

# The Community Reinvestment Act Proposal: Amending and Modernizing CRA Regulations

May 24, 2022

On May 5, 2022, the Federal Reserve Board, Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (together, the “Banking Agencies”) issued a notice of proposed rulemaking (the “Proposal”) that would amend the Banking Agencies’ regulations implementing the Community Reinvestment Act of 1977, as amended (the “CRA”).<sup>1</sup>

Pursuant to the CRA, covered banking institutions have a “continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.” To encourage banks to help meet the local communities’ credit needs, the CRA requires that the Banking Agencies “examine the banks’ records of meeting the credit needs of their entire community, including low- and moderate-income neighborhoods.” With this objective in mind, the Proposal, the first significant interagency revisions since 1995, seeks to revise the CRA implementing regulations to account for changes in the banking industry, including the expanding role of mobile and online banking.

The Banking Agencies have identified the following as the five key elements and goals of the Proposal:

- Expand access to credit, investment, and basic banking services in low- and moderate-income communities.
- Adapt to changes in the banking industry (including online and mobile banking, branchless banking and hybrid models).
- Provide greater clarity, consistency and transparency by adopting a metrics-based approach to CRA evaluations (including public benchmarks) and clarifying eligible CRA activities, among other measures.

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<sup>1</sup> Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency, Community Reinvestment Act Joint Notice of Proposed Rulemaking, Federal Register Notice (May 5, 2022), available [here](#).

- Tailor CRA evaluations and data collection to bank size and type.
- Maintain a unified approach from the Banking Agencies.

It is important to note that under the current CRA regulations and in the Proposal, CRA performance on these tests is an important factor considered by the Banking Agencies when they deliberate regarding applications including, mergers, deposit insurance, branch openings and relocations, conversions and acquisitions and other applications.

Below we provide a summary of the Proposal’s key elements, which include: (1) changes to the asset threshold of the different bank categories; (2) changes to the activities that qualify for CRA credit; (3) new types of assessment areas that allow for increased flexibility in obtaining CRA credit; (4) revisions to the evaluative framework with respect to grading scale, size definitions, performance tests and strategic plan process; and (5) new data collection and reporting obligations. Comments on the Proposal are due by August 5, 2022.

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## Change in Bank Status (Asset Thresholds)

One of the key changes in the Proposal is amending the evaluation and assessment framework to better account for differences in bank size and business model (*i.e.*, wholesale and limited purpose banks). The tests to be conducted on a specific bank will depend on the size and business model of the bank and will be more differentiated. The Proposal would revise the bank categories and accordingly what standards would apply. Below we summarize the changes in how the different banks sizes would be defined under the Proposal.

Bank	Current Regulations Asset Threshold	Proposal Asset Threshold
“Extra” Large	Does not exist	More than \$10b
Large	More than \$1.384b	More than \$2b
Intermediate	\$346m – \$1.384b	\$600m – \$2b
Small	Less than \$346m	Less than \$600m

*\*Size is calculated as the average quarterly assets, computed annually, in both of the prior two calendar years.*

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## Evaluation Components

### Qualifying Activities

To qualify for CRA credit, a bank's community development lending, investments and/or services activities must have community development as their primary purpose. The Proposal would add seven new broad categories and revise the current four categories to help clarify eligibility criteria for different community development activities. The new categories include: (i) essential community facilities that benefit or serve residents of targeted census tracts; (ii) essential community infrastructure that benefits or serves residents of targeted census tracts; (iii) recovery activities that support the revitalization of a designated disaster area; (iv) disaster preparedness and climate resiliency activities that benefit or serve residents of targeted census tracts; (v) activities undertaken with certain entities (e.g., minority depository institutions and low income credit unions); (vi) financial literacy programs or initiatives; and (vii) activities in native land areas that benefit or serve residents, including low- or moderate- income residents, of native lands areas.

In addition, the Proposal adds a process for banks to confirm the eligibility of community development activities in advance. This process would allow banks engaging in more complex, innovative activities that may require examiner judgment and the use of performance context to know if the activity would qualify for CRA purposes.

The Proposal also suggests that the Banking Agencies maintain a publicly available non-exhaustive list of activities eligible for CRA consideration. The Banking Agencies would periodically update the list, including by listing activities that are approved via the confirmatory process described above.

