

(1) One year after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Two years after the effective date of the final rule for the reporting requirements in § 25.23.

(B) Banks that are not small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(i)(A)(2) of this section, including any extensions approved by the OCC.

(ii) *Small banks*—(A) Small banks must comply with the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.20, and 25.22 one year after the effective date of this rule.

(B) Small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the compliance date in paragraph (c)(4)(ii)(A) of this section, including any extensions approved by the OCC.

(iii) *Small banks that opt into the general performance standards in § 25.12 as of the effective date of this rule and banks that no longer meet the small bank definition*—(A) Small banks that opt into the general performance standards in § 25.12 as of the effective date of this rule pursuant to § 25.09(b) and banks that no longer meet the small bank definition must comply with the following requirements on the following dates:

(1) Two years after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Three years after the effective date of the final rule for the reporting requirements in § 25.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iii)(A)(2) of this section, including any extensions approved by the OCC.

(iv) *Small banks that opt into the general performance standards in § 25.12 after the effective date of the final rule*—(A) Small banks that opt into the general performance standards in § 25.12 after the effective date of the final rule pursuant to § 25.09(b) must comply with the following requirements on the following dates:

(1) One year after the bank opts in for the assessment area, data collection, and recordkeeping requirements in §§ 25.08, 25.19, and 25.22; and

(2) Two years after the bank opts in for the reporting requirements in § 25.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iv)(A)(2) of this section, including any extensions approved by the OCC.

#### **§ 25.02 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or non-branch deposit taking facility;

(2) The relocation of the main office or a domestic branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution;

(4) The conversion of an insured depository institution to a national bank charter;

(5) A savings association charter; and

(6) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank or a Federal thrift charter must submit with its application a description of how it will meet its CRA objectives, if applicable. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term "insured depository institution" has the same meaning as this term is given in 12 U.S.C. 1813.

#### **§ 25.03 Definitions.**

For purposes of this part, the following definitions apply:

*Activity* means a loan, investment, or service by a bank.

*Affiliate* has the same meaning as this term is given in Regulation W, 12 CFR 223.2(a) and (b), as of the effective date of this rule but applies to member and non-member banks.

*Agencies* means the OCC and the Federal Deposit Insurance Corporation (FDIC).

*Area median income* means:

(1) The median family income for the metropolitan statistical area, if a person

or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

*Assessment area* means a geographic area delineated in accordance with § 25.08.

*Average* means the statistical mean.

*Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) or a savings association, the deposits of which are insured by the FDIC pursuant to Chapter 16 of Title 12, as described in 12 U.S.C. 1813(c)(2), except as provided in § 25.01(c)(3).

*Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term "branch" only includes a "domestic branch" as that term is defined in section 3(o) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(o)).

*Call Report* means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

*Community Development Financial Institution* has the same meaning as this term is given in 12 U.S.C. 4702(5).

*Community development investment* means a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 25.04(c).

*Community development loan* means a loan, line of credit, or contingent commitment to lend that meets the criteria of § 25.04(c).

*Community development services* means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

*Compensation* means the Bureau of Labor Statistics calculation of the hourly wage for that type of work engaged in by a bank employee in the course of conducting community development services.

*Consumer loan* means a loan reported on the Call Report, Schedule RC–C,

Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures, which include the following product lines:

(1) *Credit card*, which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards;

(2) *Other revolving credit plan*, which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards;

(3) *Automobile loan*, which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(4) *Other consumer loan*, which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a “loan secured by real estate” and other than those for purchasing or carrying securities), including *low-cost education loans*, which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published 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. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

*Contingent commitment to lend* means a legally-binding commitment to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

*Distressed area* means a middle-income census tract identified by the agencies that meets one or more of the following conditions:

(1) An unemployment rate of at least 1.5 times the national average,

(2) A poverty rate of 20 percent or more, or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net

migration loss of five percent or more over the five-year period preceding the most recent census.

*Essential community facility* means a public facility, including but not limited to a school, library, park, hospital and health care facility, and public safety facility.

*Essential infrastructure* means:

(1) Public infrastructure, including but not limited to public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

*Family farm* has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

*Financing* means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

*High-cost area* means any county in which the percentage of households who have monthly housing costs greater than 30 percent of their monthly income is greater than 40 percent.

*Home mortgage loan* means a loan reported on the Call Report, Schedule RC-C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

*Income levels* are:

(1) *Low-income*, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract.

(2) *Moderate-income*, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in the case of a census tract.

(4) *Upper-income*, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in the case of a census tract.

*Indian country* has the same meaning as this term is given in 18 U.S.C. 1151.

*Low-income credit union* has the same meaning as this term is given in 12 CFR 701.34.

*Major retail lending product line* means a bank’s retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period.

*Metropolitan division* has the same meaning as this term is given by the Director of the Office of Management and Budget.

*Metropolitan statistical area* has the same meaning as this term is given by the Director of the Office of Management and Budget.

*Military bank* means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

*Minority depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(1).

*Monetary or in-kind donation* means:

(1) A grant, monetary contribution, or monetary donation, or

(2) A contribution of goods, commodities, or other non-monetary resources.

*Non-branch deposit-taking facility* means a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is authorized to take deposits that is located in any state or territory of the United States of America.

*Nonmetropolitan area* means any area that is not located in a metropolitan statistical area.

*Partially benefits* means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

*Primarily benefits* means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example, in a prospectus, loan proposal, or community action plan.

*Qualifying activity* means an activity that helps meet the credit needs of a bank’s entire community, including low- and moderate-income individuals

and communities, in accordance with § 25.04.

*Qualifying loan* means a retail loan that meets the criteria in § 25.04(b) or a community development loan that meets the criteria in § 25.04(c).

*Retail domestic deposit* means a “deposit” as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC–E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g)).

*Retail loan* means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

*Retail lending product line* means a:

(1) Home mortgage loan product line, which includes all home mortgage loans;

(2) Small loan to a business product line, which includes all small loans to businesses;

(3) Small loan to a farm product line, which includes all small loans to farms; or

(4) Consumer lending product line, which includes:

(i) An automobile loan product line;

(iii) A credit card product line;

(iv) An other revolving credit plan product line; or

(v) An other consumer loan product line.

*Small bank*—(1) *Definition*. Small bank means a bank that:

(i) Had assets of \$500 million or less in each of the previous four calendar quarters; or

(ii) Was a small bank as of the close of the calendar quarter immediately preceding the close of the last calendar quarter and did not have assets of greater than \$500 million as of the close of each of the past four calendar quarters.

(2) *Adjustment*. The dollar figures in this definition shall be adjusted annually and published by the OCC, 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 twelve-month period ending in November, with rounding to the nearest \$100,000.

*Small business* means a business that has gross annual revenues of no greater than \$2 million. The OCC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small farm* means a farm with gross annual revenues of no greater than \$2

million. The OCC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small loan to a business* means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than \$2 million. The OCC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small loan to a farm* means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than \$2 million. The OCC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Underserved area* means a middle-income census tract:

(1) Identified by the agencies as meeting the criteria for population size, density, and dispersion that indicate the area’s population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for these designations the “urban influence codes,” numbered “7,” “10,” “11,” and “12,” maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the agencies as:

(i) Not having a branch of any bank within:

(A) 2 miles of the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles of the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles of the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles of the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

*Women’s depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(2).

