Comment period and where to comment

The comment period started on January 9, 2020 and runs to April 8, 2020.

Office of the Comptroller of Currency (OCC):

- *https://www.regulations.gov/* Enter "Docket ID OCC-2018-0008" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.
- E-mail: *cra.reg@occ.treas.gov*.
- Mail: Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.
- Fax: (571) 465-4326.

Use the title "Community Reinvestment Act Regulations" You must include "OCC" as the agency name and "Docket ID OCC-2018-0008" in your comment.

Federal Deposit Insurance Corporation (FDIC):

- **Website:** http://www.fdic.gov/regulations/laws/federal/propose.html.
- **E-mail:** Comments@fdic.gov. Include the RIN 3064-AF22 on the subject line.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

All comments must include the agency name and RIN 3064-AF22 for this rulemaking.

All comments received will be posted without change to http://www.fdic.gov/regulations/laws/federal/propose.html, including any personal information provided.

Commenting on regulations is not lobbying.

The Council on Foundations uses the term “advocacy” as an umbrella term for all types of engagement with policymakers (including elected and appointed officials and their staff) that is not specifically considered lobbying under the IRS definition (see Treasury Regulations, Section 53.4911-2 and 53.4945-2).

In general, lobbying is considered to be any activity that attempts to influence or expresses a view about specific legislation.

DIRECT LOBBYING

Direct lobbying is the attempt to **influence specific legislation** by expressing a view on that legislation via direct communication with a Member of Congress, Congressional staff, or any other government official or employee who is involved in the policymaking process.

GRASSROOTS LOBBYING

Grassroots lobbying is the attempt to influence specific legislation via communication with any segment of the general population, where that communication encourages the recipient to take action with respect to that legislation. Community and public foundations can engage in lobbying activities, so long as it comprises an “insubstantial” amount of the organization’s total activities (which is defined rather generously by the IRS; see rules for community and public foundations). Private foundations may not engage in lobbying, except for cases of self-defense (see rules for private foundations).

If advocacy is everything except lobbying, then **what is *not considered* lobbying?** The answer is, a lot. Some activities that are not lobbying might include:

- ***Sharing information about your foundation’s work.*** Your work impacts the lives of elected officials’ constituents. They want to hear from you about the work you are doing to improve and strengthen your shared communities.
- ***Discussing broad social, economic, or other issues.*** Foundations possess a wide range of expertise across countless issues that impact our society and economy. You are the experts who are working to address these issues in your communities every day. Your policymakers want to hear from you about the status of these issues, and your approach to solving them.
- ***Sharing a nonpartisan analysis, study, or research.*** Policymakers need fair and balanced information to inform their approach to drafting policies and legislation. If your foundation has commissioned or conducted a study or analysis that includes a sufficiently full and fair discussion of the facts impacting the issue, sharing this work is a permissible advocacy activity.
- ***Co-hosted events, or jointly funded projects.*** Co-hosting a convening that brings stakeholders together from across the sector can be a valuable way to connect and innovate for solving the issues that impact your communities.

- ***Engagement in regulatory affairs*****.** *Regulations are not considered specific legislation. Submitting comments on a proposed rulemaking that would impact your work is a permissible advocacy activity your foundation could engage in.*
- ***Self-defense communications.*** This type of activity is the exception to limitations on lobbying. *Both* public charities and private foundations are permitted to attempt to influence specific legislation that would affect your organization's existence, tax-exempt status, powers and duties, or the deductibility of contributions to your organization.

A little background on the origins of this re-write of the CRA

- Comptroller Otting was chief executive of OneWest Bank owned by an investment group led by Steven Mnuchin.
- In 2015, CIT Group was allowed to acquire OneWest. Community groups protested on grounds that OneWest was not meeting its CRA obligations. They sought commitments for increased investment.
- These rules are being written to protect bankers from similar demands.
- In the advanced notice of proposed rule making, of the 1,500 comments, 1,000 pushed back against the one ratio—Mr. Otting's signature proposal. It made it into this NPRM all the same.

Already a low bar

- On average, more than 97 percent of banks get passing grades, and the government has rarely exercised its power to prevent banks with poor records from expanding or acquiring rivals.
- If 97% banks pass the CRA exam and there are no consequences for failing, why is this NPRM making the exam easier?

