

Regulatory Alert

Regulatory Insights for Financial Services

October 2023

Community Reinvestment Act (CRA): Interagency Final Rule

Regulatory Insights:

- **Unified Approach:** After nearly 30 years and 1500 pages, FRB, FDIC, and OCC adopt the long-awaited Community Reinvestment Act (CRA) final rule.
- **Continued LMI Focus:** Continuing focus on credit, investment and banking in low- and moderate-income (LMI) communities, consistent with safe and sound operations.
- **Adapt to Industry Changes:** Substantive changes reflect growth of online, mobile, and branchless banking and hybrid models.
- **Intended to introduce greater clarity and consistency:**
 - Metrics-based approaches to evaluate retail and community development financing (using peer and demographic data)
 - Clarification and expansion of CRA-eligible activities
- **Community development categories to include:**
 - “Place-based activities” such as investment in disaster preparedness and “weather resiliency”
 - Large focus on affordable housing and affordable rental
- **Effective Dates:** The final rule is effective April 1, 2024, but banks have until January 1, 2026, to comply with most provisions; reporting requirements will become applicable January 1, 2027, with data to be reported by April 1.

The Federal Reserve Board (FRB), Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, “federal banking agencies”) issue a [final rule](#) amending the regulations that implement the Community Reinvestment Act of 1977 (CRA).

The agencies state the amendments update the regulatory framework for assessing banks' performance

in meeting the credit needs of their communities to achieve the following “key goals:”

- Encouraging banks to expand access to credit, investment, and banking services in low- or moderate-income (LMI) communities.
- Adapting to changes in the banking industry, including mobile and online banking.
- Providing greater clarity and consistency in the application of CRA regulations.

- Tailoring CRA evaluations and data collection to bank size and business model.

The final rule (highlights detailed below) includes amendments that introduce new categories of qualifying community development activities, assessment area delineation requirements, and a performance evaluation framework that includes two new performance tests and evaluation options for certain banks.

Application and Scope. The final rule applies to banks that are regulated by the federal banking agencies. It utilizes four tiers for CRA evaluations based on asset size and business model:

- **Small Banks:** Assets below \$600 million in either of the prior two calendar years.

- **Intermediate Banks:** Assets between \$600 million and \$2 billion in both of the prior two calendar years.
- **Large Banks:** Assets above \$2 billion in both of the prior two calendar years.
- **Limited Purpose Banks:** Includes both "limited purpose banks" and "wholesale banks" as currently defined.

Community Development Activities. The final rule defines eleven (11) community development categories to provide banks guidance on the activities that support community development.

Category	Definition
Affordable Housing	Consists of five components: (1) rental housing in conjunction with a government affordable housing plan, program, initiative, tax credit, or subsidy; (2) multifamily rental housing with affordable rents; (3) one-to-four family rental housing with affordable rents in a nonmetropolitan area; (4) affordable owner-occupied housing for LMI individuals; and (5) mortgage-backed securities.
Economic Development	<ul style="list-style-type: none"> — Loans, investments, and services undertaken in conjunction, or in syndication, with government programs. — Loans, investments, and services provided to intermediaries. — Other forms of assistance to small businesses and small farms. <p>Note: In a change from the proposal, the final rule expands this category to include direct loans to small businesses and small farms in conjunction, or in syndication, with government programs that meet a size and purpose test.</p>
Community Supportive Services	Activities that assist, benefit, or contribute to the health, stability, or well-being of LMI individuals. Note: This replaces the "community services targeted to low- or moderate-income individuals" category under the current rule.
Place-Based Activities	Six (6) categories of "place-based activities," each adopting a focus on targeted geographic areas and meeting common place-based eligibility criteria: <ul style="list-style-type: none"> — Revitalization or stabilization activities. — Essential community facilities. — Essential community infrastructure. — Recovery activities that promote the recovery of a designated disaster area. — Disaster preparedness and weather resiliency activities. (See Note) — Qualifying activities in "Native Land Areas," as defined in Section 12 of the final rule. <p>Note: These categories replace the revitalization and stabilization activities component of the current rule.</p> <p>Note: In a change from the proposal, "climate resiliency" was changed to "weather resiliency."</p>
Activities With Certain Institutions	Activities with Minority Depository Institutions (MDIs), CDFIs, women's depository institutions, and low-income credit unions.
Financial Literacy	Qualifying activities assisting individuals, families, and households of all income levels, including LMI individuals, families, and households.