## Subpart B—Qualifying Activities

### § 25.04 Qualifying activities criteria.

(a) *General*. Retail loans, community development loans, community development investments, and community development services that help meet the credit needs of a bank’s entire community, including low- and moderate-income communities, are qualifying activities if they meet the criteria in this section at the time the activity is originated, made, or conducted. If the activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

(b) *Retail loans*. A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) Small business; or

(iii) Small farm;

(2) Located in Indian country;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services*. A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing;

(A) That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;

(D) That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by

a federal, state, local, or tribal government; or

(E) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or

(ii) Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described in 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;

(4) Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(5) Essential community facilities that partially or primarily benefit or serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(6) Essential infrastructure that benefits or serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs;

(ii) Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily benefit low- or moderate-income individuals or families;

(ii) Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or

(iii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z-2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z-1(a);

(12) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(13) Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

#### **§ 25.05 Qualifying activities confirmation and illustrative list.**

(a) *Qualifying activities list.* The OCC maintains a publicly available illustrative list at [www.occ.gov](http://www.occ.gov) of non-exhaustive examples of qualifying activities that meet and activities that do not meet the criteria in § 25.04.

(b) *Confirmation of a qualifying activity.* A bank may request that the OCC confirm that an activity meets the criteria in § 25.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the OCC confirms that an activity is consistent with the criteria in § 25.04, the OCC will notify the requestor and may add this activity to the list of activities that meet the qualifying activities criteria described in

paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the OCC determines that an activity is not consistent with the criteria in § 25.04, the OCC will notify the requestor and may add this activity to the list of activities that do not meet the qualifying activities criteria described in paragraph (a) of this section.

(c) *Process*—(1) A bank may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on [www.occ.gov](http://www.occ.gov).

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 25.04, the OCC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the OCC deems relevant.

(3) The OCC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 25.04.

(4) An activity is confirmed as a qualifying activity if the bank is not informed of an OCC objection within 6 months of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on an ongoing basis in response to requests for confirmation described in paragraph (b) of this section, the OCC will publish the qualifying activities list no less frequently than every three years for notice and comment to determine whether the list should change. If the OCC determines that a qualifying loan or community development investment no longer meets the criteria in § 25.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

#### **§ 25.06 Qualifying activities quantification.**

(a) *Community development service quantification.* The dollar value of a community development service is the compensation for the community development service *multiplied* by the number of hours the employee spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The dollar value of an in-kind donation is the fair market value of the donation,



as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2) of this section, the average of the dollar value, as of the close of business on the last day of the month, for each month the loan or investment is on-balance sheet, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally-binding commitment to invest, as adjusted by paragraph (e) of this section; and

(iii) The allowance for credit losses on off balance sheet credit exposures for contingent commitments to lend, as calculated in accordance with the instructions to the Call Report, Schedule RC-G, as adjusted by paragraph (e) of this section; or

(2) For qualifying retail loans sold within 90 days of origination, 25 percent of the aggregate dollar value of the loan at origination, as adjusted by paragraph (e) of this section.

(e) *Portion of qualifying activities that partially benefit.* The dollar value of a qualifying activity that partially benefits, as defined in § 25.03, is calculated by *multiplying* the percentage of the partial benefit by the full dollar value of the qualifying activity quantified under paragraphs (a)–(d) of this section.

#### § 25.07 Qualifying activities value.

(a) *Bank-level qualifying activities value.* A bank evaluated under § 25.12 calculates its bank-level qualifying activities value annually based on the dollar value of all qualifying activities originated, made, purchased, or performed on behalf of the bank and not included in the bank-level qualifying activities value of another bank subject to this part or part 345. The qualifying activities value equals the *sum*, during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community development investments, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made, as adjusted in paragraph (b) of this section; and

(iii) Monetary donations made, as adjusted in paragraph (b) of this section.

(b) *Multipliers.* The dollar value of the following qualifying activities will be adjusted by *multiplying* the actual or quantified dollar value by 2.

(1) Activities provided to or that support Community Development Financial Institutions, except activities related to mortgage-backed securities;

(2) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds; and

(3) Other affordable housing-related community development loans.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 25.12 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area.

### Subpart C—Assessment Area

#### § 25.08 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 25.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once during an evaluation period and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.10(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities.

(2) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility, but may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(2) of this section.

(4) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a

single metropolitan statistical area or nonmetropolitan area.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

- (1) Reflect illegal discrimination; or
- (2) Arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated based on its entire deposit customer base at the bank level under § 25.12.

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 25.16(g)(2).

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

## Subpart D—Performance Evaluations

### § 25.09 Performance standards and ratings, in general.

(a) *Performance standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards—*(i) The OCC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2) and (a)(3) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 25.12.

(ii) The OCC determines the assigned ratings for a bank evaluated under § 25.12 as provided in § 25.17.

(iii) The OCC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 25.12 as provided in § 25.18.

(2) *Small bank performance standards—*(i) The OCC applies the small bank performance standards as provided in § 25.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a small bank evaluated under the small bank performance standards in § 25.13 lending test and bank-level ratings as provided for in Appendix A of this part.

(3) *Strategic plan.* The OCC evaluates the performance of a bank under a

strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.16.

(b) *General performance standards opt in.* A small bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section and this election must occur at least six months before the start of a bank's next evaluation period. Small banks that elect to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 25.19, 25.22, and 25.23. Once a small bank has elected to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards and must do so six months before the start of its next evaluation period. Small banks that opt out will revert to being evaluated according to the small bank performance standards as provided in § 25.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

### § 25.10 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 25.12 will determine its bank-level and assessment area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank-level CRA evaluation measure.* A bank's bank-level CRA evaluation measure is the *sum of*:

(1) The bank's annual bank-level qualifying activities values calculated under § 25.07(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income

census tracts, distressed areas, underserved areas, and Indian country *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of*:

(1) The bank's annual assessment area qualifying activities value calculated under § 25.07(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .01.

(d) *Average CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual bank-level CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

### § 25.11 Retail lending distribution tests.

(a) *General.* In each assessment area, a bank evaluated as described in § 25.12 will apply a:

(1) Geographic distribution test for its small loan to a business product line or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations in the assessment area during the evaluation period.

(b) *Geographic distribution test—*(1) *Small loan to a business product line.*

To pass the geographic distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or

the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of businesses in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to businesses in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(2) *Small loan to a farm product line.* To pass the geographic distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of farms in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to farms in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(c) *Borrower distribution test—(1) Home mortgage lending product line.* To pass the borrower distribution test for the home mortgage lending product line, a bank's percentage of home mortgage loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of home mortgage loans to low- or moderate-income individuals and families originated by all banks evaluated under the general

performance standards in § 25.12 in the assessment area.

(2) *Consumer lending product line.* To pass the borrower distribution test for a consumer lending product line, a bank's percentage of consumer loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income individuals in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of consumer loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(3) *Small loan to a business product line.* To pass the borrower distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses provided to small businesses originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small businesses in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to businesses provided to small businesses from all banks evaluated under the general performance standards in § 25.12 in the assessment area.

(4) *Small loan to a farm product line.* To pass the borrower distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms provided to small farms originated during the evaluation period in the assessment area must meet or exceed the thresholds established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of

the percentage of small farms in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to farms provided to small farms from all banks evaluated under the general performance standards in § 25.12 in the assessment area.