What needs to be addressed

- More than four decades after the law took effect, many lower-income neighborhoods remain credit deserts. In 2020, too many struggling neighborhoods—and communities of color—cannot access capital and basic financial services.
- THAT is THE problem.
- This proposal does nothing to fix it.

Prudential Regulators

Responsibility for supervising the compliance of the nation's roughly 5,200 banks is divided among three different agencies.

- The Office of the Comptroller of the Currency supervises most large banks, which make about 70 percent of the loans covered by the law.
- Supervision of the remaining banks, mostly smaller, is divided between the Federal Deposit Insurance Corporation and the Federal Reserve.

All Regulators not on board

- The OCC and FDIC are pushing the proposed changes. But the Fed has withheld its support.
- Lael Brainard, a Fed governor, criticized details of the proposal in a speech at the Urban Institute and urged, "It is much more important to get reform right than to do it quickly."
- FDIC Board member Marty Gruenberg call this proposal, "deeply misconceived" that would "fundamentally undermine and weaken the Community Reinvestment Act."
- Those backing Mr. Otting's proposal should be asking themselves if this proposal will outlast Mr. Otting.
- Consumer Bankers Association, January 13, 2020 , "the crucial need for uniform interpretation and enforcement of the CRA statute by the OCC, FDIC, and Federal Reserve by encouraging all three banking regulators to develop and implement a uniform set of regulations."

While the Federal Reserve has not published any rule, their thought process appears sounder than the OCC's. Ms. Brainard, of the Fed, says that the Fed carefully examined bank lending under the current law in the last 15 years, seeking to fashion new rules that would promote lending, particularly during economic downturns. The Fed's approach also would preserve an emphasis on keeping branches open and making small-dollar loans.

The rationale for OCC/FDIC proposal:

To improve the current CRA regulatory framework and promote increased lending and investment consistent with stakeholder feedback, the agencies propose to make changes in four key areas:

1. clarifying and expanding what qualifies for CRA credit;
2. expanding where CRA activity counts;
3. providing an objective method to measure CRA activity; and
4. revising data collection, recordkeeping, and reporting.

Devil is in the details.

Clarifying what qualifies for CRA credit

The proposal would

(1) establish clear criteria for the type of activities that qualify for CRA credit, which generally would include activities that currently qualify for CRA credit and other activities that are consistent with the purpose of CRA but may not qualify under the current CRA framework;

(2) require the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities; and

(3) establish a process for banks to seek agency confirmation that an activity is a qualifying activity.

Analysis

- Currently: Community development is affordable housing for LMI households, economic development focused on small businesses under $1 million in revenue, community facilities and the revitalization and stabilization of LMI communities.
- Proposal: Deletes economic development, revitalization, stabilization from the definition of community development.
- It introduces criteria that will dilute the focus on LMI communities. For example, essential infrastructure, transportation, stadiums.
- Stadiums never were and never will be redlined.
- It includes community development financing that partially instead of primarily benefits LMI households.
- Deposit accounts and other bank services would no longer be considered qualifying activities. Deposit accounts provide a safe and affordable place for LMI customers to store their money and is the first essential step to establishing a banking relationship. Deemphasizing bank services in LMI communities make them more dependent on check cashers and other high cost fringe services.
- It excludes consideration of home lending in LMI communities.
- It raises the threshold for what counts as a small business from $1 million to $2 million in revenue.
    - While 95% of small businesses have revenues under $1 million, CRA credit is granted to businesses of $2 million in assets.
- It applies a multiplier to almost all community development activities except purchasing Mortgage Bank Securities (MBS) and municipal bonds.
    - *A multiplier can result in less financing, which even a question on the NPRM acknowledges*
- There is allowance for affordable housing to middle-income people in high cost areas. This will divert too much financing away from LMI affordable housing, especially in high cost areas.

- The agencies will now allow naturally occurring affordable housing (NOAH) to be affordable housing. NOAH is rental housing in which LMI households would have to pay no more than 30% of 80% of area median income on monthly rent. The agencies need to consider how to make sure LMI households actually occupy the units.
- The definition of community development is relaxed in the case of Opportunity Zones—the program lacks documentation or data to specify who benefits from the financing In fact, the NPRM would allow "athletic stadiums" to be financed in LMI tracts.
- Opportunity Zones legislation does not say the investments funded by the new tax break have to produce housing that's affordable to low and moderate income residents, or create jobs that are accessible and pay living wages for Opportunity Zone residents.
- Gives banks CRA credit for investing in Opportunity Zone projects.
- It creates a new category of tracts called underserved areas that are middle-income tracts with low population levels and without easy access to branches.

