

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DATE: September 14, 2020

TO: Board of Governors

FROM: Governor Brainard

SUBJECT: Advance Notice of Proposed Rulemaking -
Regulation BB (Community Reinvestment Act)

ACTION REQUESTED:

Approval by the Board of the draft advance notice of proposed rulemaking (ANPR) seeking comment on an approach to modernize the Community Reinvestment Act (CRA) regulatory and supervisory framework by strengthening, clarifying, and tailoring the Board's Regulation BB to more effectively meet the core purpose of the CRA. The ANPR builds on ideas advanced by external stakeholders and the three federal banking agencies responsible for implementing and administering the CRA. By putting forward a proposal reflective of extensive stakeholder feedback and providing a long period for comment, the goal is to build a foundation for the banking agencies ultimately to converge on a consistent approach that has broad support among stakeholders.

SUMMARY:

The CRA is a seminal piece of legislation that remains as important as ever in today's circumstances. In consideration of the important changes in the 15 years since the Board's CRA regulation was last substantially revised and the 25 years since the most significant revisions, the ANPR requests feedback on proposals to modernize the CRA regulatory and supervisory framework. The CRA was enacted to address systemic inequities in access to credit as part of a reinforcing set of laws to expand financial inclusion and combat redlining. The proposed revisions are intended to more effectively meet the needs of low- and moderate-income (LMI) communities and address inequities in access to credit. In considering how the CRA's purpose and history relate to the nation's current challenges, the ANPR seeks feedback on what modifications would strengthen the CRA regulation in addressing ongoing systemic inequity in credit access for minority individuals and communities. The proposed revisions promote banks' engagement with their communities, especially LMI communities, strengthen the special

treatment of minority depository institutions (MDIs), and recognize that the Board's CRA and fair lending responsibilities are mutually reinforcing.

In light of changes to banking over time, and particularly the expansion of mobile and online banking, the proposed revisions would update evaluation standards and assessment areas. The proposals seek to increase the clarity, consistency, and transparency of supervisory expectations and standards regarding where activities are assessed, which activities are eligible for CRA purposes, and how eligible activities are evaluated and assessed, while seeking to minimize the associated data burden and tailor collection and reporting requirements. They would tailor CRA supervision of banks to reflect differences across business cycles, bank sizes and business models, and local market needs and opportunities, particularly with respect to small banks serving rural markets.

DISCUSSION:

To advance the CRA's purpose of meeting the broad range of banking needs in LMI communities, the ANPR proposes to assess large banks using a Retail Test and a separate Community Development Test with separate financing and services subtests to support robust bank engagement with their communities through a variety of channels. To tailor assessments for bank size and business models, the ANPR permits small banks to remain under the current framework and proposes that small banks that opt into the new framework only be evaluated on their retail lending activity, unless they also elect to have other activities considered.

Responding to stakeholder calls for greater clarity, consistency, and transparency in how banks are measured and assessed, the ANPR proposes a framework for incorporating standardized metrics into the examination process. The proposed metrics are tailored to take into account the credit needs and opportunities of local communities, such as the unique needs of rural areas. They are informed by existing data and extensive analysis to minimize the risk of unintended consequences and to increase clarity on how the revisions would affect a wide range of banks and communities. To reduce burden and cost, the metrics rely to the greatest extent possible on existing data and tailor additional collection and reporting requirements.

To further increase clarity in what counts in the assessment of CRA performance, the ANPR proposes to increase certainty about what community development activities will qualify with a focus on LMI individuals and communities. The ANPR discusses providing CRA credit for certain unsubsidized affordable housing. It proposes broadening the definition of community

development services to include a wider range of volunteer activities that support local individuals and communities to address the particular needs of rural areas. To provide greater upfront certainty on how activities will be assessed, it proposes the publication of an illustrative but not exhaustive list of qualifying community development activities and the development of a pre-approval process.

To strengthen the CRA's role in financial inclusion, the ANPR proposes special provisions for MDIs and other lenders that focus on low-income and minority communities by creating incentives for majority-owned bank investments in MDIs and giving consideration for MDIs investing in other MDIs and in their own capacity. It also creates incentives for investments in Community Development Financial Institutions (CDFIs) and community development activity in underserved areas, including in Indian Country, and explores whether banks should receive additional consideration for operating branches in banking deserts.

I have reviewed the ANPR, and I am pleased to propose it to the Board for consideration. Attached are a memorandum to the Board and draft ANPR.

Attachments

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

DATE: September 14, 2020

TO: Board of Governors

FROM: Staff¹

SUBJECT: Advance Notice of Proposed Rulemaking –
Regulation BB (Community Reinvestment Act)

ACTION REQUESTED: Approval to publish the attached draft Federal Register advance notice of proposed rulemaking (ANPR) in connection with the Board’s Regulation BB (12 CFR part 228), which implements the Community Reinvestment Act (CRA) (12 U.S.C. § 2901 *et seq.*), to request input on issues relating to potential revisions to the Board’s CRA regulatory and supervisory framework. The ANPR would be published with a 120-day comment period. Staff also requests authority to make technical, non-substantive changes to the attached draft ANPR, as necessary, prior to publication in the Federal Register.