#### **§ 25.12 General performance standards and presumptive rating.**

(a) *General.* The bank-level presumptive rating and assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category, at the bank level and in each assessment area. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The agencies will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the agencies will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The agencies will provide for a public notice and comment period on any proposed adjustments prior to finalizing the adjustments.

(c) *Bank-level performance standards—(1) Outstanding.* The bank-level outstanding performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 11 percent;

(ii) *Assessment area ratings.* The bank received an assigned rating of outstanding in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 25.07, divided by the average

quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory*. The bank-level satisfactory performance standards are:

(i) *CRA evaluation measure*. The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 6 percent;

(ii) *Assessment area ratings*. The bank received at least an assigned rating of satisfactory in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum*. The quantified value of community development loans and community development investments during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve*. The bank-level needs to improve performance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that meets or exceeds 3 percent.

(4) *Substantial noncompliance*. The bank-level substantial noncompliance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

(d) *Assessment area performance standards*—(1) *Outstanding*. The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests*. The bank must pass the geographic and borrower distribution tests for its major retail lending product lines evaluated in § 25.11;

(ii) *CRA evaluation measure*. The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 11 percent; and

(iii) *Community development minimum*. The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory*. The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests*. The bank must pass both the geographic and borrower distribution tests for all retail lending product lines evaluated in § 25.11;

(ii) *CRA evaluation measure*. The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 6 percent; and

(iii) *Community development minimum*. The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 25.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve*. The assessment area needs to improve performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that must meet or exceed 3 percent.

(4) *Substantial noncompliance*. The assessment area substantial noncompliance performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage that does not meet or exceed 3 percent.

#### § 25.13 Small bank performance standards.

(a) *Performance lending test criteria*. The OCC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in

helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating*. The OCC assesses the performance of a small bank evaluated under this section as provided in appendix A of this part.

#### § 25.14 Consideration of performance context.

(a) *General*. Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 25.12, 25.13, or 25.16. Based on that assessment, the OCC may adjust:

(1) The assessment area and bank-level presumptive ratings in § 25.12; or

(2) The small bank lending test and bank-level ratings as described in appendix A.

(b) *Performance context factors*. In assessing performance context, the OCC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 25.12, 25.13, or 25.16 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan provided for in 12 CFR 1290.6(a)(5), as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (*e.g.*, housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and

(5) Any other information deemed relevant by the OCC.

(c) *Form.* Banks other than small banks must submit the information in paragraph (b) of this section on the performance context form available on [www.occ.gov](http://www.occ.gov).

**§ 25.15 Discriminatory and other illegal credit practices.**

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the OCC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

(1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(2) Violations of the Home Ownership and Equity Protection Act;

(3) Violations of section 5 of the Federal Trade Commission Act;

(4) Violations of section 8 of the Real Estate Settlement Procedures Act;

(5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

**§ 25.16 Strategic plan.**

(a) *General.* The OCC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission*—(1) *Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank:

(i) Would otherwise be evaluated under § 25.12 and does not maintain

retail domestic deposits on-balance sheet; or

(ii) Is a small bank that does not originate retail loans.

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the OCC for approval.

(c) *Data reporting.* The OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 25.19, 25.20, 25.22, and 25.23, unless otherwise determined in writing by the OCC. The OCC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the OCC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the OCC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the OCC determines the plan is not complete, the OCC will notify bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's communities at the bank level and in each of its assessment areas, particularly the needs

of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment area(s) that meets the requirements of § 25.08(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the OCC approves, both satisfactory and outstanding performance goals, the OCC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 6 months after the OCC receives the complete plan and other material required under paragraph (g) of this section. If the OCC does not act within this time period, the plan will be deemed approved unless the OCC extends the review period for good cause for no more than 90 days.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The OCC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the OCC

to approve an amendment to the plan on grounds that there has been a material change in circumstances. The OCC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

#### § 25.17 Assigned ratings.

(a) *General performance standards—*  
(1) *Bank-level assigned rating.* The OCC determines the bank-level assigned rating for a bank evaluated under § 25.12 based on its bank-level presumptive rating under § 25.12, adjusted for performance context under § 25.14, and consideration of discriminatory or other illegal credit practices under § 25.15.

(2) *Assessment area assigned rating.* The OCC determines the assessment area assigned ratings for a bank evaluated under § 25.12 based on its assessment area presumptive rating under § 25.12, adjusted for performance context under § 25.14 and consideration of discriminatory or other illegal credit practices under § 25.15.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, assessment area assigned ratings, a bank-level assigned rating, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 25.14.

#### § 25.18 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 25.12 with interstate branches, the OCC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is the lowest rating assigned to a significant number of its assessment areas within that state or multistate metropolitan statistical area.

#### Subpart E [Redesignated]

■ 3. Redesignate subpart E as subpart F and redesignate §§ 25.61 through 25.65 as §§ 25.28 through 25.32, respectively.

■ 4. Add new subpart E to read as follows:

#### Subpart E—Data Collection, Recordkeeping, and Reporting

Sec.

25.19 Data collection for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.

25.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 25.13.

25.21 Activity location.

25.22 Recordkeeping.

25.23 Reporting for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.

25.24 Public disclosures.

25.25 Content and availability of public file.

25.26 Availability of planned evaluation schedule.

25.27 Public notice by banks.

#### § 25.19 Data collection for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.

(a) *General.* Banks evaluated under the general performance standards in § 25.12 and banks evaluated under a strategic plan under § 25.16, unless otherwise determined in writing by the OCC, must collect and maintain the information required by this section.

(b) *Performance standards data.* A bank must collect and maintain the results of its:

(1) Retail lending distribution tests under § 25.11 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) Bank-level and each assessment-area level CRA evaluation measures calculated under § 25.10; and

(3) Presumptive ratings under § 25.12.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank until the completion of its next CRA evaluation:

(1) *Qualifying loan data.* For each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) Date of:

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 90 days of origination;

(iv) An indicator of whether the loan was originated or purchased;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract;

(viii) The income or revenue of the borrower; and

(ix) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for non-qualifying home mortgage loans and consumer loans originations by the bank until the completion of its next CRA evaluation:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) The date of origination;

(iv) The loan amount at origination;

(v) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract; and

(vi) The income of the borrower.

(3) *Number of home mortgage and consumer loans.* For the home mortgage product line and each consumer loan product line as defined in § 25.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small businesses.

(5) *Number of small loans to farms.*

For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small farms.

(6) *Community development investment data.* For each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the investment;

(ii) Investment type;

(iii) Date of investment by the bank;  
 (iv) The outstanding dollar value of the investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet;

(v) The value of the monetary donation, as quantified in § 25.06;

(vi) The value of the in-kind donation, as quantified in § 25.06;

(vii) The investment location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(viii) The criteria in § 25.04 that the investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(7) *Community development services data.* For each community development service:

(i) The dollar value of the services, as quantified in § 25.06;

(ii) A description of the qualifying activity;

(iii) The date the service was performed;

(iv) The service location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 25.04 that the service satisfies or that it is on the illustrative list referenced in § 25.05.

(8) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Data collection certification.* A bank must collect and maintain a certification from each party conducting qualifying activities on behalf of the bank that the information that the party provided to the bank as described in paragraph (a) of this section is true and correct.