Concerns

- Assumed in the need to clarify what qualifies for CRA credit is that banks still don't know CRA.
- Credit cards, auto loans as well as high cost subprime loans now qualify for CRA credit.
- **This proposal allows banks to turn their attention away from LMI communities.**
- No two communities are alike. From neighborhoods, to cities, to counties, or even states. No two financial institutions are alike. From size, to structure, to means of serving, to communities they serve. No two regulators are alike. Take this NPR. Federal Reserve is not on board. No two regulators are alike. How can someone sitting in DC tell a bank what does and does not qualify for CRA activities?

QUANTIFYING the Qualifying Activities

Qualifying loans On balance sheet $ value For at least 90 days And CD investments (some * 2)	+	25% of the origination value of qualifying loans sold within 90 days of origination	+	CD Services & Monetary and in-kind donations

A community invested bank would have to make far more small dollar mortgage loans versus a community distanced bank who could make a few large dollar mortgages and create a value that it chooses to attain.

- A community invested bank would have to make far more small dollar loans.
- A community distanced bank could make a few large dollar loans.
- Playing field just got uneven. No incentives to stay invested.

Expanding where CRA activity counts

The proposal would preserve assessment areas surrounding banks' facilities and expand where CRA activity counts to help banks meet the needs of their communities. To ensure that CRA activity continues to have a local community focus where banks maintain a physical presence and conduct a substantial portion of their lending activity, banks would still be required to delineate assessment areas around their main office, branches, or non-branch deposit-taking facilities as well as the surrounding areas where banks have originated or purchased a substantial portion of their loans. These areas would be identified as "facility-based" assessment areas.

In addition, to recognize the evolution of modern banking (including the emergence of Internet banks), the fact that many banks receive large portions of their deposits from outside their facilities-based assessment areas, and in conformity with the CRA's intent to ensure that banks help meet credit needs where they collect deposits,19 the proposed rule would require banks to delineate additional, non-overlapping "deposit-based" assessment areas where they have significant concentrations of retail domestic deposits.

Specifically, a bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas would be required to delineate deposit-based assessment areas where it receives five percent or more of its total retail domestic deposits, based on the physical addresses of its depositors.

Analysis

- Presently, CRA exams define assessment areas as geographical areas including bank branches and where a substantial amount of lending activity occurs.
- Proposal creates a "facility-based" AA and a "deposit-based" AA.
- In designating deposit based AAs, the bank would be required to establish these AAs if more than 50% of the bank's deposits were collected beyond branch networks.
- The bank would be required to designate additional geographical areas as AAs if 5% or more of their deposits came from these area(s).
- The proposal is not fully developed and may exacerbate credit deserts.
- Data is not currently collected in an accurate manner concerning deposits that are generated through non-branch means. Banks now arbitrarily assign deposits collected via the internet to branches.
- There is no data analysis estimating how many banks the new AA procedure would apply to and how many additional AAs would be created.
- 5% of a bank's deposits is too high of a bar.
- Many rural counties/small cities may not qualify for AA status (for very large banks).
- Likely exacerbate the problem of credit and banking deserts.

- Currently, there are procedures for banks to receive credit outside of their AAs in statewide and regional areas after they have demonstrated they have been responsive to needs in their AAs.

Concerns

- Allowing banks to serve areas outside their AAs will encourage banks to gravitate to national level intermediaries that can put together the largest deals instead of locally-based CDFIs and other nonprofits on smaller deals directly responsive to the needs in their localities.
- Banks would only need to reach satisfactory CRA performance in half of their assessment areas.
- Eligible activities are **no longer required to primarily benefit low- and moderate-income communities**. This proposal provides for expanded CRA activities that "partially" benefit low- and moderate-income individuals.
- Diluting CRA obligation is one way to get rid of it I suppose. Take two areas in the city of Wilmington: Eastside and Riverfront. Where are there more investments? Riverfront. Now expand the area to include Pennsylvania, New Jersey, and Maryland. Is Delaware an eastside or the Riverfront?
- Expanded areas include distressed or underserved tracts. In the state of Delaware, according to FFIEC, there are no distressed or underserved tracts.
- The statutory purpose "reinvest in communities where they collect deposits" of 1977 did not envision the disinterest in collecting deposits from the LMI people and communities.
- **2017 FDIC National Survey of Unbanked and Underbanked Households**
    - Estimates from the 2017 survey indicate that 6.5 percent of households in the United States were unbanked in 2017. This proportion represents approximately 8.4 million households. An additional 18.7 percent of U.S. households (24.2 million) were underbanked, meaning that the household had a checking or savings account but also obtained financial products and services outside of the banking system.