The final rule requires the federal banking agencies to issue, maintain, and periodically update a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for community development consideration.

Geographic Areas. The final rule will retain “facility-based assessment areas” (FBAs) and adopts the proposed requirements that banks delineate FBAs where main offices, branches, and deposit-taking remote service facilities are located.

- Large banks will be required to delineate FBAs that comprise whole counties, while intermediate and small banks will be allowed to delineate partial counties.
- “Retail lending assessment areas” (RLAs) will also be evaluated for large banks in Metropolitan Statistical Areas (MSAs) or nonmetropolitan areas outside of the bank’s FBAs where the bank has originated over 150 home mortgages or 400 small business loans in each of the preceding two years. (Note: these thresholds were increased from the proposed 100 home mortgages and 250 small business loans.)

- However, in a change from the proposal, large banks that conduct more than 80 percent of retail lending within FBAs will be exempt from these requirements.

- Both large banks and certain intermediate banks will also be evaluated on retail lending performance in “outside retail lending areas,” or nationwide areas outside of FBAs and any RLAs. Note: This evaluation is intended to adapt to changes in the banking industry and account for mobile and online banking.
- In assessing large banks’ Community Development Financing Test performance, as proposed, banks will receive consideration for any qualified community development loans, investments, or services, regardless of location.

Performance Evaluation Framework. The final rule utilizes the tiers for CRA evaluation and introduces a performance evaluation framework that includes the seven performance tests outlined in the table below.

Performance Test	Description
Retail Lending Test	<p>Evaluates banks serving LMI individuals, small businesses, small farms, and LMI census tracts in FBAs, RLAs, and outside retail lending assessment area. Performance measures include:</p> <ul style="list-style-type: none"> — Retail Lending Volume Screen: Volume of bank lending relative to deposit base in the facility-based assessment area. — Other Measures: Geographic distribution, borrower distribution, and additional factors related to major product lines. <p>Note: The number of product lines potentially being evaluated is reduced to three (3), down from six (6) in the proposal. Products evaluated include closed-end mortgages, small business loans, and small farm loans.</p> <p>Further, a bank’s automobile loans will be evaluated in they represent a majority of the bank’s retail lending, or at the bank’s option.</p>
Retail Services and Products Test	<p>Assesses the availability of banks’ retail banking services and retail banking products and responsiveness to credit needs, including:</p> <ul style="list-style-type: none"> — Evaluation of banks’ branch or remote service facilities (e.g., ATMs), and large banks’ (over \$10 billion) digital systems and other delivery systems. — Review of retail banking products’ responsiveness to LMI communities.
Community Development Financing Test	<p>Evaluates how well large and intermediate banks meet community development financing needs, including:</p> <ul style="list-style-type: none"> — Community Development Financing Metric: Community development loans and investments relative to deposit base. — Standardized benchmarks for assessing performance and impact and responsiveness review.

Community Development Services Test	<p>Considers the importance of banks' community development services in fostering partnerships, building capacity, and creating effective community development credit conditions.</p> <ul style="list-style-type: none"> — Qualitative review of relevant community development services data and impact and responsiveness review.
Intermediate Bank Community Development Test	<p>Evaluates an intermediate bank's community development performance around its:</p> <ul style="list-style-type: none"> — Number and amount of community development loans. — Number and amount of qualified investments. — Extent to which the bank provides community development services. — Responsiveness through such activities to community development lending, investment, and services needs.
Small Bank Lending Test	<p>Evaluates a small bank's lending performance around:</p> <ul style="list-style-type: none"> — Loan-to-deposit ratio and, as appropriate, other lending-related activities. — Percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment areas. — 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. — Geographic distribution of the bank's loans. — Bank's record of taking action, if warranted, in response to written complaints about performance in helping to meet credit needs in its assessment areas
Community Development Financing Test for Limited Purpose Banks	<p>Evaluates wholesale and limited purpose banks based on their record of helping to meet the community development financing needs through the provision of community development loans and community development investments.</p>

The performance evaluation framework is intended to account for differences in bank size and business model. Under the final rule, small and intermediate banks will be provided the option of evaluation under the new tests. Depending on a bank's tier for CRA evaluation, it will be subject to the performance test(s) outlined in the table below.

