MORTGAGE BANKERS ASSOCIATION

Subject matter	Banking Agencies Proposal Community Reinvestment Act	MBA recommendations, August 2022	CRA Final Rule, DRAFT, 10/23/2023
General and Residential Lending Focused Comments			
New Retail Lending Assessment Area	Require large banks to delineate new and additional assessment areas outside their facility-based assessment areas (FBAAs) for evaluating their retail lending activities, known as the retail lending assessment area (RLAA). Also, require an intermediate bank to be evaluated outside its FBAAs if it does more than 50 percent of its lending outside of its FBAA.	The trigger for delineating RLAAs is too low – re-calibrate the RLAA provisions to ensure they do not unintentionally undermine the impact and effectiveness of CRA activities in FBAAs.	Threshold trigger for delineating RLAA's increased from 100 mortgage loans/250 small business loans to 150 mortgage loans/400 small business loans.
Retail Lending Test – Proposed Metrics	Use number of loans (rather than dollar amount of loans) made to LMI borrowers and in LMI geographies in calculating metrics in each assessment area. The use of loan count avoids overweighting large loans and higher income borrowers.	MBA supports giving equal weight to loans that advance the goals of CRA, regardless of dollar amount. However, MBA recommends that either the (1) Agencies specify that repurchased Ginnie Mae loans should not be included in the denominator or (2) clarify that the repurchased loans (and FHA streamline refinances) should be included in both the numerator and the denominator. Also, MBA recommends that the final rule clarify that the denominator and	Uses number of loans and dollar amounts. Additional factors put in place to address purchases that are used to inappropriately enhance a bank's evaluation, but states that these factors will not apply in instances where a bank has a business strategy of purchasing loans, for example, as a way of providing liquidity to originating lenders that lack secondary market access or purchasing distressed closed-end

		numerator either (i) both include purchased or repurchased loans that were LMI qualifying loans at the time of origination or purchase; or (ii) both exclude such loans.	home mortgage loans from Ginnie Mae servicers.[1]
Retail Lending Test – Proposed Performance Scores	Aggregate the bank's performance scores for each of the four tests, where specific weights are assigned to each test. Under the NPR, the Retail Lending Test is weighted at 45%; Retail Services and Products test is weighted at 15% (for a total of 60%). The Community Development Financing Test is weighted at 30% and Community Development Services and Products test is weighted at 10% (for a total of 40%).	MBA strongly recommends that the Agencies revise the test weightings to achieve a 50-50 balance between the combined Retail and combined Community Development tests. We suggest reallocating 10 percentage points from Retail – either by reducing Retail Lending by 10%, or by taking 5% each from Retail Lending and Retail Products/Services – and increasing the Community Development Lending test by 10 percentage points (to 40%). This would encourage large banks to aim for higher performance scores on both tests in order to achieve an overall Outstanding rating.	Weightings revised to achieve 50-50 balance between Retail and CD tests. For Large Banks (assets over $2 billion): Retail Lending: 40% Retail Services and Products: 10% CD Financing: 40% CD Services: 10% For Intermediate Banks (between $600 million and $2 billion in assets): Maintain the current community development evaluation and implement the new retail lending evaluation (with option of evaluation under new test for community development

[1] Additional factors put in place to address concerns regarding the evaluation of mortgage loans in which borrower income is missing or unavailable. The Agencies have considered comments that a bank may have a large volume of such loans, depending on the bank's business model and strategy. For example, banks that originate a large number of streamlined mortgage refinancings, may have many loans for which borrower income is not available. The borrower distribution metrics would count loans with missing or unavailable income information in the denominator, and not in the numerator, of the metric, which may result in the bank receiving a lower recommended conclusion than if these loans were excluded from the analysis or were, in fact, made to LMI borrowers and had the requisite income information. For this additional factor, if the Agencies have reason to believe that certain loans with missing or unavailable borrower income information were made to LMI borrowers, then the Agencies may consider this fact pattern when determining the Retail Lending Test conclusion. This would also include the situation raised by some commenters where a bank has purchased a portfolio of distressed Ginnie Mae mortgage loans from a loan servicer. In this situation, based on available information, the Agencies may determine that because a significant number of the loans for which borrower income was unavailable were likely made to LMI borrowers, it is therefore appropriate to assign a higher conclusion than the bank's recommended conclusion.