Providing an objective method to measure CRA activity

The new general performance standards would assess two fundamental components of a bank's CRA performance:

(1) the distribution (i.e., number) of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies and

(2) the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits.

Presumptive Ratings

CRA Evaluation (Average of a bank's annual assessment area)	Retail Lending Distribution at AA level for major line at bank level (15% of dollar volume of loans originated) Pass or Fail test	Community Development minimums	Presumptive Rating
11%	Established thresholds for all retail lending distribution test (at least 20 loans) in assessments area	Quantified value in AA divided by average AA retail deposits =2%	Outstanding
6%	Meets established thresholds	Quantified value in AA divided by average AA retail deposits =2%	Satisfactory
3%			Needs to improve
Below 3%			Substantial non compliance

Presumptive CRA Rating at the Bank Level in 50% of its assessment area and deposit assessment area where it holds more than 5% of its deposits.

$$\frac{\text{Annual Qualifying activities value[1]}}{\text{Average quarterly retail domestic deposits}} + 0.01 \left\{ \frac{\text{Branches in specified areas}}{\text{total branches}} \right\}$$

Outstanding	11% and up
Satisfactory	6%
Needs to Improve	3%
Substantial noncompliance	<3%

Branches: 1% if 100% branches in specified areas. Not enough of an incentive.

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[1] Qualifying loans On balance sheet $ value For at least 90 days And CD investments (some * 2) + 25% of the origination value of qualifying loans sold within 90 days of origination + CD Services & Monetary and in-kind donations

Retail Lending Pass Fail Test

Geographic Distribution

55% or more (Demographic comparator)

# of small loans to businesses in LMI tracts in AA/# of small loans to businesses in AA

Divided by

# of businesses in LMI tracts in AA/# of businesses in AA

OR

65% or more (Peer Comparator)

# of small loans to businesses in LMI tracts in AA/# of small loans to businesses in AA

Divided by

# of all bank's loans to businesses in LMI tracts in AA/# of all banks loans to business in AA

Not included are home mortgage and consumer loans in the Geographic distribution

Borrower Distribution

55% or more (Demographic comparator)

# of small loans to small businesses in LMI tracts in AA/# of small loans to businesses in AA

Divided by

# of small businesses in AA/# of businesses in AA

OR

65% or more (Peer Comparator)

# of small loans to small businesses in LMI tracts in AA/# of small loans to businesses in AA

Divided by

# of all bank's loans to small businesses in AA/# of all banks loans to business in AA

Community Development Minimums 2%

$$\frac{\text{Quantified value of Community Development lending and investments}^{2}}{\text{Average quarterly retail domestic deposits}}$$

[2] Qualifying loans On balance sheet \$ value For at least 90 days And CD investments (some * 2) + 25% of the origination value of qualifying loans sold within 90 days of origination + CD Services & Monetary and in-kind donations

