



INDEPENDENT COMMUNITY
BANKERS of AMERICA®

OCC-FDIC 2020 CRA MODERNIZATION PROPOSAL SUMMARY

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1. Assessment Areas

As is the case in the current rule, banks delineate one or more assessment areas (“AA”) based on the communities they serve.

Under the current rule, AAs are based on the location of bank branches and deposit taking ATMs. The proposed rule changes this by creating two different types of assessment areas -- facilities based and deposit based. The proposal would allow a bank to change its assessment area delineation once during each evaluation period.

A. Facilities Based Assessment Areas

Banks are required to delineate facilities based assessment areas in “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.” Facilities based assessment areas are very similar to the way assessment areas are delineated today, but not identical.

For example, while the current rule requires assessment areas to consist of “whole geographies” (MSAs, counties, etc.) it allows banks to adjust the boundaries of its assessment areas “to include only the portion of a political subdivision that it reasonably can be expected to serve.” The proposed rule does not include a provision for adjusting assessment areas and seems to require the use of whole geographies without adjustment.

The proposed rule does say that a facilities-based assessment area may be delineated “in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility,” it requires assessment areas 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.”

B. Deposit Based Assessment Areas

Under the proposed rule, “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.”¹

This rule applies primarily to “internet banks” with a limited branch footprint. However, as banking becomes increasingly digital and less branch-centric, it may implicate an increasing number of more traditional, branch focused community banks as well.

C. Assessment Area Grades and Whole Bank Grades

Under the proposed rule, banks not evaluated using the small bank performance standards will receive a presumptive CRA rating in each of its assessment areas and at the whole-bank level. These presumptive ratings will be determined by assessing whether the bank has met or exceeded the performance standards established by their regulator.

Banks also must meet a geographic distribution test for all major product lines (those with at least 20 loans) in an assessment area in order to receive a “satisfactory” or “outstanding” rating in that assessment area.

Generally, the way this evaluation works in regard to AAs is that the bank’s CRA activities are plugged into the following formula, which is then compared to the benchmarks of 11% for outstanding, 6% for satisfactory, and 3% for needs improvement. This formula is applied in each assessment area and at the whole-bank level:

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

In order for a bank to receive an “outstanding” rating, the bank-wide value after using the above formula must exceed 11%, the banks community development loans and investments must meet or exceed the threshold of 2% of its quarterly average of retail domestic deposits, AND the bank must receive an “outstanding rating” “in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits.”

¹ 85 F.R. 1244.



D. Credit for CRA Activity Outside of Your Assessment Areas

For CRA activity conducted in one of a bank's assessment areas, a bank receives CRA credit at both the assessment area and whole bank level.

For CRA-qualifying activity that occurs outside of a bank's assessment areas the bank receives CRA credit only at the whole bank level. This is a significant change because, under the current rule, potentially CRA-qualifying activity conducted outside of a bank's assessment areas does not qualify for CRA credit.

2. Qualifying Activities

A. General Criteria for Qualifying Activities

Loans and investments “are qualifying activities if they meet specified criteria 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 at the time of purchase.”²

A retail loan (a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan) is a qualifying activity if it:

1. Is provided to an LMI individual or family, a small business (>\$2m in annual revenue), or a small farm (>\$2m in annual revenue);
2. Is located in Indian Country;
3. Is a small loan (>\$2m) provided to a business (of any size) that is located in an LMI census tract; OR
4. Is a small loan (>\$2m) provided to a farm (of any size) that is located in an LMI census tract.

These thresholds have all been raised above their current levels. The current rule defines small businesses and small farms as having less than \$1m of annual revenue.

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:
 - o Rental housing:
 - That is likely to partially or primarily benefit LMI 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;
 - That partially or primarily benefits LMI individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government;
 - That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for LMI individuals or families;
 - That partially or primarily benefits **middle-income** individuals or families in high-cost areas as demonstrated by an affordable

2 85 F.R. 1242.