			financing.) Retail Lending Test weighted at 50% For Small Banks (under $600 million in assets) Maintain the current CRA evaluation but provide option of evaluation under a new test for retail lending.
Retail Lending Test – Proposed Benchmarks	Calculate Retail Lending performance ranges using benchmarks that include both community and market benchmarks. The community benchmarks reflect the demographics of an assessment area, whereas the market benchmarks reflect aggregate lending to targeted areas or targeted borrowers in an assessment area by all reporting lenders.	MBA believes the benchmarks are unrealistic and could encourage unsafe and unsound risk-taking. MBA strongly suggests that the Agencies revise and re-calibrate the benchmarks to remove the unnecessarily high bar that would work against large banks attaining results that are commensurate with their efforts and actions.	The final rule contains analysis used to support the Agencies' decisions regarding the Retail Lending Test approach in various ways. Specifically, the analysis informed the Agencies' determination that the final rule multiplier values produce performance ranges that are generally attainable for "Outstanding," "High Satisfactory," or "Low Satisfactory" performance[2]
Purchase Loans	Evaluate a bank's CRA performance by counting in the Retail Lending Test the bank's purchased retail loans as equivalent to its retail loan originations.	MBA supports this approach and to address concerns over the "churning" of mortgage loans, MBA supports an examiner adjusting a retail lending assessment where there's a determination that loans to CRA-eligible borrowers or census tracts were purchased and sold repeatedly and within very short periods (such as 30 days) by different banks, with the possibility of each bank receiving CRA credit	Allows banks to receive credit for originated and purchased loans. Includes factors that address concerns about "churning"

[2] MBA is still reviewing this section of the final rule and will share a more detailed analysis after such review.

		equivalent to the banks that originated the loans.	
Mortgage-Backed Securities (MBS)	Give CRA qualification for investments in MBS that contain a majority of single-family home mortgages to LMI borrowers. Also limit CRA consideration for initial purchase of MBS from the issuer and not for any subsequent purchases of seasoned MBS.	MBA recommends that where the MBS contains more than 50% of single-family mortgages to LMI borrowers, 100% CRA qualification be given for such MBS. Also, MBA opposes CRA consideration for only initial purchase of MBS.	Does not adopt the 50% recommendation. Rather, retains the "majority" approach for MBS consideration. CRA consideration of MBS will not be limited to the initial purchase of a mortgage-backed security from the issuer.
Published list of Community Development Qualifying Activities/Pre-Approval Process	Maintain a publicly available list of CRA-eligible activities. Also, establish a process for banks to obtain pre-approval for activities that are not on the list.	MBA recommends a clear process for the frequency of updates, the factors considered in adding new activities, and the process for alerting banks to any modifications. Also, **MBA recommends that bank-paid housing counseling be included in the illustrative list**. MBA supports a process for pre-approval and recommends presumptive approval if a bank does not receive a response within 60 days. Also, approval by one Agency should be binding on all three Agencies.	The Agencies will issue, maintain, and periodically update a publicly available illustrative list of non-exhaustive examples of loans, investments, and services that qualify for CD consideration. Also includes a process through which banks can confirm with the appropriate Federal financial supervisory agency whether a particular loan, investment, or service is eligible for CD consideration. Housing Counselling is included in qualifying CD activities.
Credit for Affiliate Activities	Under current rules, banks may, but are not required to, include certain activities of affiliates in their CRA performance evaluation.[3] The	MBA supports providing banks the option of having CRA activities of its other affiliates considered. MBA recommends that when a bank	Relevant activities of a bank's operating subsidiaries are included in a bank's performance evaluation. Relevant activities of