Analysis

- Two exam standards.
- Small bank performance standards apply to smaller institutions with $500 million or less in assets opting to be examined under current CRA regulations for small banks.
- General bank performance standards apply to institutions with over $500 million in assets.
- The dollar amount of qualified CRA activities / bank's quarterly average for retail deposits for each AA and at the bank level.
- It would be the determinative factor on a CRA exam as reflected by its name "presumptive" rating.
- The numerator includes a measure capturing bank branches in LMI areas and other underserved areas. This would be the percentage of all branches that are in the specified areas multiplied by .01.
- This branch measure is supposed to provide some weight to the importance of branches by increasing the ratio by as much as one percentage point.
- For approximately half of a bank's AAs, a bank would need to pass a retail lending distribution test and ensure 2% of deposits finance community development.
- The retail test would apply to each major retail lending product lines that comprises 15% or more of the bank's overall dollar volume of retail originations.
- In an AA, the retail product line would have to have at least 20 loan originations during the exam time period to be evaluated in that AA.
- The retail test looks at the distribution of borrowers for home and consumer lending.
- It does not consider home or consumer lending in LMI tracts.
- The retail test would look at the distribution of lending by borrower for small business and farm lending and also at the geographical distribution of lending for those loan types.
- In order to pass the borrower and geographic distribution tests, the bank, for all major retail product lines, would need to meet or exceed a minimum threshold associated with either the demographic or with peer comparator in that assessment area.
- Demographic comparator
    - A bank's percentage of lending for LMI borrowers or small businesses or farms would need to be at least 55% of the percentage of LMI households or small businesses or small farms in an AA.
    - A bank's percentage of small loans to businesses or farms in LMI census tracts would need to be at least 55% of the percentage of businesses or farms in LMI census tracts in the AA.
- Peer comparator
    - A bank's percentage of lending for LMI borrowers or small businesses or farms would need to be at least 65% of the percentage of loans to LMI

borrowers or small businesses or small farms originated by all banks in the AA under the general performance standards.
    - A bank's percentage of small loans to businesses or farms in LMI census tracts would need to be at least 65% of the percentage of small loans to businesses or farms in LMI tracts originated by all banks in the AA under the general performance standards.
- Require a bank to pass both the borrower and geographic distribution tests.
- Bank only needs to pass either the demographic or peer comparator to pass the borrower or geographic distribution tests.
- The agencies provide an option for small banks with assets under $500 million to be evaluated under a streamlined small bank exam that only has a lending test or to be evaluated under the proposed tests.
- As of the most recent call report data (June 2019), 84.6% of all banks or 4,455 banks would be designated as small banks.
- The agencies say that available data and analysis conclude the small banks would perform better on the new tests than their larger counterparts.
- While the small banks probably do not engage in as much community development financing, a higher percentage of their retail lending might be for LMI borrowers, small businesses and farms.

Concerns

- The current service test of the large bank exam now counts for 25% of the rating.
- This would be replaced by using branches as part of the numerator of the service test and thus will undermine the importance of branches.
        - 1 (100% branches in the area) of 11 (to get outstanding rating) is 9%
- A bank with 30% of their branches in LMI census tracts, which would be a relatively high percentage of branches in LMI census tracts, would only receive a branch score of .3 percentage points in the CRA evaluative measure. Moving to this approach will greatly diminish the importance of bank branches in CRA compliance, which will likely lead to significant branch loss in LMI communities.
- Recent Federal Reserve research documented that the current service test that explicitly examines branch distribution in census tracts with different incomes prevented the closures of economically viable branches in LMI tracts.
- The agencies briefly describe their data using the time period of 2011 through 2018 to establish these ratios but do not release their research as an appendix or accompanying paper.
- The agencies admit the data was incomplete and that they had to use some assumptions.
- The stated goal is to increase CRA activity, and it is argued that this approach helps accomplish that.

- The agencies must release their research on the current levels of CRA activity in order for the public to evaluate whether the proposed thresholds would actually motivate increases in CRA activity, or would merely legitimize current rates of CRA activity.
- Not adjusted for banks of different asset classes.
- Regional or state banks are being compared against the largest banks.
- Creates competitive inequities among banks, may encourage smaller banks to engage in riskier financing to achieve the ratios.
- May encourage an over-reliance on large easy deals.
- May bias banks to neglect small dollar business and home mortgage lending.
- May neglect partnerships between nonprofit and public sector entities; they can more easily meet CRA obligations with a few large deals in each AA.
- Discards qualitative considerations (responsiveness to community need).
- Generously expanding upon how bank can describe capacities and limitations, it appears that performance context guidelines would be used mainly to excuse banks from not hitting CRA performance thresholds.
- The pass-fail retail lending test does not consider the quality of the lending (e.g. high-cost consumer loans; how many small dollar mortgages are being made) and drops all place-based review of home mortgages in LMI neighborhoods.
- The retail lending test is weakened on the exam – it would have far less weight and banks could fail in half of their local AAs and still achieve a bank-level passing CRA grade.
- **A bank could choose half of its assessment areas to serve, ignore the rest, and still receive an outstanding rating.** Which half of a bank's communities will get left out?
- Allowing a financial institution to serve anything less than 100 percent of its assessment areas would legalize redlining.
- No rationale for the 55% and 65% benchmarks.
- 55% demographic benchmark might be too low in lower-cost areas where it is easier to lend to LMI borrowers or too high in higher-cost areas where it is harder to lend to LMI borrowers.
- No rationale for 2% of deposits to be a significant level of community development activity.
- We have no idea how easy or hard it will be to pass on both tests because the agencies provide no information on estimates regarding pass rates compared to current pass rates.
- Since the retail test would be only pass or fail, the evaluation measure would have much more weight.
- At the very least, all components of an exam at an AA level should have ratings and have equal or similar weight.
- The agencies are missing an opportunity to preserve the small bank retail lending while increasing their community development financing.