BACKGROUND:

The Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the agencies) implement the CRA through their CRA regulations.² The CRA is designed to encourage regulated financial institutions (banks and savings associations, collectively “banks”) to help meet the credit needs of the local communities in which they are chartered. The CRA regulations establish the framework and criteria by which the agencies assess a bank’s record of helping to meet the credit needs of its communities,

¹ Mr. Belsky, Ms. Killian, Mr. Firschein, Ms. Johnson, and Mr. Patel (Division of Consumer and Community Affairs); Ms. Martin and Mr. Smith (Legal Division).

² See 12 CFR parts 25, 195, 228, and 345.

including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operations.

A. ANPR Objectives and Proposed Reforms

The CRA is a seminal piece of legislation that has helped address inequities in credit access for LMI individuals and communities. To ensure its continued effectiveness, the CRA regulations must evolve with the banking landscape. To this end, stakeholders have provided feedback on modernizing the regulations. Along with general support for the CRA and its goals, common themes include the need for: (1) greater clarity on where banks' activities will be assessed; (2) additional incentives for banks to serve LMI, unbanked, underbanked, and rural communities; (3) greater clarity regarding performance measures and the basis for assigning ratings; and (4) minimizing bank recordkeeping and reporting burden.

Through the ANPR, the Board seeks comment on proposals intended to be responsive to this feedback. The core objectives of the ANPR are:

Address changes in the banking industry: It has been 15 years since the regulations implementing the CRA were last substantially revised and 25 years since the most significant revisions. Since that time, the banking landscape has changed with the growing presence of mobile and online banking. Stakeholders have urged the agencies to respond to these developments. The ANPR proposes ways to modernize CRA assessment areas while still maintaining a focus on more traditional means to provide products and services, such as branches, given their importance to individuals and communities.

Strengthen implementation of CRA's core purpose to meet the wide range of LMI banking needs: Given stakeholder feedback on the importance of both retail and community development activities to the core purpose of the statute, the ANPR proposes assessing large

retail banks using a Retail Test and a separate Community Development Test (each with separate financing and services subtests) to ensure that large retail banks are assessed and separately rated on all of these activities. This approach is intended to support robust bank engagement with communities through a variety of channels. Additionally, the ANPR would retain the focus of small bank evaluations on retail lending, with a focus on how well a bank is serving both LMI individuals and LMI communities.

Promote financial inclusion: To strengthen the CRA's role in financial inclusion, the ANPR proposes special provisions for minority depository institutions (MDIs), women-owned financial institutions, low-income credit unions, and underserved areas. The ANPR requests comment on creating incentives for bank investments in MDIs and Community Development Financial Institutions (CDFIs), and community development activity in geographic areas of need where banks could conduct activities outside of assessment areas, including in Indian Country. The ANPR also explores whether banks should receive additional consideration for operating branches in banking deserts.

Bring greater clarity, consistency, and transparency to tailored performance evaluations: Responding to stakeholders' calls for greater certainty regarding how banks' activities are evaluated and how performance ratings are assigned, the ANPR proposes a framework for incorporating standardized metrics into the examination process. These metrics are tailored to local market conditions, including demand and needs, and adjust to structural economic and business cycle changes.

Tailor performance tests to account for bank size and business models: In response to stakeholder feedback on the importance of tailoring CRA evaluations for bank size, small retail banks would also have the option to have their retail lending activities evaluated under the

current framework or to be evaluated under the ANPR's metrics-based approach. The ANPR proposes to assess small retail banks that opt in solely under a Retail Lending Subtest, unless they elect to have other activities considered. To tailor for business model, wholesale and limited purpose banks would be evaluated only under the Community Development Test.

Recognize the special circumstances of small banks in rural areas: The ANPR provides small banks in rural areas greater clarity and flexibility in defining their assessment areas, tailoring the facility-based assessment area definition based on bank size. The ANPR proposes to provide greater clarity that a small bank would not be required to expand the delineation of an assessment area to include parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances. In addition, the ANPR proposes to revise the definition of community development services to include a wider range of volunteer activities that support local individuals and communities to address the particular needs of rural areas.

Clarify and expand eligible community development activities focused on LMI communities: While retaining a focus on LMI individuals and communities, the ANPR proposes to increase certainty about what community development activities will qualify, including through the publication of an illustrative, non-exclusive list of qualifying activities and a pre-approval process.

Minimize data collection and reporting burden: The ANPR seeks to strike an appropriate balance between providing greater consistency and transparency in how banks are assessed and minimizing the associated data collection and reporting burden. In an effort to reduce burden

and cost, the ANPR proposes metrics that would rely to the greatest extent possible on existing data and tailors additional collection and reporting requirements.

Create a consistent regulatory approach: Stakeholders have expressed strong support for the agencies to work together to modernize the CRA. The ANPR provides an opportunity to put forward a proposal reflective of a broad set of stakeholder views with an appropriately long period for public comment, with the goal of building a foundation for the agencies to develop a shared, modernized CRA framework that has broad support.