- housing set-aside required by a federal, state, local, or tribal government; or
- 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
 - o 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, or the Small Business Investment Company 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 LMI individuals or families;
 5. Essential community facilities that partially or primarily benefit or serve LMI individuals or families or LMI census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;
 6. Essential infrastructure that benefits or serves LMI individuals or families or LMI census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country;
 7. A family farm's purchase or lease of farmland, equipment, and other farm-related inputs, receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary, or sale and trade of family farm products;
 8. Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily benefit LMI individuals or families, partially or primarily benefit small businesses or small farms as those terms are defined in the programs, projects or initiatives, or are consistent with a bona fide government revitalization, stabilization, or recovery plan for a LMI 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 that benefit LMI qualified opportunity zones;³
12. A Small Business Administration Certified Development Company, a Small Business Investment Company, a New Markets Venture Capital company, a qualified Community Development Entity, or a U.S. Department of Agriculture Rural Business Investment Company; 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.

B. Opportunity Funds

A qualified opportunity fund is an investment vehicle that was created by the Tax Cuts and Jobs Act of 2017. They are corporations or partnerships that are designed for the purpose of investing in qualified opportunity zones and they must hold at least 90% of their assets in qualified opportunity zones.

These funds receive tax advantages, but they must make “substantial improvements” to the properties they purchase (investment equal to the amount paid for the property), and they are forbidden from operating certain businesses such as liquor stores or facilities used for gambling.

A qualified opportunity zone is a low-income community⁴ that has been designated as a qualified opportunity zone by its state's governor and had that designation approved by the Secretary of the Treasury.

A list and map of the 8,700 census tracts designated as qualified opportunity zones is available here:

<https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx/>

C. Qualifying Activities List

The OCC is proposing to maintain on their website a list of activities that meet the general criteria listed above. They will also maintain a list of activities that do not qualify.

³ See a description of opportunity funds and opportunity zones on the next page.

⁴ Defined as a census tract with a poverty rate of at least 20% or where the median income does not exceed 80% of the statewide median income or, if the tract is in a metropolitan area, where the median income does not exceed 80% of the metropolitan area's median income.

The list is **non-exhaustive**, meaning that certain activities not found on the list will still be eligible for CRA credit if they meet the general criteria. However, the idea of the list is that it will provide more specific, concrete examples of which activities count and which don't, rather than requiring banks to decipher the more legalistic general criteria.

Furthermore, a bank may request that the OCC confirm that a certain activity is a qualifying activity. To do so, they would fill out a form describing the activity on the OCC's website. It would then be evaluated by OCC staff, who would then either: (1) confirm to the bank that it is a qualifying activity (and potentially add it to the qualifying activity list), (2) inform the bank that it is not a qualifying activity (and potentially add it to the non-qualifying activities list), or (3) inform the bank that the activity would be a qualifying activity, subject to certain conditions that the OCC would specify.

If a bank submits a request form to the OCC and does not receive an objection from the regulator within 6 months, the activity is treated as a qualifying activity.

In addition to periodically updating the list as described above, the OCC will publish the list in the Federal Register no less frequently than every three years for notice and comment to determine if the list should change.

D. Quantifying Qualifying Activities

The value of community development services is calculated by multiplying hourly salary as estimated by the Bureau of Labor Statistics for the job category of the service provided by the number of hours they performed that community development service. The definition of community development services has been broadened beyond services related to the provision of financial services to include a broader realm of services such as manual labor provided to a CD project.

In kind donations are valued at their fair market value. Monetary donations are valued at the dollar amount donated.

In general, qualifying loans or investments are valued at "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."⁵ However, qualifying retail loans sold within 90 days of origination are valued at 25 percent of the aggregate dollar value of the loan at origination.

5 85 F.R. 1257.

For all of the above activities that partially benefit LMI communities,⁶ the dollar value is calculated by multiplying the percentage of the partial benefit by the full dollar value of the qualifying activity quantified under the procedures described above.

E. Qualifying Activities Value

Bank Level Qualifying Activities – Banks calculate a 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.