- The agencies ask whether the threshold for small banks should be increased to $1 billion. This would surely lead to the loss of hundreds of millions of annual community development financing.
- CRA investment test is eliminated.
- The proposal doubles the credit for most investments.
- It will be easy to pass a retail lending test with high cost consumer lending.

Consumer Bankers Association

- "More analysis must be undertaken by stakeholders to better understand the impact the new metrics that will be used to measure CRA activity for individual institutions and the communities they can serve… but feels the true costs of reforms must be understood before dramatic changes are made… It is crucial that the OCC and FDIC engage with stakeholders to carefully analyze the real impact of the proposed changes on CRA deserts and hot spots, to make sure that sufficient incentives are provided to induce banks to serve the hard-to-reach areas that are most in need of investment.

Revising Data Collection, Recordkeeping, and Reporting

The proposal would be required to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, and assessment areas. Those banks would also be required to use that information to make the calculations necessary to determine their ratings, based on the application of the performance standards in the proposal. Prior to a CRA performance evaluation, the evaluating agency would validate the data used in determining a bank's ratings. The agencies would provide additional guidance on the data that banks need to collect and maintain under the proposed rule that would standardize the information collected and help banks ensure that they meet the requirements of the rule.

Analysis

- Current reporting framework records deposits by attributing them to a branch location, rather than the account holder's address and uses a different definition of deposits than the proposed rule.
- The agencies recognize that, even if the proposal were implemented, the available data for the small loans to businesses and small loans to farms borrower distribution tests may be insufficient and, therefore, banks may need to rely on private datasets.
- Available data do not currently include, for example, the dollar volume of CD investments or a quantification of the dollar value of CD services.
- Available data do not necessarily map perfectly to the configuration of assessment areas specified in this proposal.
- Require banks to collect new data on deposits by customer location and data on community development lending and investing.
- It refers to "certain" data being available to the public.
- The agencies would provide to the public data on a county level of retail lending such as consumer lending but not data on community development financing (this data would only be available at the bank level).
- The new data required to be collected also must be disseminated to the public so that the community can hold banks accountable for making deposit accounts available to LMI customers and engaging in community development lending and investments

Consumer Bankers Association

CBA notes the large amount of regulatory burden banks face across every aspect of their operations, including significant data collection and reporting obligations. Any increase to such obligations should be undertaken with careful consideration of the costs, and a clear, communicated understanding of the benefits of the newly required information to both LMI communities and the goals of increased transparency throughout the process.

Public Disclosure

- The agencies state that banks need to keep data and information in their CRA public file and that they can place this information on the internet. People without internet can obtain paper copies from the bank but the bank can charge people for the information. The public should not have to pay for information regarding whether banks are complying with the laws including CRA.
- Banks receiving Outstanding ratings would be subject to CRA exams once every five years, as opposed to the current schedule of once every two to three years.
- Five years is too long a time period between exams; it fails to hold banks to the statutory requirement of "continual" and "affirmative" obligation to meet community needs since banks will relax their commitment to CRA, especially in the first year or two at the beginning of a five year time cycle.
- CRA ratings are an integral part of merger reviews, which will be compromised by stale exams that are less likely to reflect recent past CRA performance

Public Input

- When the CRA exam is conducted by the bank and the examiner validates the underlying assumption, how can the public provide any input?
- Small banks are not subject to new exams. 85% of them will be examined on retail lending alone.
- The NPRM refers to public comments only a few times and only in reference to needs in AAs.
- The NPRM leaves open the question about whether the agencies will continue receiving community group comments on the performance of banks in adhering to their CRA obligations.