(e) *Assessment areas.* A bank must collect and maintain until the completion of its next CRA evaluation a list of its assessment area(s) showing within the assessment area(s) each:

- (1) County or county equivalent;
- (2) Metropolitan division;
- (3) Nonmetropolitan area;
- (4) Metropolitan statistical area; or
- (5) State.

(f) *Bank facilities.* A bank must collect and maintain until the completion of its next CRA evaluation information indicating whether each facility operated by the bank during the evaluation period was a depository or non-depository facility.

**§ 25.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 25.13.**

*Retail domestic deposit data collection.* Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

**§ 25.21 Activity location.**

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

**§ 25.22 Recordkeeping.**

Banks must keep the data collected under § 25.19 and § 25.20 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation.

**§ 25.23 Reporting for banks evaluated under the general performance standards in § 25.12 or a strategic plan under § 25.16.**

(a) *General.* Banks evaluated under the general performance standards in § 25.12 and banks evaluated under a strategic plan under § 25.16, unless otherwise determined in writing by the OCC, must report the information required by this section.

(b) *Performance standards data.* On an annual basis, a bank subject to this

section must report to the OCC the information required by § 25.19(b).

(c) *Qualifying activities data.* On an annual basis, a bank subject to this section must report to the OCC the following data for all qualifying activities conducted during the annual period:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(d) *Data collection certification.* A bank subject to this section must annually provide to the OCC any certification required by § 25.19(d).

(e) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the OCC the information required by § 25.19(e).

(f) *Retail loans.* A bank subject to this section must annually report to the OCC the information required by § 25.19(c)(3)–(5) for loans originated during the annual period.

(g) *Retail domestic deposit data.* A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(h) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 25.14(c).

(i) *Form.* Banks subject to this section must use the CRA data reporting form available at [www.occ.gov](http://www.occ.gov) to meet the reporting requirements in this section.

**§ 25.24 Public disclosures.**

(a) *Individual CRA Disclosure Statement.* The OCC prepares annually a CRA Disclosure Statement for each bank evaluated under § 25.12 that contains at the bank level:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The OCC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county

level, from all banks evaluated under § 25.12, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

- (1) The number of home mortgage loan originations;
  - (2) The number of home mortgage loan originations to low- or moderate-income individuals and families;
  - (3) The number of originations for each consumer loan product line;
  - (4) The number of originations to low- or moderate-income individuals and families for each consumer loan product line;
  - (5) The number of small loans to businesses;
  - (6) The number of small loans to businesses in low- and moderate-income census tracts;
  - (7) The number of small loans to businesses provided to small businesses;
  - (8) The number of small loans to farms;
  - (9) The number of small loans to farms in low- and moderate-income census tracts; and
  - (10) The number of small loans to farms provided to small farms;
- (c) *Availability of CRA disclosure statements.* The OCC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.
- (d) *Availability of ratings.* The OCC will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office and branches.

#### § 25.25 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

- (1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;
- (2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The

bank must place this copy in the public file within 30 business days after its receipt from the OCC;

- (3) A list of the bank's branches, their street addresses, and census tracts;
- (4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;
- (5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);
- (6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and
- (7) Any other information the bank chooses.

(b) *Additional information available to the public—(1) Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

#### § 25.26 Availability of planned evaluation schedule.

The OCC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

#### § 25.27 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate. Bracketed text must be included if applicable.

■ 5. Revise paragraph (a) of newly designated § 25.29 to read as follows:

#### § 25.29 Definitions.

\* \* \* \* \*

(a) *Bank* means, unless the context indicates otherwise, a national bank and a foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

\* \* \* \* \*

#### § 25.30 [Amended]

■ 6. In newly designated § 25.30 amend paragraph (b)(2) by removing “§ 25.64” and adding “§ 25.31” in its place.

■ 7. Revise Appendix A to read as follows:

#### Appendix A to Part 25—Small Bank Ratings

(a) *Ratings in general—(1) In assigning a rating, the OCC evaluates a small bank's performance under the applicable performance criteria in § 25.13, adjusting for performance context in § 25.14 and consideration of any evidence of discriminatory and illegal credit practices as described in § 25.15. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.*

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank performance standards—(1) Lending test ratings—(i) Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance “satisfactory” if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of



different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(i) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(ii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Bank-level rating—(i) Eligibility for an outstanding overall rating.* A small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for a bank-level rating of "outstanding." In assessing whether a bank's performance is "outstanding," the OCC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(ii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

■ 8. Revise Appendix B to read as follows:

#### **Appendix B to Part 25—Community Reinvestment Act Notice**

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency (OCC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The OCC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the OCC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public section of our most recent CRA evaluation, prepared by the OCC, which is available at (web address and/or physical address at

which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the OCC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the OCC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and Deputy Comptroller (address and email address). Your comments, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

#### **PART 195—[REMOVED]**

■ 9. Under the authority of 12 U.S.C. 93a, 1462a, 1463, 1464, and 5412(b)(2)(B), remove part 195.

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

##### **12 CFR Chapter III**

■ 10. For the reasons discussed in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

#### **PART 345—COMMUNITY REINVESTMENT**

##### **Subpart A—General**

Sec.

- 345.01 Authority, purposes, and scope.
- 345.02 Effect of CRA performance on applications.
- 345.03 Definitions.

##### **Subpart B—Qualifying Activities**

- 345.04 Qualifying activities criteria.
- 345.05 Qualifying activities confirmation and illustrative list.
- 345.06 Qualifying activities quantification.
- 345.07 Qualifying activities value.

##### **Subpart C—Assessment Area**

- 345.08 Assessment area.

##### **Subpart D—Performance Evaluations**

- 345.09 Performance standards and ratings, in general.
- 345.10 CRA evaluation measure.
- 345.11 Retail lending distribution tests.
- 345.12 General performance standards and presumptive rating.
- 345.13 Small bank performance standards.
- 345.14 Consideration of performance context.
- 345.15 Discriminatory and other illegal credit practices.
- 345.16 Strategic plan.
- 345.17 Assigned ratings.
- 345.18 State/multistate metropolitan statistical area assigned rating.

##### **Subpart E—Data Collection, Recordkeeping, and Reporting**

- 345.19 Data collection for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 34.16.
  - 345.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 345.13.
  - 345.21 Activity location.
  - 345.22 Recordkeeping.
  - 345.23 Reporting for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.
  - 345.24 Public disclosures.
  - 345.25 Content and availability of public file.
  - 345.26 Availability of planned evaluation schedule.
  - 345.27 Public notice by banks.
- Appendix A to Part 345—Small Bank Ratings  
Appendix B to Part 345—Community Reinvestment Act Notice

**Authority:** 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

##### **Subpart A—General**

##### **§ 345.01 Authority, purposes, and scope.**

(a) *Authority.* The authority for this part is 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2907, 3103–3104, and 3108(a).

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the

agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Federal Deposit Insurance Corporation (FDIC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the FDIC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General*. This part applies to all insured State nonmember banks, including insured State branches as described in paragraph (c)(2) and any uninsured State branch that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(2) *Insured State branches*. Insured State branches are branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act (FDIA). In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States. The assessment area of an insured State branch is the community or communities located within the United States served by the branch as described in § 345.08.

(3) *Certain exempt banks*. This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24(Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance Dates*—(i) *Banks other than small banks*—(A) Banks that are not small banks must comply with the following requirements of this part on the following dates:

(1) One year after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Two years after the effective date of the final rule for the reporting requirements in § 345.23.

