

Overview of May 2022 Notice of Proposed Rulemaking for the Community Reinvestment Act

June 2022



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Introduction

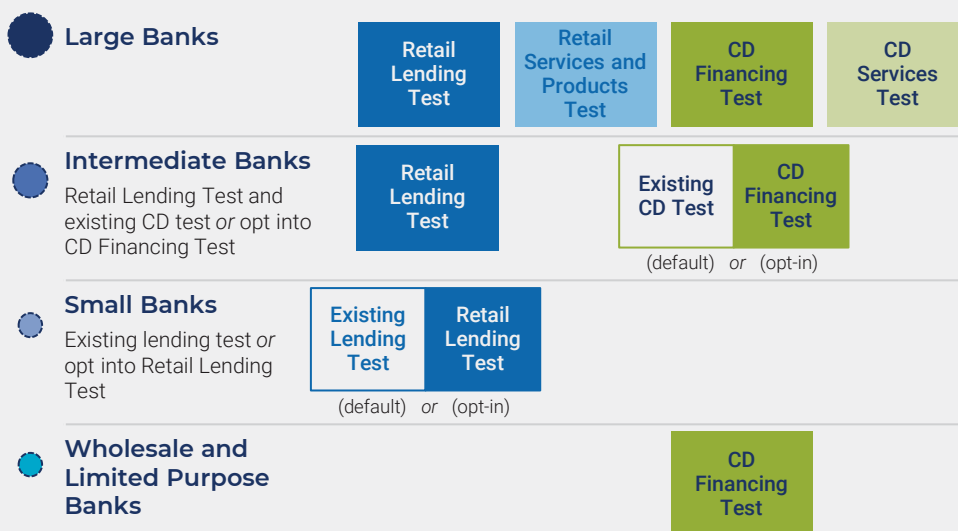
On May 5, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve Board (FRB) jointly issued a Notice of Proposed Rulemaking (NPR) that proposes changes to the implementing regulations for the Community Reinvestment Act (CRA). The changes are intended to improve consistency of examinations, update the rules to reflect changes in banking practices, and obtain additional data to promote efficiency and transparency in application of the rule. This report highlights proposed changes and their potential impact to banks.

Bank Categorizations

The NPR includes proposed changes to the definitions of large, intermediate (now presently identified as intermediate small), and small banks. Small banks would have total assets less than \$600 million, intermediate banks at least \$600 million but less than \$2 billion, and large banks at least \$2 billion. Limited purpose and wholesale bank designations would remain as options along with strategic plans.

The chart below shows a summary of tests for all banks.

Summary of Tests



Source: Interagency CRA Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking Webinar; May 11, 2022

Large Banks

Retail Lending Test

Retail Services and Products Test

CD Financing Test

CD Services Test

Potential Impact to Large Banks

The most significant changes would affect large banks, which would be subject to four performance tests instead of the current three tests, additional record-keeping, and data collection/reporting requirements, expanded community development definitions, and new retail lending assessment areas.

- 1 Retail Lending Test** (45% of the CRA rating): This uses metrics, benchmarks, and performance thresholds to analyze retail products that meet the definition of major product lines in each facility-based assessment area (AA), retail-lending AA, and in the bank's "outside retail lending area." Retail products (for all banks) include:
 - Closed-end home mortgage loans
 - Open-end home mortgage loans
 - Multifamily home mortgage loans
 - Small business loans
 - Small farm loans
 - Automobile loans
- 2 Retail Services and Products Test** (15% of the CRA rating): This uses metrics and benchmarks to review activities in each facility-based AA and at the state, multistate metropolitan statistical area (MSA), and institution levels.
 - Branch availability and services
 - Remote service facility (e.g., ATM) availability
 - Responsiveness of credit products and programs
 - For large banks over \$10 billion, digital delivery systems and availability and usage of responsive deposit products
- 3 Community Development (CD) Financing Test** (30% of the CRA rating): This uses metrics, benchmarks, and a qualitative impact review in each facility-based AA, states, multistate MSA, and nationwide area.
 - CD loans
 - CD investments
- 4 CD Services Test** (10% of the CRA rating): This uses an impact and responsiveness review in each facility-based AA, state, multistate MSA, or nationwide area. Large banks over \$10 billion also would have a quantitative review using a standardized metric.
 - CD services data

Intermediate Banks

Retail
Lending
Test

Existing CD Test
(default)

or

CD Financing
Test
(opt-in)

Small Banks

Existing Lending Test
(default)

or

Retail Lending
Test
(opt-in)

Wholesale and Limited Purpose Banks

CD
Financing
Test

Potential Impact to Intermediate Bank

- 1 **Retail Lending Test** (50% of the CRA rating): This uses metrics and benchmarks to analyze retail products that meet the definition of major product lines in each facility-based AA and in the bank's "outside retail lending area" if the bank originates and purchases over 50% of its retails, by dollar amount, outside of its facility-based AA over the relevant evaluation period.
- 2 **Existing CD test or may opt into the CD Financing Test** (50% of the CRA rating).
- 3 With opt-in to the proposed CD Financing Test, banks may request consideration for activities that qualify under the Retail Services and Products Test and/or the CD Services Test.