B. CRA Statutory Purpose and History

Congress enacted the CRA in 1977 primarily to address economic challenges in predominantly minority urban neighborhoods that had suffered from decades of disinvestment and other inequities.³ Many believed that systemic inequities in credit access – due in large part to a practice known as “redlining” – along with a lack of public and private investment, was at the root of these communities’ economic distress.⁴ Redlining occurred when banks refused outright to make loans or extend other financial services in neighborhoods consisting largely of African-American and other minority individuals, leading to discrimination in access to credit and less favorable financial outcomes even when they presented the same credit risk as others residing outside those neighborhoods. Congress passed the CRA, along with other

³ See Chairman Ben S. Bernanke, Board of Governors of the Federal Reserve System, “The Community Reinvestment Act: Its Evolution and New Challenges” (Mar. 30, 2007), <https://www.federalreserve.gov/newsevents/speech/Bernanke20070330a.htm> (“Public and congressional concerns about the deteriorating condition of America’s cities, particularly lower-income and minority neighborhoods, led to the enactment of the Community Reinvestment Act. . . . Several social and economic factors help explain why credit to lower-income neighborhoods was limited at that time. First, racial discrimination in lending undoubtedly adversely affected local communities. Discriminatory lending practices had deep historical roots.”).

⁴ See, e.g., Michael Berry, Federal Reserve Bank of Chicago, and Jessie Romero, Federal Reserve Bank of Richmond, “Federal Reserve History: Community Reinvestment Act of 1977,” https://www.federalreservehistory.org/essays/community_reinvestment_act (also explaining that other federal and state policies likewise contributed to redlining and additional discriminatory practices).

complementary federal civil rights laws during the late 1960s and 1970s, to address systemic inequities in access to credit and other financial services that contributed to often dramatic differences in economic access and overall financial well-being.⁵

The CRA statute directed the relevant federal financial supervisory agencies to encourage the banks they supervise to safely and soundly meet the credit needs of the communities that they serve, including LMI neighborhoods, and evaluate their record of doing so; take this record into account when evaluating banking applications for a deposit facility; and report to Congress the actions they have taken to carry out their CRA responsibilities. In 1978, consistent with Congress’s statutory directive, the agencies issued the first CRA regulations. The agencies have since amended these regulations twice, in 1995 and 2005 – with the most significant updates taking place in 1995. In addition, the agencies have periodically jointly published the Interagency Questions and Answers Regarding Community Reinvestment to provide guidance on the CRA regulations.

Unfortunately, even with the implementation of the CRA and the other complementary laws, the harmful legacy of redlining and other discriminatory practices too often continues to be felt. In 2016, the “wealth gap [was] roughly the same as it was in 1962, two years before the passage of the Civil Rights Act of 1964[.]”⁶ Consequently, it is critical to take a careful

⁵ See, e.g., Governor Lael Brainard, “Strengthening the Community Reinvestment Act by Staying True to Its Core Purpose” (Jan. 8, 2020), <https://www.federalreserve.gov/newsevents/speech/brainard20200108a.htm>; “The CRA was one of several landmark pieces of legislation enacted in the wake of the civil rights movement intended to address inequities in the credit markets.”

⁶ Dionissi Aliprantis and Daniel Carroll, Federal Reserve Bank of Cleveland, “What is Behind the Persistence of the Racial Wealth Gap” (Feb. 28, 2019), <https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2019-economic-commentaries/ec-201903-what-is-behind-the-persistence-of-the-racial-wealth-gap.aspx>. See also, e.g., The New York Times, “How Redlining’s Racist Effects Lasted for Decades” (Aug. 24, 2017), <https://www.nytimes.com/2017/08/24/upshot/how-redlinings-racist-effects-lasting-for-decades.html> (citing William J. Collins and Robert A. Margo, “Race and Home Ownership from the End of the Civil War to the Present” (Nov. 2010) (“For example, “the black-white gap in homeownership in America has in fact changed little over the last century That pattern helps explain why, as the income gap between the two groups has persisted, the *wealth* gap has widened by much more.”)).

approach to CRA reform. It must remain an effective tool in ensuring that LMI individuals and communities have access to credit and in encouraging community development activities that benefit LMI individuals and communities.

C. Recent Rulemaking

Since issuance of the current regulations, the financial services industry has undergone transformative changes. In September 2018, the OCC published an ANPR to solicit ideas for building a new CRA framework, and more than 1,500 comment letters were submitted. To complement this input, the Federal Reserve System held 30 outreach meetings with representatives of banks, community organizations, and the other agencies, with the Federal Reserve Bank of Philadelphia also hosting a research symposium.⁷ On December 12, 2019, the FDIC and the OCC issued a joint notice of proposed rulemaking. Subsequently, on May 20, 2020, the OCC issued a CRA final rule, retaining the most fundamental components of the proposal but also adjusting some elements to reflect stakeholder input.

DISCUSSION:

This section describes the key proposals advanced by the ANPR in response to stakeholder feedback provided through meetings, roundtables, and comment letters.

A. Assessment Areas

The ANPR presents options to update how a bank's local communities are defined and, as a result, where a bank's CRA performance is evaluated, to take into account the evolution of the provision of financial services while maintaining CRA's nexus with fair lending laws.

⁷ For a summary of the outreach session feedback *see*: <https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf>.