(B) Banks that are not small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(i)(A)(2) of this section, including any extensions approved by the FDIC.

(ii) *Small banks*—(A) Small banks must comply with the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.20, and 345.22 one year after the effective date of this rule.

(B) Small banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the compliance date in paragraph (c)(4)(ii)(A) of this section, including any extensions approved by the FDIC.

(iii) *Small banks that opt into the general performance standards in § 345.12 as of the effective date of this rule and banks that no longer meet the small bank definition*—(A) Small banks that opt into the general performance standards in § 345.12 as of the effective date of this rule pursuant to § 345.09(b) and banks that no longer meet the small bank definition must comply with the following requirements on the following dates:

(1) Two years after the effective date of the final rule for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Three years after the effective date of the final rule for the reporting requirements in § 345.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iii)(A)(2) of this section, including any extensions approved by the FDIC.

(iv) *Small banks that opt into the general performance standards in § 345.12 after the effective date of the final rule*—(A) Small banks that opt into the general performance standards in § 345.12 after the effective date of the final rule pursuant to § 345.09(b) must comply with the following requirements on the following dates:

(1) One year after the bank opts in for the assessment area, data collection, and recordkeeping requirements in §§ 345.08, 345.19, and 345.22; and

(2) Two years after the bank opts in for the reporting requirements in § 345.23.

(B) Those banks must comply with the applicable requirements of the other sections of this part after completing the evaluation period that concludes immediately after the reporting requirements compliance date in paragraph (c)(4)(iv)(A)(2) of this section, including any extensions approved by FDIC.

#### § 345.02 Effect of CRA performance on applications.

(a) *CRA performance*. Among other factors, the FDIC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or other facility with the ability to accept deposits;

(2) The relocation of the bank's main office or a branch;

(3) The merger, consolidation, acquisition of assets, or assumption of liabilities; and

(4) Deposit insurance for a newly chartered financial institution.

(b) *New financial institutions*. A newly chartered financial institution shall submit with its application for deposit insurance a description of how it will meet its CRA objectives. The FDIC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties*. The FDIC takes into account any views expressed by interested parties that are submitted in accordance with the FDIC's procedures set forth in part 303 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application*. A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution*. For purposes of this section, the term "insured depository institution" has the same meaning as this term is given in 12 U.S.C. 1813.

#### § 345.03 Definitions.

For purposes of this part, the following definitions apply:

*Activity* means a loan, investment, or service by a bank.

*Affiliate* has the same meaning as this term is given in Regulation W, 12 CFR 223.2(a) and (b) as of the effective date of this rule but applies to member and non-member banks.

*Agencies* means the Office of the Comptroller of the Currency and the FDIC.

*Area median income* means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

*Assessment area* means a geographic area delineated in accordance with § 345.08.

*Average* means the statistical mean.

*Bank* means a State nonmember bank, as that term is defined in section 3(e)(2) of the FDIA, as amended (12 U.S.C. 1813(e)(2)), with Federally insured deposits, except as provided in § 345.01(c). The term bank also includes an insured State branch.

*Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term “branch” only includes a “domestic branch” as that term is defined in section 3(o) of the FDIA (12 U.S.C. 1813(o)).

*Call Report* means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

*Community Development Financial Institution* has the same meaning as this term is given in 12 U.S.C. 4702(5).

*Community development investment* means a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 345.04(c).

*Community development loan* means a loan, line of credit, or contingent commitment to lend that meets the criteria of § 345.04(c).

*Community development services* means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 345.04(c) or supporting activities that meet the criteria of § 345.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

*Compensation* means the Bureau of Labor Statistics calculation of the hourly wage for that type of work engaged in by a bank employee in the course of

conducting community development services.

*Consumer loan* means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures, which include the following product lines:

(1) *Credit card*, which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards;

(2) *Other revolving credit plan*, which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards;

(3) *Automobile loan*, which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(4) *Other consumer loan*, which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a “loan secured by real estate” and other than those for purchasing or carrying securities), including *low-cost education loans*, which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published 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. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

*Contingent commitment to lend* means a legally-binding commitment to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

*Distressed area* means a middle-income census tract identified by the agencies that meets one or more of the following conditions:

(1) An *unemployment* rate of at least 1.5 times the national average,

(2) A poverty rate of 20 percent or more, or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

*Essential community facility* means a public facility, including but not limited to a school, library, park, hospital and health care facility, and public safety facility.

*Essential infrastructure* means:

(1) Public infrastructure, including but not limited to public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

*Family farm* has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

*Financing* means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

*High-cost area* means any county in which the percentage of households who have monthly housing costs greater than 30 percent of their monthly income is greater than 40 percent.

*Home mortgage loan* means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

*Income levels* are:

(1) *Low-income*, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent in the case of a census tract.

(2) *Moderate-income*, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in the case of a census tract.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in the case of a census tract.

(4) *Upper-income*, which means an individual income that is 120 percent or

more of the area median income, or a median family income that is 120 percent or more in the case of a census tract.

*Indian country* has the same meaning as this term is given in 18 U.S.C. 1151.

*Insured State branches* mean the branches of a foreign bank established and operating under the laws of any State, the deposits of which are insured in accordance with the provisions of the FDIA. In the case of insured State branches, references in this part to main office mean the principal branch within the United States and the term branch or branches refers to any insured State branch or branches located within the United States.

*Low-income credit union* has the same meaning as this term is given in 12 CFR 701.34.

*Major retail lending product line* means a bank's retail lending product line that composes at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period.

*Metropolitan division* has the same meaning as this term is given by the Director of the Office of Management and Budget.

*Metropolitan statistical area* has the same meaning as this term is given by the Director of the Office of Management and Budget.

*Military bank* means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

*Minority depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(1).

*Monetary or in-kind donation* means:

(1) A grant, monetary contribution, or monetary donation, or

(2) A contribution of goods, commodities, or other non-monetary resources.

*Non-branch deposit-taking facility* means a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is located in any state or territory of the United States of America.

*Nonmetropolitan area* means any area that is not located in a metropolitan statistical area.

*Partially benefits* means 50 percent or less of the dollar value of the activity or

of the individuals or census tracts served by the activity.

*Primarily benefits* means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example, in a prospectus, loan proposal, or community action plan.

*Qualifying activity* means an activity that helps meet the credit needs of a bank's entire community, including low- and moderate-income individuals and communities, in accordance with § 345.04.

*Qualifying loan* means a retail loan that meets the criteria in § 345.04(b) or a community development loan that meets the criteria in § 345.04(c).

*Retail domestic deposit* means a "deposit" as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and as reported on Schedule RC-E, item 1, of the Call Report that is held in the United States and is provided by an individual, partnership, or corporation other than a deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker as that term is defined in section 29 of the FDIA (12 U.S.C. 1831f(g)).

*Retail loan* means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

*Retail lending product line* means a:

(1) Home mortgage loan product line, which includes all home mortgage loans;

(2) Small loan to a business product line, which includes all small loans to businesses;

(3) Small loan to a farm product line, which includes all small loans to farms; or

(4) Consumer lending product line, which includes:

(i) An automobile loan product line;

(ii) A credit card product line;

(iii) An other revolving credit plan product line; or

(iv) An other consumer loan product line.