### Assessment Areas

To evaluate whether a bank is meeting its obligation to help meet the credit needs of the local communities in which it is present, the current CRA regulations focus on physical locations, defining local communities to include the areas surrounding the bank's main office, branches and deposit-taking ATMs. The current CRA regulations require that each bank delineate areas in which their CRA performance will be assessed (referred to as "assessment areas").

Under the existing CRA framework banks are evaluated based on what the Proposal terms "facility-based assessment areas," which are determined by the geographic proximity to the bank's brick-and-mortar locations and the surrounding geographies where a substantial portion of its loans are originated or purchased. The Proposal,

however, would have Extra Large and Large banks retail lending activity evaluated based on (1) their facility-based assessment area; (2) their retail lending assessment area (*i.e.*, areas delineated outside of the bank's facility-based assessment areas where a bank has an annual lending volume of at least 100 home mortgage loan originations or at least 250 small business loan originations in a geographical area for two consecutive years); and (3) their outside retail lending areas (*i.e.*, outside of its facility-based assessment areas and retail lending assessment areas) at the institution level using a tailored benchmark.

Intermediate banks that conduct more than 50% of their lending outside of their facility-based assessment areas would be evaluated based on their retail loans that are outside of facility-based assessment areas. This expansion of the assessment area outside of the physical presence of a bank would not apply to Small banks. Under the Proposal, Small banks will continue to be evaluated on its facility-based assessment area.

In addition, for two of the new tests (Community Development Financing Test and Community Development Services Test), community development loans, investments and services activities conducted anywhere nationwide outside of facility-based assessment areas would be considered at the state, multistate metropolitan statistical areas ("MSA") and institution levels, as applicable.

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## New Evaluation Framework

### Grading Scale

Currently, banks may receive four possible ratings on their CRA evaluations: "outstanding," "satisfactory," "needs to improve" and "substantial noncompliance." The Proposal distinguishes between "ratings," which refer to a bank's overall CRA performance across applicable CRA tests and "conclusions," which refer to a bank's performance on a particular test. While the Proposal maintains the four possible ratings for CRA evaluations as described above, it would allow for five possible ratings for conclusions, with the "satisfactory" rating being split into "high satisfactory" and "low satisfactory."

To determine the overall CRA grade for Extra Large, Large, Intermediate and wholesale and limited purpose banks, the Banking Agencies would combine a bank's "conclusions" for each applicable test (described below) at each applicable level according to a specified set of weights tailored to the size and type of bank. For Small banks, a rating would be assigned based on the bank's lending performance in each facility-based assessment area to arrive at the overall rating.

**Performance Tests**

Under the Proposal’s framework there would be six different tests that the Banking Agencies may use to assess a bank’s CRA performance. Which test(s) apply would depend on the bank’s size and type. The Proposal suggests maintaining two current tests for Small and Intermediate banks and creates four new tests for Extra Large and Large banks (although Small and Intermediate banks may opt in to certain tests). Wholesale and limited purpose banks would be evaluated under a tailored version of one of the new tests.

**Tests Applicable to Small and Intermediate Banks —Current Tests to be Maintained**

<i>Small Bank Lending Test</i>	<i>Intermediate Bank Community Development Test</i>
<ul style="list-style-type: none"> <li>• Applies to: Small banks.</li> <li>• Criteria evaluated: (i) the bank’s loan-to-deposit ratio; (ii) percentage of loans located in the bank’s assessment area; (iii) the bank’s record of lending to borrowers of different income levels and businesses and farms of different sizes; (iv) geographic distribution of the bank’s loans; and (v) the bank’s record of taking action in response to written complaints about its performance to meet credit needs in its assessment areas.</li> </ul>	<ul style="list-style-type: none"> <li>• Applies to: Intermediate banks.</li> <li>• Criteria evaluated: (i) the number and amount of community development loans and investments; (ii) the extent to which the bank provides community development services; and (iii) the bank’s responsiveness through such activities to community development lending, investment and services needs.</li> </ul>

**Tests Applicable to Extra Large, Large Banks and Intermediate Banks — New Tests**

1. *Retail Lending Test*

- Applies to: Extra Large, Large and Intermediate banks (Small banks may opt in).
- Criteria evaluated: bank’s record of helping to meet credits needs of its facility-based assessment areas through a bank’s origination and purchase of retail loans.
  - For Extra Large and Large banks, the test also evaluates a bank’s origination and purchase of retail loans in each retail lending assessment area and in its outside retail lending area, at the institution level.
  - For Intermediate banks, the test also evaluates the bank’s origination and purchase of retail loans in its outside retail lending area if the bank originates and purchases over 50% of its retail loans (by dollar amount) outside of its facility-based assessment areas over the relevant evaluation period.