The ANPR first proposes continuing to delineate facility-based assessment areas, including where banks have their main offices and branches. The ANPR solicits feedback regarding proposals related to facility-based assessment areas, including the continued utility of delineating assessment areas around deposit-taking ATMs and whether to delineate assessment areas around loan production offices. The ANPR proposes to tailor the facility-based assessment area definition based on bank size, giving small banks the flexibility to define assessment areas that include partial counties or portions of smaller political subdivisions, including portions of cities or townships, as long as they are composed of at least whole census tracts. Further, as noted above, the ANPR proposes to provide greater clarity that a small bank would not be required to expand the delineation of an assessment area to include parts of counties where it does not have a physical presence and where it either engages in a *de minimis* amount of lending or there is substantial competition from other institutions, except in limited circumstances.

To address the objective of assessing non-branch based banking activity, the ANPR also seeks feedback on the option of adding assessment areas where banks have more than a threshold level of deposits outside of facility-based assessment areas. Sufficiently granular deposit data to support such an approach do not currently exist, although future collection of depositor location data is a possibility. Additionally, the ANPR seeks feedback on the option of adding lending-based assessment areas where banks have a sufficient concentration (either a relative share of their lending or an absolute number) of retail loans in major product lines.

The ANPR also proposes designating nationwide assessment areas for certain banks that deliver their products and services primarily through non-branch means. For these banks, a national assessment area could more accurately and completely reflect their business models compared to current requirements.

B. Overview of Test Framework, Metrics, and Performance Standards

Stakeholder feedback indicated that retail and community development activities are both fundamental to the CRA and essential for meeting the core purpose of the statute. Staff believe that separately evaluating these activities in a Retail Test and a Community Development Test would better ensure that these activities are appropriately taken into consideration. The ANPR proposes a framework for incorporating standardized metrics into the CRA examination process to promote consistency, clarity, and transparency about how banks will be assessed. The current performance evaluation methodology does not utilize standardized metrics; relies on examiner judgment for evaluating retail and community development activities; and could offer more clarity on how much activity is enough to achieve specific performance conclusions and ratings.

The ANPR presents a CRA evaluation framework divided into a Retail Test (composed of a Retail Lending Subtest and a Retail Services Subtest) and a Community Development Test (composed of a Community Development Financing Subtest and a Community Development Services Subtest). The ANPR proposes tailoring these tests based on differences in bank asset size and business models. Additionally, the ANPR seeks feedback on setting the threshold that differentiates between small and large banks at \$750 million or \$1 billion in assets (*i.e.*, above the current small bank asset-size threshold of \$326 million, but below the current large bank threshold of \$1.305 billion).

The ANPR proposes that small retail banks could continue to be evaluated under the current CRA framework but would have the option to be evaluated under the Retail Lending Subtest alone, and could also elect to have their retail services and community development activities evaluated. Large retail banks would be evaluated under all four subtests. Wholesale

and limited purpose banks would be evaluated under the two community development subtests. Any bank would have the option to be evaluated pursuant to an approved strategic plan.

C. Retail Test

1. Retail Lending Subtest

For the Retail Lending Subtest, the ANPR proposes a metrics-based approach for evaluating retail lending activities that is tailored to a bank's major product lines and to the credit needs and opportunities within its assessment area(s). In each assessment area, the ANPR proposes focusing on overall retail lending relative to overall retail deposits and loan count-based distribution metrics – to provide a window into lending in LMI geographies (*i.e.*, geographic distribution) and to LMI, small business, and small farm borrowers (*i.e.*, borrower distribution) – for major retail lending product lines.

Although geographic distribution and borrower distribution are considered in current CRA examinations, there are no existing standards correlating these measures to performance conclusions. The ANPR offers specific thresholds for banks to meet on both the geographic and the borrower distribution metrics, which reflect data specific to each assessment area and local economic conditions over time, for the purpose of earning a presumption of “satisfactory” retail lending performance. The ANPR also proposes providing an online portal with dashboards displaying target thresholds and a bank's performance relative to those thresholds, to help banks track their retail lending performance relative to CRA performance expectations.

a. Retail Lending Screen

The ANPR proposes using a retail lending screen that would determine whether a bank should be eligible for a metrics-based evaluation of retail lending that could result in a presumption of “satisfactory” or should, instead, be evaluated subject to examiner discretion,

guided by examination procedures, as a result of having relatively low levels of retail lending in an assessment area.

b. Retail Lending Distribution Metrics

i. Distribution Metrics Overview

- Geographic Distribution Metric. This component would be used to measure the percentage of a bank's loans made to borrowers in LMI census tracts. For each assessment area, examiners would separately calculate the geographic distribution metric for each of a bank's major product lines by dividing the total number of the bank's originated or purchased loans in LMI census tracts by the total number of its originated or purchased loans for that major product line in that assessment area.
- Borrower Distribution Metric. This component would be used to measure the distribution of a bank's loans to borrowers of different income and revenue levels. For each assessment area, examiners would separately calculate the borrower distribution metric for each of the bank's major product lines by dividing the total number of a bank's originated or purchased loans for each major product line to, as applicable, LMI borrowers, small businesses, or small farms by the relevant total number of its originated or purchased loans for that major product line in that assessment area.
- If a bank meets the thresholds for both distribution metrics for all of its major product lines in an assessment area, it would receive a presumption of "satisfactory" retail lending performance.