*Small bank*—(1) *Definition*. Small bank means a bank that:

(i) Had assets of \$500 million or less in each of the previous four calendar quarters; or

(ii) Was a small bank as of the close of the calendar quarter immediately preceding the close of the last calendar quarter and did not have assets of greater than \$500 million as of the close of each of the past four calendar quarters.

(2) *Adjustment*. The dollar figures in this definition shall be adjusted

annually and published by the FDIC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest \$100,000.

*Small business* means a business that has gross annual revenues of no greater than \$2 million. The FDIC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small farm* means a farm with gross annual revenues of no greater than \$2 million. The FDIC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small loan to a business* means a loan reported on the Call Report, Schedule RC-C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than \$2 million. The FDIC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Small loan to a farm* means a loan reported on the Call Report, Schedule RC-C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than \$2 million. The FDIC will annually adjust the \$2 million threshold for inflation, and the adjustment to the threshold will be made publicly available.

*Underserved area* means a middle-income census tract:

(1) Identified by the agencies as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The agencies will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the agencies as:

(i) Not having a branch of any bank within:

(A) 2 miles of the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles of the center of the census tract if it is a mixed census tract, as

defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles of the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles of the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

*Women's depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(2).

### Subpart B—Qualifying Activities

#### § 345.04 Qualifying activities criteria.

(a) *General.* Retail loans, community development loans, community development investments, and community development services that help meet the credit needs of a bank's entire community, including low- and moderate-income communities, are qualifying activities if they meet the criteria in this section at the time the activity is originated, made, or conducted. If the activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) Small business; or

(iii) Small farm;

(2) Located in Indian country;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing;

(A) That is likely to partially or primarily benefit low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That partially or primarily benefits low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families;

(D) That partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or

(E) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for middle-income individuals or families in high-cost areas; or

(ii) Owner-occupied housing purchased, refinanced, or improved by low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Businesses or Farms that meet the size-eligibility standards of the Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, or the Small Business Investment Company, as described in 13 CFR part 107, by providing technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary;

(4) Community support services which means activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(5) Essential community facilities that partially or primarily benefit or serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(6) Essential infrastructure that benefits or serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs,

(ii) Receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily benefit low- or moderate-income individuals or families;

(ii) Partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives; or

(iii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z-2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z-1(a);

(12) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(13) Ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which such institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

#### § 345.05 Qualifying activities confirmation and illustrative list.

(a) *Qualifying activities list.* The FDIC maintains a publicly available illustrative list on the FDIC's website of

non-exhaustive examples of qualifying activities that meet and activities that do not meet the criteria in § 345.04.

(b) *Confirmation of a qualifying activity.* A bank may request that the FDIC confirm that an activity meets the criteria in § 345.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the FDIC confirms that an activity is consistent with the criteria in § 345.04, the FDIC will notify the requestor and may add this activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the FDIC determines that an activity is not consistent with the criteria in § 345.04, the FDIC will notify the requestor and may add this activity to the list of activities that do not meet the qualifying activities criteria described in paragraph (a) of this section.

(c) *Process*—(1) A bank may request that the FDIC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on the FDIC's website.

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 345.04, the FDIC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the FDIC deems relevant.

(3) The FDIC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 345.04.

(4) An activity is confirmed as a qualifying activity if the bank is not informed of an FDIC objection within 6 months of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on an ongoing basis in response to requests for confirmation described in paragraph (b) of this section, the FDIC will publish the qualifying activities list no less frequently than every three years for notice and comment to determine whether the list should change. If the FDIC determines that a qualifying loan or community development investment no longer meets the criteria in § 345.04, that loan or community development investment will not be considered a

qualifying activity for any subsequent purchasers.

#### § 345.06 Qualifying activities quantification.

(a) *Community development service quantification.* The dollar value of a community development service is the compensation of for the community development service *multiplied by* the number of hours the employee spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The dollar value of an in-kind donation is the fair market value of the donation, as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2) of this section, the average of the dollar value, as of the close of business on the last day of the month, for each month the loan or investment is on-balance sheet, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally-binding commitment to invest, as adjusted by paragraph (e) of this section; and

(iii) The allowance for credit losses on off balance sheet exposures for contingent commitments to lend, as calculated in accordance with the instructions to the Call Report, Schedule RC-G, as adjusted by paragraph (e) of this section; or

(2) For qualifying retail loans sold within 90 days of origination, 25 percent of the aggregate dollar value of the loan at origination, as adjusted by paragraph (e) of this section.

(e) *Portion of qualifying activities that partially benefit.* The dollar value of a qualifying activity that partially benefits, as defined in § 345.03, is calculated by *multiplying* the percentage of the partial benefit by the full dollar value of the qualifying activity quantified under paragraphs (a)–(d) of this section.

#### § 345.07 Qualifying activities value.

(a) *Bank-level qualifying activities value.* A bank evaluated under § 345.12 calculates its bank-level qualifying activities value annually based on the dollar value of all qualifying activities

originated, made, purchased, or performed on behalf of the bank and not included in the bank-level qualifying activities value of another bank subject to this part or part 25. The qualifying activities value equals the *sum*, during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community development investments, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made, as adjusted in paragraph (b) of this section; and

(iii) Monetary donations made, as adjusted in paragraph (b) of this section.

(b) *Multipliers.* The dollar value of the following qualifying activities will be adjusted by *multiplying* the actual or quantified dollar value by 2.

(1) Activities provided to or that support Community Development Financial Institutions, except activities related to mortgage-backed securities;

(2) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds; and

(3) Other affordable housing-related community development loans.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 345.12 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area.

### Subpart C—Assessment Area

#### § 345.08 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the FDIC evaluates the bank's record of helping to meet the credit needs of its community. The FDIC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 345.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once during an evaluation period and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 345.10(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a

main office, a branch, or a non-branch deposit-taking facility as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities.

(2) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility, but may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(2) of this section.

(4) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated based on its entire deposit customer base at the bank level under § 345.12.

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 345.16(g)(2).

(g) *Use of assessment area(s).* The FDIC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the FDIC determines that the assessment area(s) do not comply with the requirements of this section.

## Subpart D—Performance Evaluations

### § 345.09 Performance standards and ratings, in general.

(a) *Performance standards.* The FDIC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards*—

(i) The FDIC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2) and (a)(3) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 345.12.

(ii) The FDIC determines the assigned ratings for a bank evaluated under § 345.12 as provided in § 345.17.

(iii) The FDIC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 345.12 as provided in § 345.18.

(2) *Small bank performance standards*—(i) The FDIC applies the small bank performance standards as provided in § 345.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The FDIC assigns a small bank evaluated under the small bank performance standards in § 345.13 lending test and bank-level ratings as provided for in Appendix A of this part.

(3) *Strategic plan.* The FDIC evaluates the performance of a bank under a strategic plan if the bank submits, and the FDIC approves, a strategic plan as provided in § 345.16.