Applicability of Performance Tests				
Small Banks	Small Bank Lending Test (default) or Retail Lending Test (opt-in)			
Intermediate Banks	Retail Lending Test	Intermediate Bank Community Development Test (default) or Community Development Financing Test (opt-in)		
Large Banks	Retail Lending Test	Retail Services and Products Test	Community Development Financing Test	Community Development Services Test

Limited Purpose Banks	Community Development Financing Test for Limited Purpose Banks
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Performance Weighting. For banks that will be evaluated under more than one of the performance tests, specific weights will be applied to each performance test conclusion, with such weighting varying by asset size:

- Large Banks:
 - Retail Lending Test will be weighted at 40 percent (Note: reduced from the proposed 45 percent).
 - Retail Services and Products Test will be weighted at 10 percent (Note: reduced from the proposed 15 percent).
 - Community Development Financing Test will be weighted at 40 percent (Note: increased from the proposed 30 percent).
 - Community Development Services Test will be weighted at 10 percent (as proposed).
- Intermediate Banks: Each applicable performance test will be weighted at 50 percent (as proposed).

Conclusions and Ratings. For each applicable performance test, the agencies will assign one of the following five conclusions reflecting the bank’s performance in its FBAs and other geographic areas:

- “Outstanding”
- “High Satisfactory”
- “Low Satisfactory”
- “Needs to Improve”
- “Substantial Noncompliance”

The conclusions assigned in each performance test will be combined to develop a bank’s overall CRA rating of “Outstanding”, “Satisfactory”, “Needs to Improve”, or “Substantial Noncompliance.”

Note:

- **Adverse Impacts.** The final rule adopts provisions stating a bank’s CRA performance would be adversely affected by evidence of discriminatory or other illegal credit practices, which would include violations of the fair lending laws and other consumer protection laws (e.g., ECOA, RESPA, TILA, MLA). In making a determination, the agencies

would consider several factors (e.g., root cause, severity of harm).

- **Consideration of Past Performance.** Separately the final rule also provides that “if a bank’s prior rating was “Needs to Improve,” the [Agency] may determine that a “Substantial Noncompliance” rating is appropriate where the bank failed to improve its performance since the previous evaluation period, with no acceptable basis for such failure.”
- **CRA Performance and Applications.** The final rule reiterates that a bank’s record of performance under the CRA examination may be the basis for denying or conditioning approval of an application. The agencies add further, that a bank’s CRA performance is often a controlling factor in the consideration of a bank’s record when reviewing applications in which CRA performance is a relevant factor.

Strategic Plan Option. Banks of any tier may opt to be evaluated based on the submission of a draft strategic plan. Under this option, the agencies will consider banks’ capacities, business strategies, and expertise, as well as their record of helping to meet the credit needs in its FBAs, and if applicable, RLAs and other geographic areas served.

Data Collection, Maintenance, and Reporting. The final rule does not include new data collection and reporting requirements for small and intermediate banks. Large banks, however, will be required to collect, maintain, and report data on their retail lending, community development financing, and retail banking services and products to facilitate implementation of metrics and benchmarks included in the performance tests.

Transition and Compliance. The final rule is effective April 1, 2024, but banks have until January 1, 2026, to comply with most provisions (e.g., definitions, data collection); reporting requirements will become applicable January 1, 2027, with data to be reported by April 1.

The final rule includes amendments to transition to the CFPB’s Section 1071 Final Rule on Small Business Lending once the data become available. At present there is no effective date attributable to these specific

provisions. Once the availability of Section 1071 data is clarified, the agencies intend to take steps to provide notice in the Federal Register regarding the effective date of the transition amendments.

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