The qualifying activities formula is as follows:

$$\begin{array}{ccccc} \text{Qualifying Loans on balance sheet for at least 90 days and} & + & \text{Twenty-five percent of the origination value of} & + & \text{CD Services and} \\ \text{CD Investments} & & \text{Qualifying Loans} & & \text{Monetary and} \\ & & \text{sold within 90 days} & & \text{In-kind donations} \\ & & \text{of origination} & & \end{array}$$

Before calculating the value of qualifying activities using the above formula, it is important to utilize any relevant 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 (MBSs) and municipal bonds; and
3. Other affordable housing-related community development loans.

In addition to calculating the qualifying activities at the whole-bank level, banks use the same process to calculate the value of their qualifying activities in each assessment area, counting only activity in that assessment area.

⁶ Defined as activities where 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

3. Performance Evaluations

A. Small Bank Opt-In


Small banks, defined in the proposed rule as a bank that had assets of \$500 million or less in each of the previous four calendar quarters, will be evaluated under the small bank performance standards currently applicable to small banks that are not intermediate small banks. At their discretion, small banks may choose to opt in to the revised framework that is mandatory for larger institutions.

For banks with less than \$326 million in assets (the current threshold at which one becomes an intermediate small bank), the performance standards used to evaluate them will not change unless they opt in to the revised framework. Banks between \$326 million and \$500 million in assets will no longer be classified as intermediate small banks because that category is disappearing. They will instead be classified simply as small banks and, if they elect not to opt in to the revised framework, they will be subject only to the lending test. This contrasts with the present system wherein intermediate small banks are subject to both the lending test and the community development test.

Small banks, even those not opting in to the new performance standards, would be required 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.

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, 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 would receive consideration for those activities to the extent that they were consistent with the small bank performance standards.

Because the small bank performance standards would be applied consistent with the current regulatory framework, certain activities that do not meet the specified qualifying activities criteria 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.



In short, even for small banks (below the \$500m threshold) that do not opt in to the new regulatory framework, the proposed rule would change the definitions of “qualified investments” for CRA exams and would require a re-evaluation of their assessment area to ensure that it is consistent with the new rule.

B. The General Performance Standards

Banks with over \$500 million in assets will become subject to the revised framework, also called the new “general performance standards.” These performance standards are designed to assess:

- the distribution (i.e., number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies and
- the impact of a bank’s qualifying activities, measured by the value of a bank’s qualifying activities relative to its retail domestic deposits.”

Under the new general performance standards, banks are evaluated both within all of their assessment areas and at the whole institution level. By comparing the value of their qualifying activities to a benchmark created by the regulators, banks will be assigned presumptive ratings at both the assessment area and whole bank level. Presumptive ratings may then be adjusted up or down by examiner discretion depending on specific circumstances (such as fair lending violations or other illegal conduct) and examiner discretion.

At the assessment level, to receive a presumptive rating of satisfactory or outstanding:

- banks would be required to meet the minimum thresholds for performance in that assessment area for each major retail lending product line with at least 20 loans in that assessment area; and
- the average of banks’ CRA evaluation measures (described in more detail below) for an evaluation period would have to meet the associated empirical benchmark.

At the whole bank level, the same factors would be used, but all CRA qualifying activity would be considered, including CRA activity not conducted in any of a bank’s assessment areas. Then, in order to receive a rating of satisfactory, examiners would consider whether the bank must receive an received a satisfactory rating “in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits.” Likewise, to receive an outstanding rating, a bank would need to achieve outstanding ratings in in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposits.

Both the distribution of loans and the value of qualifying activities will be assessed by comparing them to benchmarks established prior to the beginning of a bank's assessment period. The intention of this system is to make CRA evaluations more objective and transparent by using metrics that bankers will know in advance.