(b) *General performance standards opt in.* A small bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section and this election must occur at least six months before the start of a bank's next evaluation period. Small banks that elect to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 345.19, 345.22, and 345.23. Once a small bank has elected to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards and must do so six months before the start of its next evaluation period. Small banks that opt out will revert to being evaluated according to the small bank performance standards as provided in § 345.13 in evaluating the performance of a small bank, unless the bank is evaluated under an approved strategic plan as described under (a)(3) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the FDIC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

### § 345.10 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 345.12 will determine its bank-level and assessment

area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank-level CRA evaluation measure.* A bank's bank-level CRA evaluation measure is the sum of:

(1) The bank's annual bank-level qualifying activities values calculated under § 345.07(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the sum of:

(1) The bank's annual assessment area qualifying activities value calculated under § 345.07(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in low- or moderate-income census tracts in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .01.

(d) *Average CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual bank-level CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

#### **§ 345.11 Retail lending distribution tests.**

(a) *General.* In each assessment area, a bank evaluated as described in § 345.12 will apply a:

(1) Geographic distribution test for its small loan to a business product line or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations in the assessment area during the evaluation period.

(b) *Geographic distribution test—(1) Small loan to a business product line.*

To pass the geographic distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of businesses in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to businesses in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(2) *Small loan to a farm product line.* To pass the geographic distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms in low- or moderate-income census tracts originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator threshold.* The geographic demographic comparator threshold is 55 percent of the percentage of farms in low- and moderate-income census tracts in the assessment area.

(ii) *Geographic peer comparator threshold.* The geographic peer comparator threshold is 65 percent of the percentage of small loans to farms in low- and moderate-income census tracts originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(c) *Borrower distribution test—(1) Home mortgage lending product line.* To pass the borrower distribution test for the home mortgage lending product line, a bank's percentage of home mortgage loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for

either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of home mortgage loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(2) *Consumer lending product line.* To pass the borrower distribution test for a consumer lending product line, a bank's percentage of consumer loans to low- and moderate-income individuals and families originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of low- and moderate-income individuals in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of consumer loans to low- or moderate-income individuals and families originated by all banks evaluated under the general performance standards in § 345.12 in the assessment area.

(3) *Small loan to a business product line.* To pass the borrower distribution test for the small loan to a business product line, a bank's percentage of small loans to businesses provided to small businesses originated during the evaluation period in the assessment area must meet or exceed the threshold established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small businesses in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to businesses provided to small businesses from all banks evaluated under the general performance standards in § 345.12 in the assessment area.



(4) *Small loan to a farm product line.* To pass the borrower distribution test for the small loan to a farm product line, a bank's percentage of small loans to farms provided to small farms originated during the evaluation period in the assessment area must meet or exceed the thresholds established for either the associated demographic borrower comparator or the associated demographic peer comparator.

(i) *Borrower demographic comparator threshold.* The borrower demographic comparator threshold is 55 percent of the percentage of small farms in the assessment area.

(ii) *Borrower peer comparator threshold.* The demographic peer comparator threshold is 65 percent of the percentage of small loans to farms provided to small farms from all banks evaluated under the general performance standards in § 345.12 in the assessment area.

#### § 345.12 General performance standards and presumptive rating.

(a) *General.* The bank-level presumptive rating and assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category, at the bank level and in each assessment area. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The agencies will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the agencies will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The agencies will provide for a public notice and comment period on any proposed adjustments prior to finalizing the adjustments.

(c) *Bank-level performance standards—(1) Outstanding.* The bank-level outstanding performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a

percentage, must meet or exceed 11 percent;

(ii) *Assessment area ratings.* The bank received an assigned rating of outstanding in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The bank-level satisfactory performance standards are:

(i) *CRA evaluation measure.* The average of the bank's bank-level CRA evaluation measures during the evaluation period, expressed as a percentage, must meet or exceed 6 percent;

(ii) *Assessment area ratings.* The bank received at least an assigned rating of satisfactory in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The bank-level needs to improve performance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that meets or exceeds 3 percent.

(4) *Substantial noncompliance.* The bank-level substantial noncompliance standard is an average bank-level CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

(d) *Assessment area performance standards—(1) Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass the geographic and borrower distribution tests for its major retail lending product lines evaluated in § 345.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period,

expressed as a percentage, must meet or exceed 11 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for all retail lending product lines evaluated in § 345.11;

(ii) *CRA evaluation measure.* The assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, must meet or exceed 6 percent; and

(iii) *Community development minimum.* The quantified value of community development loans and community development investments in the assessment area during the evaluation period, as valued in § 345.07, *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period, must meet or exceed 2 percent.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that must meet or exceed 3 percent.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an assessment area average CRA evaluation measure during the evaluation period, expressed as a percentage, that does not meet or exceed 3 percent.

#### § 345.13 Small bank performance standards.

(a) *Performance lending test criteria.* The FDIC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(b) *Small bank performance rating.* The FDIC assesses the performance of a small bank evaluated under this section as provided in appendix A of this part.

#### **§ 345.14 Consideration of performance context.**

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 345.12, 345.13, or 345.16. Based on that assessment, the FDIC may adjust:

(1) The assessment area and bank-level presumptive ratings in § 345.12; or

(2) The small bank lending test and bank-level ratings as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the FDIC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 345.12, 345.13, or 345.16 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan provided for in 12 CFR 1290.6(a)(5), as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (e.g., housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the FDIC; and

(5) Any other information deemed relevant by the FDIC.

(c) *Form.* Banks other than small banks must submit the information in paragraph (b) of this section on the performance context form available on the FDIC's website.

#### **§ 345.15 Discriminatory and other illegal credit practices.**

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the FDIC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

(1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(2) Violations of the Home Ownership and Equity Protection Act;

(3) Violations of section 5 of the Federal Trade Commission Act;

(4) Violations of section 8 of the Real Estate Settlement Procedures Act;

(5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the FDIC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

#### **§ 345.16 Strategic plan.**

(a) *General.* The FDIC assesses a bank's record of helping to meet the

credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the FDIC as provided for in this section;

(2) The FDIC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission—(1) Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank:

(i) Would otherwise be evaluated under § 345.12 and does not maintain retail domestic deposits on-balance sheet; or

(ii) Is a small bank that does not originate retail loans.

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the FDIC for approval.

(c) *Data reporting.* The FDIC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 345.19, 345.20, 345.22, and 345.23 unless otherwise determined in writing by the FDIC. The FDIC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general—(1) Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the FDIC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the FDIC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the FDIC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the FDIC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the FDIC

determines the plan is not complete, the FDIC will notify bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's communities at the bank level and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation*. A plan must include a delineation of the bank's assessment area(s) that meets the requirements of § 345.08(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information*. A bank may submit additional information to the FDIC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the FDIC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards*. A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the FDIC approves, both satisfactory and outstanding performance goals, the FDIC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing*. The FDIC will act upon a plan within 6 months after the FDIC receives the complete plan and other material required under paragraph (g) of this section. If the FDIC does not act within this time period, the plan will be deemed approved unless the FDIC extends the review period for good cause for no more than 90 days.

(2) *Public participation*. In evaluating the plan's goals, the FDIC considers any

written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan*. The FDIC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment*. During the term of a plan, a bank may request the FDIC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The FDIC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

#### § 345.17 Assigned ratings.

(a) *General performance standards*—(1) *Bank-level assigned rating*. The FDIC determines the bank-level assigned rating for a bank evaluated under § 345.12 based on its bank-level presumptive rating under § 345.12, adjusted for performance context under § 345.14, and consideration of discriminatory or other illegal credit practices under § 345.15.