ii. Measuring Performance Using Loan Counts

The ANPR proposes using loan counts, rather than dollar volume, in the geographic and borrower distribution metrics to best capture the importance and responsiveness of smaller dollar

loans to the needs of LMI borrowers and smaller businesses and farms. In addition, using loan counts would treat different-sized loans equally within product categories.

c. Use of Threshold Levels for Distribution Metrics for Presumptions and Recommended Ranges

The ANPR proposes an approach for determining the Retail Lending Subtest conclusions for bank assessment areas. If a bank's retail lending performance in an assessment area qualifies for a presumption of "satisfactory" performance, examiners' review of qualitative factors could not contradict that presumption, in the absence of discrimination or other illegal credit practices. Use of a presumption would give banks greater *ex ante* certainty and promote consistency.

Additionally, the ANPR proposes using the distribution metrics and performance ranges to determine for each bank assessment area: (1) for banks that receive the presumption, whether they should receive a recommended performance conclusion of "outstanding" instead of "satisfactory"; and (2) for banks that do not receive the presumption, whether they should receive a recommended performance conclusion of "substantial noncompliance," "needs to improve," "satisfactory," or "outstanding." Examiners would consider a bank's recommended performance conclusion in an assessment area in conjunction with a targeted set of qualitative factors to reach a final performance conclusion.

2. Retail Services Subtest

For retail services, which do not readily accommodate a metrics-based approach, the ANPR proposes a largely qualitative approach that is intended to provide greater standardization and transparency to evaluate the core aspects of retail services. This subtest would apply only to

large banks. Specifically, the ANPR proposes evaluating these banks': (1) delivery systems, including branches and non-branch systems; and (2) deposit products.

The delivery systems component would include an evaluation of the distribution of a bank's branches, branch-based services (*e.g.*, payroll and check cashing services), and non-branch delivery channels, to recognize the importance of branches, particularly for LMI communities, while crediting other delivery channels that promote accessibility and usage. The proposed evaluation methodology is primarily qualitative, but it would leverage a transparent and consistent set of quantitative benchmarks to evaluate a bank's branch distribution.

The deposit products component would include an evaluation of a bank's deposit products (*e.g.*, checking accounts), focusing on those products tailored to meet the needs of LMI individuals. This approach would elevate the focus on deposit products offered and the degree to which they are available and responsive to the needs of LMI individuals and areas.

3. Retail Test Eligible Activities

The ANPR seeks feedback regarding what activities should qualify in evaluating retail lending and retail services performance. Among the issues raised are:

- *What retail product lines should be considered in the retail lending distribution metrics.*

Small banks are currently evaluated only on major product lines, but large banks are evaluated on all home mortgage, small business, and small farm lending. Consumer lending is currently considered only at the option of a bank or if these loans constitute a substantial majority of the bank's business. The ANPR discusses how to define major product lines (*e.g.*, 15 percent or more of a bank's retail lending in a particular assessment area during an evaluation period) when using the distribution metrics and discusses whether to use a major product line screen for all banks and for all retail lending products. Additionally, the ANPR

proposes applying the metrics-based approach to home mortgage, small business, and small farm lending at the category level, while evaluating consumer lending at specific sub-category levels (motor vehicle, credit card, other secured consumer loans, other unsecured consumer loans).

- *Whether to update the “small business” and “small farm” thresholds.* Adjusting the loan size thresholds for inflation would raise the maximum loan amount from \$1 million for small business loans to approximately \$1.65 million and from \$500,000 for small farm loans to approximately \$800,000. An inflation adjustment for the gross annual revenues of the borrowing small business or small farm would raise the thresholds from \$1 million or less in gross annual revenues to approximately \$1.65 million.
- *Whether to provide expanded eligibility for retail loans in Indian Country.* Currently, a retail activity located within Indian Country must also satisfy additional Regulation BB eligibility criteria (e.g., a retail loan must be inside a bank’s assessment area). The ANPR proposes that qualitative aspects of a bank’s performance would include review of any retail activity conducted in Indian Country, including loans to low-, moderate- and middle-income borrowers. It also proposes to extend eligibility to retail activities in Indian Country located outside of a bank’s assessment area(s) if a bank satisfies the needs of its assessment area(s).

D. Community Development Test

The Board is proposing a new Community Development Test that would include a Community Development Financing Subtest and a Community Development Services Subtest. As noted above, the Community Development Test would apply only to large retail banks and wholesale and limited purpose banks in order to tailor performance expectations by bank size.

1. Community Development Financing Subtest

In order to increase clarity and consistency, the ANPR proposes a transparent and predictable metrics-based approach to evaluating community development financing activities that is tailored to the community development needs and opportunities within an assessment area. Additionally, the ANPR proposes combining consideration of community development loans and qualified investments, including originations, purchases, and activities held on the bank's balance sheet from a previous year, into one metrics-based Community Development Financing Subtest – a departure from the current assessment under separate and more generalized lending and investment tests.

The ANPR discusses how this would give banks more flexibility to provide the type of financing – loans or investments – most responsive to local community needs without concern about meeting different examination criteria. Additionally, giving similar treatment to community development loans and qualified investments would more effectively encourage patient capital by allowing banks to receive CRA credit for extending and maintaining long-term debt or equity financing, whereas the current treatment of community development lending creates an incentive to rollover multiple short-term loans.