[3] Pursuant to this provision, CRA consideration is available for both the origination of a loan by an affiliate and subsequent purchase of the loan by the bank. In addition, CRA credit is available for both origination by a bank and purchase of the loan by an affiliate (as long as the same loans are not sold several times to inflate their value for

	Agencies propose to require a bank to include the relevant activities of its bank subsidiaries in the evaluation because such activities would be considered a component of the bank's operation. On the other hand, the Agencies propose to retain the current flexibility that would allow a bank to elect to include or exclude the relevant activities of other affiliates. A bank would be able to choose to have the examiners consider mortgage loans that are made or purchased by one or more of the bank's affiliates in a particular assessment area (as long as those loans are not claimed for purposes of CRA by any other bank).	elects to have the Agencies consider retail loans within a retail loan category that are made or purchased by an affiliate in a particular assessment area, the Agencies should consider all the retail loans within that retail loan category by that affiliate only in that particular assessment area, unless the bank elects to include all of the bank's assessment areas.	other affiliates would be considered at a bank's option.
Special Purpose Credit Programs (SPCPs) and Small Dollar Mortgage Lending	Credit products and programs that facilitate mortgage and consumer lending targeted to LMI borrowers would be considered for CRA qualification (under the Retail Services and Products test) in evaluating a bank's responsiveness to the needs of LMI individuals and communities - this includes small-dollar mortgages ($100k or less) and programs that utilize alternative credit histories. Special feedback requested on whether	MBA supports the inclusion of SPCPs -- regardless of whether the program is race or geographically targeted – that are compliant with ECOA. MBA also recommends that the Agencies consider including other programs that are focused on LMI borrowers as well as first time homebuyers. For instance, FHA loans, VA loans, and other Agency products such as the HomeReady and Home Possible loan programs.	Includes SPCPs in the Retail Services and Products Test. Also includes several other types of investments, loans, and services provided by banks in connection with credit products or programs that facilitate mortgage and consumer lending targeted to LMI borrowers and first-look homebuyers that would qualify under the affordable housing category of community development.

CRA purposes). A bank can elect to have a particular category of affiliate lending (e.g., loans of a particular type) in a specific assessment area be considered. In this type of situation, the bank must include all such loans. The NPR would categorize affiliate as either: • "bank subsidiaries", which would cover entities for which banks exercise a high level of ownership, control, and management, such as state member bank and non-member bank operating subsidiaries, or • "other affiliates", which would cover third party affiliate entities over which the bank does not exercise a high level of control or management.

	SPCPs should be added to the list of CRA-eligible activities.		
Implementation Period	The Agencies propose a one-year transition period (comprised of multiple applicability dates) following the publication of a final rule.	MBA recommends the implementation period be extended to no less than 24 months after issuance of the final rule.	Transition/Implementation period extended to a little over 24 months.
Multifamily Specific Comments			
Product Line Threshold	Establishment of a major product line threshold of 15 percent of the dollar value of a bank's retail lending in each assessment area to determine whether to evaluate certain loan products under the Retail Lending Test, including multifamily lending.	MBA encourages the Agencies to consider a lower threshold for multifamily lending activities to qualify as a major product line under the Retail Lending Test.	The Final Rule excludes multifamily loans entirely from the Retail Lending Test.
Geographic Loan Distribution Metric	The Agencies seek feedback on whether an alternative measure of geographic loan distribution for multifamily lending under the Retail Lending Test would be preferable.	MBA recommends that the Agencies use metrics similar to the Community Development Financing Test to evaluate multifamily lending rather than using an alternative geographic loan distribution metric. The geographic distribution test evaluates multifamily properties based on their geographic location but fails to evaluate them based on the LMI tenants the property serves. Evaluating multifamily lending based on the number of multifamily units or rent affordability would be a more effective measure.	The Final Rule excludes multifamily loans entirely from the Retail Lending Test.