National Community Reinvestment Coalition has put together a list of examples of activities that would qualify for CRA.

Stadiums in Opportunity Zones

The NPRM would allow financing of improvements to athletic stadiums in low-income census tracts located in Opportunity Zones.[3] Recently, the City of Jacksonville borrowed $45 million to pay for upgrades, a new outdoor amphitheater and indoor practice facility, next to the stadium in which the Jacksonville Jaguars play.[4] One of the two largest banks in terms of deposit market share in Jacksonville had community development lending ($15 million) that was of a lower dollar amount than the loan for the stadium. The community development lending of this bank supported 72 units of affordable housing and economic development.[5] If financing for stadiums is allowed, banks would have an incentive to eliminate important community development lending directly benefiting LMI households and neighborhoods. Another bank, which is also one of the two largest banks in terms of deposit market share, made $21 million in community development lending that supported over 200 units of affordable housing.[6] Again, would this bank continue to do this if large scale financing and other infrastructure is promoted by a new CRA rule?

Small Business

The agencies proposed to revise the definition of a small business as one with revenues of up to $2 million and annually adjusted for inflation, which would be an increase from the $1 million limit currently.[7] The CFPB estimated that 95% of small businesses had revenues of $1 million or less.[8] The agencies' change in the small business revenue size that qualifies a loan as CRA eligible would divert CRA-qualified lending away from the smallest businesses.

Middle- and Upper-Income Housing

The NPRM could facilitate mixed-income housing as defined by middle- and upper-income housing. Current CRA guidelines provide partial CRA credit to mixed-income housing that is low-income and middle/upper income, but the credit is "based on the percentage of units set-aside for affordable housing for low- or moderate-income individuals."[1] The NPRM proposes to also provide CRA credit for the portion of units set aside for those that are middle income in high-cost areas. As one example, §§ 25.04(c)(1)(i)(D) and 345.04(c)(1)(i)(D) of NPRM defines affordable housing as rental housing "that partially or primarily benefits middle-income individuals or families in high-cost areas as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government."[2] Affordable housing for low-income households is far more difficult to finance and, if these provisions are implemented, it could make up a shrinking share of the affordable rental housing promoted by CRA.

Financial Education for All Incomes

The NPRM would allow banks to offer financial education to people of all income levels.[9] Currently, this community development service is targeted to low- and moderate-income people. Thus under the NPRM, banks could offer financial education to the Comptroller of the Currency and the Chairman of the FDIC and receive CRA credit. The provision of financial education must be consistent with the statutory purpose of CRA, that is, combating redlining and increasing access to credit and banking services to low- and moderate-income populations and neighborhoods.

The Dominant Single Metric and Three Large Credit Card Lenders

The CRA evaluation measure would likely be ineffective in stimulating increases in community development financing by large credit card lenders. We did a back-of-the-envelope calculation. NCRC approximated the CRA evaluation measure of three large credit card lenders. We made a conservative estimate of credit card lending to LMI borrowers (no data on this lending is publicly available). Even with a conservative estimate of credit card lending to LMI borrowers, the three large credit card lenders had ratios with just qualified credit card lending in the numerator that already exceeded the benchmark of 11% needed for an Outstanding rating.

In addition, one of the three large lenders had an overall community development minimum that today exceeds 2% of deposits. In other words, this large lender likely would not have to increase its community development financing in order to keep receiving Outstanding ratings. For this lender, stagnant performance would earn it an Outstanding. The other two lenders would have to increase their community development financing but once they hit the 2% minimum required ratio, their performance would stagnate. The proposal would be likely to lead to lackluster CRA performance (that does not continually and affirmatively respond to needs) in the long term for these three large lenders.

Family Farm

An illustrative example of CRA qualifying activities under proposed §§ 25.04(c)(7)(i) and 345.04(c)(7)(i) is a loan to a family farm with gross annual revenues of $10 million.[1]

According to the U.S. Department of Agriculture, only 1% of farms had sales of $5 million or more. About 76% of farms had sales of $50,000 or less.[2] This change in CRA qualifying activities would divert lending away from the smallest farms.