- Retail lending product lines evaluated under the test include closed-end home mortgage, open-end home mortgage, multifamily, small business, small farm lending and automobile lending. All products (except for automobile loans) would need to consist of 15% or more of the dollar value of the bank's retail lending in the respective geography. For automobile loans, the average of the dollar volume and loan count percentage would be used to arrive at the 15% threshold.
- Methodology and Metrics: Banking Agencies would assess: (i) a bank's volume of retail lending relative to its deposit base, compared to other banks in each facility-based assessment area through a retail lending volume screen; and (ii) the geographic and borrower distribution of a bank's major product lines in each facility-based assessment area and, as applicable, in each retail lending assessment area and in its outside retail lending area through a series of distribution metrics and dynamic thresholds.

## 2. Retail Services and Products Test

- Applies to: Extra Large and Large banks.
- Criteria evaluated: (i) bank's availability and services, remote service facility availability and digital and other delivery systems; and (ii) bank's efforts to offer credit and deposit products that are responsive to the needs of low- and moderate-income communities.
  - Evaluation of digital and other delivery systems and availability and usage of responsive deposit products would only be required for Extra Large banks.

## 3. Community Development Financing Test

- Applies to: Extra Large, Large banks (Intermediate banks may opt in). Wholesale and limited purpose banks would be evaluated under a modified version of this test.
- Consists of a: (i) community development financing metric (that would measure the dollar value of a bank's community development loans and investments together, relative to the bank's capacity, as reflected by the dollar value of deposits); (ii) benchmarks (that would reflect local context, including the amount of community development financing activities by other banks in the assessment area); and (iii) an impact review (that would evaluate the impact and responsiveness of a bank's community development loan and investment activities through the application of a series of specific qualitative factors).

- Wholesale and Limited Purpose Banks: Modified test would include an institution-level metric that measures a bank's volume of activities relative to its capacity (see below for additional information).

#### 4. *Community Development Services Test*

- Applies to: Extra Large and Large banks.
- Criteria evaluated: (i) bank's record of providing community development services; and (ii) the impact and responsiveness of these activities to community needs.
  - For Extra Large banks, the evaluation would also use a standard metric based on a bank's community development services hours relative to its full-time equivalent employees in each facility-based assessment area.

For certain provisions of the Proposal, including the facility-based assessment area delineation and certain Small and Intermediate bank performance standards, the Banking Agencies propose an applicability date of the effective date of the final rule. For other provisions, such as the community development definition, qualifying activities, performance tests, standards and ratings, and data collection requirements outlined below, the Banking Agencies propose an applicability date of 12 months after the final rule is published. The Proposal would begin examinations pursuant to the new evaluation framework two years after publication of a final rule. CRA examinations conducted immediately after this start date would be conducted using modified procedures until peer data and applicable benchmarks become available. As noted above, no transition period is proposed for Small or Intermediate banks because they will continue to be evaluated under the tests used in the current CRA regulations. However, Small banks opting into the Retail Lending Test and Intermediate banks opting into the Community Development Financing Test would have the same start date for CRA examinations as established for other banks evaluated under these tests.

#### **Wholesale and Limited Purpose Banks**

The Proposal's significant amendments to the CRA regulations, including the changes to the delineation of assessment areas, qualifying activities and data collection and reporting, also affect wholesale and limited purpose banks. In addition, the Proposal would revise the test applicable to wholesale and limited purpose banks.