The ANPR proposes a community development financing metric that is the ratio of a retail bank's community development financing dollars relative to retail deposits.⁸ Specifically, the numerator of the community development financing metric would be a retail bank's average annual dollars of community development lending or investments in a given assessment area. The ANPR also proposes to continue to evaluate important qualitative factors such as

⁸ Wholesale and limited purpose banks, whose business models generally do not involve retail deposit accounts, would be evaluated under separate examination procedures that would not involve retail deposits.

responsiveness together with the community development financing metric to account for the heterogeneity in this form of financing and in its impact. For the denominator, the ANPR proposes that a retail bank's average annual dollar amount of deposits within a given assessment area would be the most appropriate measure for its financial capacity, as it aligns with the CRA's intent that a bank meet the credit needs in the communities where it conducts business.

a. Setting Thresholds for the Community Development Financing Metric

The ANPR proposes using local and national data to create points of comparison for the community development financing metric that are tailored to each assessment area. These comparison points ("benchmarks") would inform how the value of a bank's community development financing metric in a specific assessment area should correspond to a certain performance conclusion in a way that is tailored to local and national conditions.

The ANPR proposes to establish one local and one national benchmark for each assessment area. The use of these separate benchmarks calibrated to local and national conditions could help to account for factors that affect the level of community development financing activity, including local and national business cycles, the availability and capacity of community development financing partners, and the presence of other financial institutions. The local benchmark would be based on banks' aggregate community development financing activity compared to deposits within a bank's assessment area. The national benchmark would be based on banks' community development financing activity compared to deposits nationwide, calculated for all metropolitan or all nonmetropolitan areas, as applicable.

b. Use of the Community Development Financing Metric

To provide greater clarity, consistency, and transparency regarding assigning CRA conclusions and ratings, the ANPR discusses using the national and local community

development financing benchmarks for purposes of granting a presumptive conclusion of “satisfactory” performance, similar to the proposed Retail Lending Subtest. Under a presumption approach, if a bank’s community development financing metric surpasses a certain threshold, the bank could be presumed to have achieved at least “satisfactory” performance. Examiners would evaluate qualitative factors to determine whether a bank that surpasses the threshold should receive a “satisfactory” or “outstanding” performance conclusion, or to determine the appropriate rating for a bank that does not meet the “satisfactory” threshold.

The ANPR also explains that, in light of data limitations, it might be necessary, at least initially, to treat the thresholds as a general guideline to help evaluate a bank’s community development financing metric rather than to create a presumption of “satisfactory” performance. Under this alternative, surpassing a threshold would be taken into consideration, but would not on its own grant a presumption of a specific performance conclusion.

c. Use of Multipliers in the Community Development Financing Metric

The ANPR discusses the option of differentially weighting certain loan categories and investment activities in calculating this metric in order to account for perceived differences in responsiveness and impact. Although weighting could address concerns that some highly responsive and impactful smaller-dollar financing would not be adequately reflected in the metric, it could also mask the sizable variation in the responsiveness and impact of community development financing activities between different assessment areas.

d. Use of “Impact Scores” with the Community Development Financing Metric

Instead, the ANPR proposes the potential use of “impact scores”: examiners could assign a score to a bank’s community development financing activities based upon their assessment of

its understood impact. The impact score for an assessment area would be evaluated together with the community development financing metric to develop a performance conclusion.

e. Use of Supplementary Metrics with the Community Development Financing Metric

The ANPR also considers the potential use of supplementary metrics to complement the community development financing metric. With more complete community development data collection, the Board could develop supplementary metrics to help examiners better evaluate the impact of a bank's activities.

2. Community Development Services Subtest

Under Regulation BB, "community development services" are bank volunteer activities that have community development as a primary purpose and are related to the provision of financial services or other associated professional expertise (*e.g.*, information technology).

The ANPR proposes a Community Development Services Subtest as a way to focus a bank's attention on community development services while also providing greater transparency and predictability in performance evaluations. Separately assessing and assigning community development services conclusions would facilitate a focus on these services and underscore their critical importance for fostering partnerships among different stakeholders, building capacity, and creating the conditions for effective community development.

Specific to the proposed Community Development Services Subtest, the ANPR also discusses various options to broaden consideration of community development services in order to promote participation in such activities. One option would be to allow for the consideration of volunteer activities in rural areas that do not involve the provision of financial or related services (*e.g.*, helping to build affordable housing). The ANPR also proposes providing incentives for a bank's participation in beneficial civic and other non-profit activities (*e.g.*, serving on a board of

a civic institution) that may not have a primary purpose of community development in rural areas, where community development capacity is limited. Additionally, the ANPR seeks feedback on allowing banks to receive community development credit for certain activities (*e.g.*, financial literacy programs and home ownership counseling) even where such activities do not primarily benefit LMI individuals.