Potential Impact to Small Banks

- 1 **Existing lending test or it may opt into the new Retail Lending Test** to evaluate activities in each facility-based AA.
- 2 All other activities at bank's option.

Potential Impact to Wholesale and Limited Purpose Banks

- 1 **CD Financing Test for Wholesale and Limited Purpose Banks** (100% of the CRA rating): This uses the dollar value of activities and an impact review of these activities in each facility-based AA, states, multistate MSA, and nationwide area.
 - CD Loans
 - CD Investments
- 2 Activities that may qualify under the CD Services Test at bank's option.

Potential Impact to Bank's on a Strategic Plan

Approved strategic plan using the AA requirements, data requirements, and performance standards that would otherwise apply to the bank.

Expanded Definition of CD Activities

The proposal would include 11 CD categories that build on existing CD definition as well as the official agency guidance, which is included in the Interagency Questions and Answers.

- 1 CD primary purpose definition:
 - a Majority of dollars, applicable beneficiaries, or housing units
 - b Stated purpose or bona fide intent of providing affordable housing for low- and moderate-income (LMI) people may receive partial credit if less than 50%

Defining Affordable Housing

*Important clarifications and language from existing Q&As have been incorporated into the regulatory text to define **affordable housing**. The proposed text defines affordable housing to include the following activities that support affordable housing for LMI individuals:*

(1) Rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy. Rental housing purchased, developed, financed, rehabilitated, improved, or preserved in conjunction with a federal, state, local, or tribal government affordable housing plan, program, initiative, tax credit, or subsidy with a stated purpose or bona fide intent of providing affordable housing for LMI individuals.

(2) Multifamily rental housing with affordable rents. Rents are deemed affordable for purchased, developed, financed, rehabilitated, improved, or preserved multifamily rental housing if, for the majority of the units, the monthly rent as underwritten by the bank, reflecting post- construction or post-renovation changes as applicable, does not exceed 30% of 60% of the area median income (AMI) for the metropolitan area or nonmetropolitan county, and: (i) the housing is located in a LMI census tract; (ii) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any non-profit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; (iii) the property owner has made an

explicit written pledge to maintain affordable rents for LMI individuals for at least five years or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that a majority of the housing units are occupied by LMI individuals or families.

(3) Activities, excluding single-family home mortgage loans considered under the Retail Lending Test in § __.22, that directly assist LMI individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing or activities that support programs, projects, or initiatives that assist LMI individuals to obtain, maintain, rehabilitate, or improve affordable owner-occupied housing; and

(4) Purchases of mortgage-backed securities that contain a majority of either loans financing housing for low- or moderate-income individuals or loans financing housing that otherwise qualifies as affordable housing under paragraph (b) of this section.

Also, the agencies propose to create and maintain a publicly available illustrative list of CD activities. As proposed, only banks would be permitted to request additions to the list.

Please note: Affordable housing definitions are from the Q&As. CCM's impact theme description of affordable housing varies and is available [here](#).

2 CD purpose includes loans, investments, or services that promote one or more of the following:

- a** Affordable housing for LMI
- b** Economic development that supports small businesses or small farms
- c** Community supportive services that serve or assist LMI
- d** Revitalization activities in conjunction with a federal, state, local, or tribal government plan, program, or initiative that must include an explicit focus on revitalizing or stabilizing “targeted census tract” (defined in rule)
- e** Essential community facilities that benefit or serve residents of targeted census tracts
- f** Essential community infrastructure that benefits or serves residents of targeted census tracts
- g** Recovery activities that support the revitalization of a designated disaster area
- h** Disaster preparedness and climate resiliency activities that benefit or serve residents of targeted census tracts
- i** Activities undertaken with Minority Depository Institutions (MDIs), Women’s Depository Institutions (WDIs), Low-Income Credit Unions (LICUs), or Community Development Financial Institutions (CDFIs) certified by the U.S. Department of the Treasury’s Community Development Institutions Fund
- j** Financial literacy programs or initiatives, including housing counseling
- k** Activities undertaken in Native Land Areas that benefit or serve residents, including LMI residents of Native Land Areas

Financial literacy training programs would no longer be restricted to LMI audience.



Other Important New or Updated Definitions in the NPR

The NPR expands certain definitions that would be used in the new Retail Lending Test.

- 1 Deposits and deposit location are defined because some large banks (those over \$10 billion in total assets) would be required to collect, maintain, and report deposit data annually.
- 2 Native land area has been added as a new component of the definition of community development. Native land area generally includes land within Indian reservations, communities, territories, allotments, land held in trust by the USA, Alaska native villages, Hawaiian homelands, Oklahoma tribal statistical areas, etc. *Refer to ____ 12 (xi) for the complete definition.*
- 3 Retail lending AA means a geographic area, separate and distinct from a facility-based AA, in which retail lending activities of large banks and certain intermediate banks are evaluated as part of the retail lending test.
- 4 Targeted census tract means an LMI census tract or a distressed or underserved nonmetropolitan middle-income census tract, which is proposed to be considered when evaluating certain CD activities.