(2) *Assessment area assigned rating*. The FDIC determines the assessment area assigned ratings for a bank evaluated under § 345.12 based on its assessment area presumptive rating under § 345.12, adjusted for performance context under § 345.14 and consideration of discriminatory or other illegal credit practices under § 345.15.

(b) *Strategic plans assigned rating*. A bank operating under a strategic plan will receive, as applicable, assessment area assigned ratings, a bank-level assigned rating, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 345.14.

#### § 345.18 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 345.12 with interstate branches, the FDIC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned

rating for that state or multistate metropolitan statistical area is the lowest rating assigned to a significant number of its assessment areas within that state or multistate metropolitan statistical area.

#### Subpart E—Data Collection, Recordkeeping, and Reporting

##### § 345.19 Data collection for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.

(a) *General*. Banks evaluated under the general performance standards in § 345.12 and banks evaluated under a strategic plan under § 345.16, unless otherwise determined in writing by the FDIC, must collect and maintain the information required by this section.

(b) *Performance standards data*. A bank must collect and maintain the results of its

(1) Retail lending distribution tests under § 345.11 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) Bank-level and each assessment-area level CRA evaluation measures calculated under § 345.10; and

(3) Presumptive ratings under § 345.12.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained*. A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank until the completion of its next CRA evaluation:

(1) *Qualifying loan data*. For each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) Date of

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 90 days of origination;

(iv) An indicator of whether the loan was originated or purchased;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract;

(viii) The income or revenue of the borrower; and

(ix) The criteria in § 345.04 that the loan satisfies or that it is on the illustrative list referenced in § 345.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for non-qualifying home mortgage loans and consumer loans originations by the bank until the completion of its next CRA evaluation:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Loan type;

(iii) The date of origination;

(iv) The loan amount at origination;

(v) The loan location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract; and

(vi) The income of the borrower.

(3) *Number of home mortgage and consumer loans.* For the home mortgage product line and each consumer loan product line as defined in § 345.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to small farms.

(6) *Community development investment data.* For each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the investment;

(ii) Investment type;

(iii) Date of investment by the bank;

(iv) The outstanding dollar value of the investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet;

(v) The value of the monetary donation, as quantified in § 345.06;

(vi) The value of the in-kind donation, as quantified in § 345.06;

(vii) The investment location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(viii) The criteria in § 345.04 that the investment satisfies or that it is on the illustrative list referenced in § 345.05 and whether it serves a particular assessment area, if applicable.

(7) *Community development services data.* For each community development service:

(i) The dollar value of the services, as quantified in § 345.06;

(ii) A description of the qualifying activity;

(iii) The date the service was performed;

(iv) The service location and the associated FIPS code for the MSA, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 345.04 that the service satisfies or that it is on the illustrative list referenced in § 345.05.

(8) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period.

(c) *Data collection certification.* A bank must collect and maintain a certification from each party conducting qualifying activities on behalf of the bank that the information that the party provided to the bank as described in paragraph (a) of this section is true and correct.

(d) *Assessment areas.* A bank must collect and maintain until the completion of its next CRA evaluation a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Bank facilities.* A bank must collect and maintain until the completion of its next CRA evaluation information indicating whether each facility operated by the bank during the evaluation period was a depository or non-depository facility.

**§ 345.20 Retail domestic deposit data collection and recordkeeping for small banks evaluated under the small bank performance standards in § 345.13.**

*Retail domestic deposit data collection.* Small banks must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination

period until the completion of its next CRA evaluation.

**§ 345.21 Activity location.**

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

**§ 345.22 Recordkeeping.**

Banks must keep the data collected under § 345.19 and § 345.20 in machine readable form (as prescribed by the FDIC) until the completion of their next CRA evaluation.

**§ 345.23 Reporting for banks evaluated under the general performance standards in § 345.12 or a strategic plan under § 345.16.**

(a) *General.* Banks evaluated under the general performance standards in § 345.12 and banks evaluated under a strategic plan under § 345.16, unless otherwise determined in writing by the FDIC, must report the information required by this section.

(b) *Performance standards data.* On an annual basis, a bank subject to this section must report to the FDIC the information required by § 345.19(b).

(c) *Qualifying activities data.* On an annual basis, a bank subject to this section must report to the FDIC the following data for all qualifying activities conducted during the annual period:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(d) *Data collection certification.* A bank subject to this section must annually provide to the FDIC any certification required by § 345.19(d).

(e) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the FDIC the information required by § 345.19(e).

(f) *Retail loans.* A bank subject to this section must annually report to the FDIC the information required by § 345.19(c)(3)–(5) for loans originated during the annual period.

(g) *Retail domestic deposit data.* A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(h) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 345.14(c).

(i) *Form.* Banks subject to this section must use the CRA data reporting form available on the FDIC's website to meet the reporting requirements in this section.

#### § 345.24 Public disclosures.

(a) *Individual CRA Disclosure Statement.* The FDIC prepares annually a CRA Disclosure Statement for each bank evaluated under § 345.12 that contains at the bank level:

(1) The quantified value of qualifying retail loans;

(2) The quantified value of community development loans;

(3) The quantified value of community development investments; and

(4) The quantified value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The FDIC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county level, from all banks evaluated under § 345.12, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

(1) The number of home mortgage loan originations;

(2) The number of home mortgage loan originations to low- or moderate-income individuals and families;

(3) The number of originations for each consumer loan product line;

(4) The number of originations to low- or moderate-income individuals and families for each consumer loan product line;

(5) The number of small loans to businesses;

(6) The number of small loans to businesses in low- and moderate-income census tracts;

(7) The number of small loans to businesses provided to small businesses;

(8) The number of small loans to farms;

(9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to small farms;

(c) *Availability of CRA disclosure statements.* The FDIC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The FDIC will make available the ratings of all FDIC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office and branches.

#### § 345.25 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the FDIC. The bank must place this copy in the public file within 30 business days after its receipt from the FDIC;

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit

products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public—(1) Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the FDIC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

#### § 345.26 Availability of planned evaluation schedule.

The FDIC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

#### § 345.27 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate. Bracketed text must be included if applicable.

#### Appendix A to Part 345—Small Bank Ratings

(a) *Ratings in general—(1) In assigning a rating, the FDIC evaluates a small bank's*

performance under the applicable performance criteria in § 345.13, adjusting for performance context in § 345.14 and consideration of any evidence of discriminatory and illegal credit practices as described in § 345.15. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The FDIC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Bank-level rating*—(i) *Eligibility for an outstanding overall rating.* A small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for a bank-level rating of "outstanding." In assessing whether a bank's performance is "outstanding," the FDIC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(ii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

#### **Appendix B to Part 345—Community Reinvestment Act Notice**

Under the Federal Community Reinvestment Act (CRA), the Federal Deposit Insurance Corporation (FDIC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The FDIC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the FDIC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public section of our most recent CRA evaluation, prepared by the FDIC, which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the FDIC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the FDIC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Regional Director, FDIC (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and the FDIC Regional Director (address and email address). Your comments, together with any response by us, will be considered by the FDIC in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the FDIC Regional Director. You may also request from the FDIC Regional Director an announcement of our applications covered by the CRA filed with the FDIC. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

Dated: December 12, 2019.

**Joseph M. Otting,**  
*Comptroller of the Currency.*  
Federal Deposit Insurance Corporation.  
By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

**Annmarie H. Boyd,**  
*Assistant Executive Secretary.*

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