3. Community Development Test Qualifying Activities and Geographies

In addition to discussing options to potentially broaden consideration of community development services, the ANPR also proposes potential revisions to Regulation BB's community development definition, as well as eligible geographic categories, to improve clarity and predictability.

a. Community Development Definition Subcomponents

Affordable Housing. Recognizing the importance of subsidized and unsubsidized affordable housing to LMI individuals, the ANPR proposes potential revisions to the affordable housing definition. This includes clarifying the consideration of subsidized affordable housing, defining and incorporating consideration of unsubsidized affordable housing, providing *pro rata* consideration for mixed-income projects, and defining affordable housing activities that could be considered particularly responsive to the needs of LMI individuals and communities (*e.g.*, proximity to public transportation).

Community Services. Community development includes “community services,” which are general welfare activities for which the primary purpose, mandate, or function is serving or assisting LMI areas and individuals (*e.g.*, homeless shelters, youth programs). The ANPR

proposes revising the existing definition to add greater clarity, including by providing greater guidance on how to determine whether a community service is targeted to LMI individuals.

Economic development. CRA activities qualified through Regulation BB's economic development prong provide key support for small businesses and small farms, while also providing incentives for other types of important assistance to business development efforts. The ANPR proposes options to revise the regulation's economic development definition by improving its overall clarity and functionality in order to better encourage activities most supportive of small businesses and small farms. In particular, the ANPR explores options that would qualify more financing while ensuring that it supports the core tenets of the CRA. The ANPR also seeks feedback on how to encourage economic development activity that benefits the smallest business, smallest farms, and minority-owned small businesses.

Revitalization and Stabilization. Currently, Regulation BB identifies three qualified geographies for revitalization and stabilization activities: LMI areas; distressed or underserved nonmetropolitan middle-income geographies; and designated disaster areas. Given the complexity of the existing definition, the Board is examining approaches to provide more detail in the regulation on which activities qualify in targeted geographies *and* to simplify the definition overall. To achieve this, the ANPR seeks to clarify the treatment of activities that attract or retain residents or businesses across each of the eligible targeted geographies. In addition, the Board is exploring whether the list of relevant activities related to disaster recovery should be expanded to include disaster preparedness and climate resilience. The Board is also considering how best to determine eligibility for infrastructure, community facilities, and other large-scale projects in a way that retains a strong connection between these projects and meeting the needs of these communities. In addition, the ANPR also proposes options for clarifying how to

demonstrate that activities meet a required standard of qualification as a revitalization or stabilization activity.

b. MDIs and other Mission-Oriented Financial Institutions

Banks Focused on Low-Income and Minority Communities. The ANPR recognizes and seeks to emphasize the importance of MDIs, women-owned financial institutions, and low-income credit unions in providing financial access to low-income and minority consumers and communities. Congress also recognized and included special consideration for these financial institutions in the CRA statute.

The ANPR proposes broadening CRA consideration in connection with MDIs by defining MDIs as either minority-owned, as is currently the case, or minority-serving. Additionally, the ANPR discusses considering a bank as an MDI if a majority of its board of directors is minority or the communities it serves are predominately minority.

Currently, only majority-owned banks can receive CRA consideration for investing in MDIs, women-owned financial institutions, and low-income credit unions. The ANPR proposes the option of also allowing MDIs and women-owned financial institutions to receive CRA credit for such investments. Additionally, the ANPR proposes the option of providing incentives for bank investments in these mission-oriented financial institutions by making such activities a contributing factor toward earning an “outstanding” performance rating. The ANPR also proposes the option of allowing MDIs and women-owned financial institutions to receive CRA consideration for retained earnings that are internally reinvested.

CDFIs. The ANPR explores how to provide incentives for the use of high-impact intermediaries that help extend the reach of CRA investments. Within eligible geographies, the ANPR proposes granting automatic CRA community development consideration for qualified

activities in conjunction with U.S. Department of the Treasury-certified CDFIs. The ANPR also seeks feedback on the option of extending to CDFIs the status corresponding to that extended to MDIs, women-owned financial institutions, and low-income credit unions, which would effectively give banks CRA consideration for loans, investments, or services in conjunction with a CDFI anywhere in the country. This could help encourage more investment and lending in underserved parts of the country.

c. Mechanisms to Provide Additional Certainty about Eligible Activities

The ANPR proposes different mechanisms for providing greater *ex ante* certainty regarding qualification of CRA activities, particularly community development activities. One means would be through clarifications included in the regulation, although this alone is not likely sufficient. Accordingly, the ANPR proposes publication of an illustrative, non-exhaustive list of activities that meet requirements for CRA consideration and also discusses establishing a pre-approval process for activities.

d. Broader Geographic Areas for Community Development Activities

To provide greater clarity regarding where community development activities are eligible for CRA consideration, the ANPR proposes to allow broader consideration of bank community development activities outside of assessment areas. This would also help to address CRA “hot spots”⁹ and “deserts,”¹⁰ as banks might consider deploying resources more broadly to underserved areas outside of assessment areas if they were confident about CRA eligibility.

The ANPR proposes an approach that would consider community development activities anywhere within states, territories, or regions (multistate areas) where a bank has at least one

⁹ CRA hot spots are areas where large numbers of banks concentrate CRA and other banking activities in the same, relatively small number of localities.

¹⁰ CRA deserts are areas with little bank presence and corresponding lesser availability of banking products and services and community development activities.

facility-based assessment area. In addition, the ANPR proposes designating geographic areas of need where banks could also conduct activities.