Currently wholesale and limited purpose banks are evaluated under a standalone community development test. Under the Proposal, wholesale and limited purpose banks will be evaluated under a tailored version of the Community Development Financing Test, which would include a qualitative and quantitative review of a bank's community

development lending and investments (similar to the current examination procedures) at the facility-based assessment area, state, and multistate MSA levels. At the institution level, the examination would also use a metric measuring a bank’s volume of activities relative to its capacity. Wholesale and limited purpose banks would also have the option to have examiners consider community development service activities that would qualify under the new Community Development Services Test. These activities would be considered qualitatively for possible adjustment of an overall institution rating from “satisfactory” to “outstanding.”

## Summary of Proposal’s Examination Framework

Bank	Asset Size	Subject to New Retail Lending Test?	Subject to New Retail Services & Products Test?	Subject to New Community Development Financing Test?	Subject to New Community Development Services Test?	Subject to Current (Intermediate Bank) Community Development Test?	Subject to Current Small Bank Lending Test?
Extra Large	More than \$10b	Yes	Yes <i>(additional provisions apply)</i>	Yes	Yes <i>(additional provisions apply)</i>	No	No
Large	More than \$2b	Yes	Yes	Yes	Yes	No	No
Intermediate	\$600m-\$2b	Yes	No	(May opt in to replace current Community Development Test)	No	Yes	No
Small	Less than \$600m	(May opt in instead of current Small Bank Lending Test)	No	No	No	No	Yes
Wholesale and Limited Purpose	N/A	No	No	Yes – Tailored version of test	No	No	No

### Strategic Plans

The Proposal maintains the current option for banks to elect to be evaluated under a CRA strategic plan as an alternative method for evaluation. These banks would continue to be required to request approval for the plan from their appropriate Banking Agency. In addition, banks requesting a strategic plan would have the same assessment area requirements as other banks and would need to submit plans that include the same performance tests and standards that would otherwise apply.



Strategic plans under the Proposal would be required to: (i) incorporate performance standards and metrics appropriate for their size in setting their goals; (ii) delineate assessment areas in the same manner as non-strategic plan banks; and (iii) include goals for each retail lending major product line (including those of subsidiaries). The Proposal includes more specific criteria to ensure that all banks are meeting their CRA obligations and that banks have a strong justification for why the applicable performance tests and standards are not appropriate for the bank. The proposed revisions include additional provisions to provide more clarity about establishing strategic plans, the measureable goals established and where performance is evaluated, among others.

The current CRA regulations would apply to strategic plans submitted for approval during the transition period between the date of publication of a final rule and 12 months after the publication date. A plan submitted during the transition period would remain in effect until its expiration date.

#### **Data Collection and Reporting**

The Proposal would impose additional data collection and reporting requirements for the purpose of increasing the clarity, consistency and transparency of the evaluation process by introducing standard metrics and benchmarks.

For Extra Large banks, the Proposal suggests imposing additional obligations to collect, maintain and report on deposits data, retail services data on digital delivery systems, retail services data on responsive deposit products, community development services data and automobile lending. Large banks are required to collect and maintain certain retail services data. The Proposal does not impose any additional data obligations on Small and Intermediate banks, but such banks may collect and maintain deposit data at their option. In addition, wholesale and limited purpose banks are required to collect and report data with respect to community development financing for purposes of metrics and benchmarks.

Below we summarize the key requirements by bank size and type.

<b>Bank</b>	<b>Deposit Data</b>	<b>Retail Lending Data</b>	<b>Community Development Financing Data</b>	<b>Community Development Services Data</b>	<b>Retail Services &amp; Products</b>	<b>Assessment Area Delineation</b>
<b>Extra Large</b>	Collect and report based on location of depositor	Collect and report automobile lending data + certain small business, small farm and home mortgage loans	Collect and report (in prescribed form) for creation of metrics & benchmarks	Collect and report (in prescribed form)	Collect (in prescribed form) + Digital and other delivery systems + Responsive deposit products	Report
<b>Large</b>	Optional to collect	Certain small business, small farm and home mortgage loans		—	Collect (in prescribed form)	Report
<b>Intermediate</b>	Optional to collect	—	Optional to collect (if opt in to CD Financing Test)	—	—	—
<b>Small</b>	Optional to collect	—	—	—	—	—
<b>Wholesale and Limited Purpose</b>	—	—	Collect and report for creation of metrics & benchmarks	—	—	Report

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Please do not hesitate to contact us with any questions.

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