Assessment Area Changes

The agencies propose several changes to AA to reflect changes in banking and to comprehensively evaluate the communities where a bank operates, while maintaining a focus on evaluating bank performance in areas where banks have branches

Large Banks

Wholesale and
Limited Purpose
Banks

Intermediate Banks

Small Banks

- 1 Facility-based AAs would be established around a bank's main office, branches, and deposit-taking remote services facilities, e.g., ATMS.
 - a Large banks, wholesale banks, and limited purpose banks would be required to designate facility-based AAs consisting of one or more MSA or metropolitan division (MD) or one or more contiguous counties.
 - b Intermediate and small banks would have continued flexibility to use partial county designations, consistent with current practice.
- 2 Activities outside facility-based AA would be evaluated as follows:
 - a **Retail lending assessment areas:** Require large banks to delineate retail lending assessment areas based on concentrations of home mortgage or small business lending outside of facility-based AAs.
 - b **Outside retail lending areas:** Evaluate retail lending in a bank's "outside retail lending area" at the institution level using a tailored benchmark for large banks and certain intermediate banks.

- c Nationwide Areas for Eligible Community Development Activity:**
Under the proposal, community development loans, investments, and services conducted anywhere *nationwide* outside of facility-based AAs would be considered at the state, multistate MSA, and institution levels, as applicable, for banks evaluated under the *new* performance tests.

Data Collection

The agencies propose significant new data collection, maintenance, reporting, and recordkeeping requirements.

Large Banks

1 Large banks with total assets over \$10 billion:

- a** collect, maintain, and report deposits data based on the location of the depositor
- b** collect, maintain, and report automobile lending data
- c** collect, maintain, and report CD financing data in a prescribed format for purposes of constructing CD financing metrics and benchmarks
- d** collect, maintain, and report CD services data in a prescribed format
- e** collect and maintain data on digital and other delivery systems, as well as responsive deposit products
- f** report assessment area delineations, including retail lending assessment areas, if applicable

2 Large banks with total assets of at least \$2 billion up to \$10 billion:

- a** collect, maintain, and report CD financing data in a prescribed format for purposes of constructing CD financing metrics and benchmarks
- b** collect and maintain data related to retail services and products in a prescribed format
- c** report assessment area delineations, including retail lending assessment areas, if applicable
- d** deposit data would be captured via FDIC Summary of Deposits Report

Wholesale and Limited Purpose Banks

3 Wholesale and limited purpose banks:

- a** collect, maintain, and report CD financing data in a prescribed format for purposes of constructing CD financing metrics and benchmarks
- b** report assessment area delineations, including retail lending assessment areas, if applicable
- c** deposit data would be captured via FDIC Summary of Deposits Report

Intermediate Banks

4 Intermediate banks:

- a deposit data would be captured via FDIC Summary of Deposits Report
- b intermediate banks that opt into the CD Financing Test would have the choice of collecting and maintaining CD financing data in a prescribed format or a format of their own choosing (reporting would not be required)

Small Banks

5 Small banks:

- a deposit data would be captured via FDIC Summary of Deposits Report

Effective Dates and Transition Plans

We anticipate that the agencies will publish the final rule no later than 11/1/22. If so, the final rule would be effective 1/1/23. On its effective date, the following provisions would become applicable:

- 1 authority, purposes, and scope
- 2 facility-based AA delineation provisions
- 3 small bank performance standards
- 4 intermediate bank community development performance standards
- 5 effect of CRA performance on applications
- 6 content and availability of public file
- 7 public notice by banks
- 8 publication of planned examination schedule
- 9 public engagement

In addition, a one-year transition is anticipated for the following:

- 1 definitions (except for the revised definitions related to small business loans and small farms loans, as these are proposed to align them with the CFPB Section 1071 rule)
- 2 community development definitions
- 3 qualifying activities confirmation and illustrative list of activities
- 4 retail lending assessment areas
- 5 areas for eligible community development activity

- 6 performance tests, standards, and ratings, in general (Retail Lending Test, Retail Services and Products Test, Community Development Financing Test, Community Development Services Test, Community Development Financing Test for Wholesale and Limited Purpose Banks, and Strategic Plans)
- 7 data collection and certain data reporting requirements
- 8 Impact Review of Community Development Activities

Comments

The comment period ends on August 5, 2022. Comments can be submitted to any of the three agencies and all comments will be shared between the agencies. Submission instructions:

FRB

Submit a comment using the link on: <https://www.federalreserve.gov/consumerscommunities/community-reinvestment-act-proposed-rulemaking.htm>

Comments can also be emailed, faxed, or mailed

OCC

Submit a comment at <https://regulations.gov/>. Enter "Docket ID OCC-2022-0002" in the Search Box and click "Search."

Comments can also be mailed or hand-delivered

FDIC

Submit a comment at: <http://www.fdic.gov/regulations/laws/federal/propose.html>. Include the RIN 3064 -AF81 on the subject line of the message.

Comments can also be emailed, mailed, or hand-delivered

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