E. Strategic Plans

The ANPR proposes to amend the strategic plan option to provide more clarity, flexibility, and transparency regarding: strategic plan development; standards to assess activities that are tailored to different business models and communities; and the communities in which those activities will be assessed. For example, the ANPR seeks feedback on providing increased flexibility for strategic plan banks in delineating assessment areas.

F. Ratings

The ANPR also proposes options for greater transparency and consistency in assigning ratings for the Retail Test and the Community Development Test and for an institution's performance overall. Specifically, the ANPR proposes that ratings would be grounded in performance in a bank's local communities, and offers a standardized and transparent process for assigning ratings for each statutorily required level (state, multistate metropolitan statistical area, and institution).

Given CRA's emphasis on retail credit, the Retail Test would be weighted slightly more than the Community Development Test to determine overall institution ratings, where applicable. The ANPR also seeks to ensure that a bank's performance in all applicable geographic areas, including smaller rural assessment areas, is appropriately factored into ratings. In addition, the ANPR proposes assigning a bank's overall rating on the Retail Test by using a weighted average of each of a bank's assessment area-level conclusions. The ANPR also seeks feedback on ways to develop ratings for small retail banks in instances where such a bank opts to have its retail

services and community development activities considered in addition to its retail lending activities.

Additionally, the ANPR proposes retaining the practice that if examiners determine that a bank has engaged in discriminatory or illegal credit practices – including violations of relevant consumer laws and regulations enacted or implemented since Regulation BB was last substantively updated – a ratings downgrade could occur at the institution level.

G. Data Collection and Reporting

The ANPR discusses the data collection and reporting impact of the proposed approaches, and how to implement these in a manner that would minimize regulatory burden. The ANPR also seeks feedback on how to balance the potential trade-off between the clarity and consistency of metrics-based approaches and the additional data collection and reporting that may be necessary to implement these approaches. As part of this emphasis, the ANPR prioritizes approaches that would exempt small banks from deposit and certain other data collection and reporting requirements that could apply to certain large banks.

1. Collection and Reporting of Deposit Data

The Retail Lending Subtest's and the Community Development Financing Subtest's metrics-based approaches are designed to increase certainty and transparency, and the ANPR proposes to implement these approaches using existing data where possible. To minimize related burden for small banks and certain large banks, the ANPR proposes the option of using FDIC Summary of Deposits data to measure the dollar amount of deposits assigned to branches within a bank's assessment area as the denominator. However, as that data is not based on the actual address of retail depositors, the ANPR seeks feedback on options for large retail banks with multiple assessment areas and a substantial share of deposits taking place outside of assessment

areas. For example, only these large banks could collect and report annually the dollar amount of retail deposits held on behalf of depositors residing within each assessment area.

2. Tailoring Retail Lending Data Options for Small Banks

For small banks that opt in to this evaluation approach, the ANPR discusses two options for implementing the proposed Retail Lending Subtest. The first option would involve using a sample of bank data drawn from each assessment area to generate the retail lending metrics for small bank evaluations. This approach could use information maintained by the bank in its internal operating systems and could supplement it with information pulled from loan files, similar to the process used today. A drawback to this approach is that it would not allow a small bank to obtain the certainty and clarity of tracking its performance in advance of an examination.

The second option would involve requiring these small banks to maintain income or revenue information only to the extent that it is used in a bank's underwriting process, and would allow this to be in a format consistent with the banks own internal operating systems. A key benefit of this option is that it would provide a bank with certainty about the loans considered in the evaluation and, as a result, would allow it to track its performance using a dashboard to monitor its retail lending performance against the threshold for a presumption of "satisfactory" performance. A drawback to this option is that any small bank that uses, but does not currently capture, revenue or income information in the credit extension process would need to update its systems and processes to capture this information.

3. Large Bank Data Reporting

Much of the retail lending data needed to examine a large bank under the proposed Retail Lending Subtest is currently collected and reported (additional home mortgage lending data for non-Home Mortgage Disclosure Act reporters would be needed). The ANPR discusses whether,

under a Retail Lending Subtest focused upon major product lines, large banks should also be required to collect consumer lending data. The ANPR also discusses alternative options for large bank consumer lending data (*e.g.*, having examiners sample banks' data or having banks collect the data in their own format).

Currently, large banks must report the total number and amount of new community development loans originated and purchased, but there are no data collection, maintenance, or reporting requirements for longer-term community development loans maintained on a bank's books. Furthermore, large banks do not collect or report any data for qualified investments. The ANPR discusses the need for this additional data to promote consistency and certainty in a metrics-based Community Development Financing Subtest. In order to develop the local benchmarks and the community development financing metric, large banks would need to report annually the dollar amount, number, and location of community development loans originated and investments made, as well as the dollar amount, number, and location of community development loans and qualifying investments from previous years that remain on the banks' balance sheet. The ANPR also considers the development of a Board-prescribed, machine-readable format to ensure a consistent and transparent process for collecting community development financing data.

Conclusion:

Based on the foregoing, staff recommends that the Board approve the attached draft ANPR with a 120-day public comment period. Staff also requests authority to make technical and non-substantive changes to the attached materials to prepare them for publication in the Federal Register.