Evaluation of Multifamily only under Community Development Financing Test	The Agencies seek feedback on whether to only evaluate multifamily lending under the Community Development Financing Test (and not the Retail Lending Test as well).	MBA encourages the Agencies to continue to evaluate multifamily lending under both the Retail Lending Test and the Community Development Financing Test.	The Final Rule only evaluates multifamily under the Community Development Financing Test, which is a positive outcome because the Retail Lending Test and Community Development Financing Test are given equal weight under the rule.
Pro Rata Credit for Qualifying Affordable Housing	The Agencies ask if any other community development activities outside of affordable housing should receive partial consideration (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities).	MBA encourages the Agencies to limit pro rata consideration to affordable multifamily housing. Partial consideration for affordable housing encourages mixed-income property development and mixed-income multifamily properties play an important role in promoting income diversity in neighborhoods and offering LMI individuals' opportunities to live near better jobs, schools, and health services.	The Final Rule limits pro-rata considerations to affordable housing and does not extend partial credit to other types of community development activities.
Naturally Occurring Affordable Housing	The NPR proposes an expansion of CRA credit to naturally occurring affordable multifamily housing and proposes the following definition for naturally occurring affordable multifamily housing: a multifamily housing: a multifamily project where 50 percent of renters are paying rents targeted at 30 percent or below monthly incomes of 60 percent or lower of area medium income (AMI).	MBA recommends that naturally occurring affordable multifamily housing should be defined as a multifamily property where 50 percent of renters are paying rents targeted at 30 percent or below monthly incomes of 80 percent or lower of area medium income (AMI).	The Final Rule: describes naturally occurring affordable rental housing as multifamily housing where the **majority of units have monthly rent, as underwritten by the bank**, reflecting post-construction or post-renovation changes **that does not exceed 30 percent of 80 percent of the area median income** and that also meets at least one of the following eligibility criteria: (1) the housing is located in a low- or moderate-income census tract; (2) the housing is located in a census

			tract in which the median income of renters is low- or moderate-income and the median rent does not exceed 30 percent of 80 percent of the area median income; (3) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; or (4) the bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals or families. The final rule retains the Agencies' proposal to use the monthly rental amounts as underwritten by the bank to determine whether the rental housing meets the affordability standard.
Multifamily Mortgage-Backed Securities	The Agencies seek feedback on whether Multifamily MBS should be subject to holding periods or only qualify for CRA credit at origination.	We encourage careful examination of any proposals to establish purchase or holding requirements for multifamily MBS. If CRA consideration is given only for the initial purchase of MBS, this will stifle the MBS secondary market, which is vital to ensuring LMI	The final rule specifies that affordable housing includes mortgage-backed securities that are collateralized by loans, a majority of which are not loans that the bank originated or purchased, and which are either home mortgage loans made to low- or moderate-income

		individuals and communities continue to be served.	individuals or loans financing multifamily affordable housing. After carefully considering commenter feedback, the Agencies have decided not to limit consideration of mortgage-backed securities to the initial purchase of a mortgage-backed security from the issuer under this component.
Treatment of Low-Income Housing Tax Credits	Preserve current treatment of LIHTC loans or investment.	MBA supports	The Final Rule preserves full credit for loans or investments involving LIHTC.
Disaster Preparedness, Recovery, and Climate Resiliency	Expand list of CRA-eligible activities to those that assist LMI individuals and communities in the preparedness for, and ability to withstand natural disasters, weather-related disasters, or climate risks.	MBA supports and encourages the Agencies to consider allowing banks to receive CRA credit for investments in green bonds.	The final rule provides community development consideration for disaster preparedness and weather resiliency activities that assist individuals and communities to prepare for, adapt to, and withstand natural disasters or weather-related risks or disasters.