The value of qualifying activities is calculated using the following formula:

$$\begin{array}{ccccc} \text{Qualifying Loans on balance} & + & \text{Twenty-five percent of} & + & \text{CD Services and} \\ \text{sheet for at least 90 days and} & & \text{the origination value of} & & \text{Monetary and} \\ \text{CD Investments} & & \text{Qualifying Loans} & & \text{In-kind donations} \\ & & \text{sold within 90 days} & & \\ & & \text{of origination} & & \end{array}$$

The definitions of qualifying activities for the purposes of the above formula are as follows:

Qualifying Activities	Values
Qualifying loans and CD investments	Average month-end on-balance sheet dollar value
Qualifying retail loans originated and sold within 90 days of their origination date	25% of their origination value
Legally-binding commitments to invest reported on the Call Report, Schedule RC-L	Average month-end dollar value
Qualifying commitments to lend that are reported on the Call Report, Schedule RC-G	Average month-end dollar value of the allowance for credit losses
CD services and monetary or in-kind donations	Value of the monetary donation or in-kind activity or at the hourly salary for the job of the service provided for the number of hours provided

The value from the above equation is then plugged into the following formula (at both the whole bank level and in each assessment area). This formula divides qualifying activities by Retail Domestic Deposits and then adds it to a number that is based on the percentage of branches that a bank has located in LMI tracts:

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

Once this formula has been applied, you will be left with a value that will be compared with a series of benchmarks to establish a presumptive rating.

Under the proposal, the associated benchmarks for each presumptive rating are:

- outstanding – 11%

- satisfactory – 6%
- needs to improve – 3%
- substantial noncompliance – less than 3%

The chart below illustrates ways to achieve each presumptive rating:

Presumptive Rating	CRA Evaluation	Retail Lending Distribution Tests	CD Minimums
Outstanding	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, divided by 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 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, divided by the average of the bank's assessment area retail domestic deposits must meet or exceed 2 percent.
Needs Improvement	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).		
Substantial Non-compliance	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).		

C. Retail Lending Distribution Tests

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% of the bank's overall dollar volume of retail loan originations during the evaluation period.

A retail lending distribution test would only apply when there are at least 20 originations in an assessment area 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.

Banks are to apply the distribution test themselves and the examiner will later validate their performance.

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 the assessment area being evaluated.

For small loans to businesses and farms, banks must pass a geographic distribution and borrower distribution test. For mortgage and consumer loans, banks must pass a borrower distribution test. The consequence of making banks not subject to a geographic distribution test is that it means they will not receive positive CRA consideration for loans made to high income families who take out mortgages to buy houses in LMI tracks.

To illustrate how the thresholds work, the example of small loans to businesses will be considered below:

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:

Geographic Distribution Test

Demographic Comparator: (55%) – To pass the geographic distribution test for small loans to businesses (SLB) using the demographic comparator, the percentage of a bank's SLBs 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. Expressed another way:

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

OR (if more favorable)

Peer Comparator: (65%) – On the other hand, still using SLBs as the example, 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 meet or exceed the threshold of 65 percent. Expressed as a formula, this would be:

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

AND:

Borrower Distribution Test – In addition, the bank would, for the product of SLBs in an AA with more than 20 originations, be required to meet one of the following borrower distribution thresholds. They are designed to compare the percentage of a bank's small loans to business that are made to small businesses (below \$2m revenue) out of small loans to business made to businesses of all sizes. Then, this numerator, is compared to the denominator made up of the mix of small and large businesses in an area OR the lending mix of all competing banks in the AA.

Demographic Comparator:

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

OR (if more favorable)

Peer Comparator:

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

D. Community Development Minimums

The proposal establishes 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.

To get a satisfactory or outstanding presumptive rating, 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 2%.

Satisfactory or outstanding presumptive rating:

$$\frac{\text{quantified value of CD loans and investments}}{\text{average of the bank's retail domestic deposits}} \geq 2\%$$


E. Performance Context

Another goal of the proposal is to preserve and standardize the evaluation of performance context in order to "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."

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.

Other factors agencies could consider include 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. For example, if a bank



does not engage in retail lending, regulators would consider that this limits the range of qualifying activities in which the bank may engage.

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

4. Data Collection, Recordkeeping, and Reporting

A. Agency Objectives

The agencies hope that a uniform, industry-wide data reporting system will make CRA exams more transparent and will serve as a way to make more accessible information already available (but difficult to access) on CRA performance evaluations.⁷

“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 agencies also hope that the data keeping requirements, specifically regarding the location of deposits, will provide banks more insight into their own businesses. They predict that banks’ non-CRA businesses will benefit from the increased “insights into the location and potential needs of their customers.”⁸

B. Location of Depositors

The proposed rule will require data collection and recordkeeping that is not required by the current rule. The most notable new requirement, which applies to banks evaluated under the general performance standard and to banks under the small bank threshold that choose not to opt-in, is that banks must record “[t]he 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.”⁹

Banks evaluated under the general performance will be required to report the value of retail domestic deposit accounts and the location of depositors to their regulator on an annual basis. Small banks will not be required to report this data, but they will be required to collect and maintain it. Depositor location data will be used by banks to delineate deposit-based assessment areas and to demonstrate to examiners that the delineation of deposit-based assessment areas was proper.

⁷ 85 F.R. 1227.

⁸ Id.

⁹ 85 F.R. 1263.

C. Data Collection for Banks Subject to the General Performance Standards

Banks must collect and maintain the results regarding their performance standards including:

1. The results of their retail and geographic distribution tests in each assessment area.
2. Bank-level, and assessment area level results calculated under the new CRA evaluation formula.
3. Presumptive ratings.

In addition, banks evaluated under the general performance standards, must collect and maintain data and supporting documentation for all qualifying activities and certain nonqualifying activities conducted by the bank until the completion of its next CRA evaluation. For each qualifying loan a bank must collect and maintain:

- (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 day 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

Under the current rule, banks that are not small banks are required to collect and maintain similar data for small business loans and small farm loans. They are also required to collect and maintain the aggregate number and aggregate amount of community development loans originated or

purchased. Finally, banks that are HMDA reporters must also collect similar data for home mortgage loans.

Under the current rule, banks may optionally collect and report similar data for consumer loans.

The proposed rule makes the collection of the above data mandatory for all qualifying loans in all categories (loans to small business, home mortgage, consumer, etc.). At a minimum, this means that banks will have a new requirement to collect data regarding consumer loans and additional data collection requirements for CD loans.

For non-qualifying loans, banks must collect and maintain the following additional data:

“(2) Other loan data. A bank must collect and maintain the following data and supporting documentation for nonqualifying 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.”¹⁰

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 above is true and correct.

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.

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.

D. Reporting for Banks Evaluated Under the General Performance Standards

Banks evaluated under the general performance standards and banks evaluated under a strategic plan, unless otherwise determined in writing by their regulator, must report the following information to their regulator on an annual basis:

- a) Their performance standards data (i.e. their distribution tests, CRA evaluation formula results, and their presumptive ratings).
- b) Qualifying activities data, including:
 - a. The quantified value of qualifying retail loans;
 - b. The quantified value of community development loans;
 - c. The quantified value of community development investments; and
 - d. The quantified value of community development services.
- c) Any data collection certification presented to them by third parties conducting qualifying activities on their behalf.
- d) A list of political subdivisions within each assessment area.

- e) The number of home mortgage, small business, and small farm loans made in LMI areas compared to the overall number of each type of loan made.
- f) The average quarterly retail domestic deposits as of the close of business on the last day of each quarter.
- g) Performance context information.

The regulators will publish a CRA data reporting form to report this information that banks must use.

E. Public Disclosures

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.

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 LMI individuals and families;
- (3) The number of originations for each consumer loan product line;
- (4) The number of originations to LMI 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 LMI 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;

Availability of CRA disclosure statements.

The regulator will annually make publicly available the aggregate and individual CRA Disclosure Statements.

Availability of ratings.

The regulator will make available the ratings of all 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.

F. Incentives to Receive an Outstanding Rating

A bank receiving an outstanding rating would 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 (as opposed to the standard three-year period) unless the data reported indicates that an earlier evaluation is warranted.

G. Public File

As is the case under the current rule, banks would be required to maintain a public file containing all public comments received by the bank regarding CRA, the most recent CRA exam, information on the location of branches, a list of bank hours and services, and maps of the bank's assessment areas.