

# Community Reinvestment Act:

## The Final Regulations and What Banks Need to Know Now

Presenters:

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November 28, 2023



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Warren Traiger is a nationally recognized authority on the Community Reinvestment Act with over 30 years of experience counseling banks on CRA and fair lending matters. He played a leading role in formulating the banking industry's position on CRA modernization, coordinating and preparing the responses of leading national trade associations and several banks to the proposed federal interagency rulemaking. Warren's research and analysis of mortgage lending under the CRA have been cited in publications of the Federal Reserve Banks of San Francisco, Boston and Dallas; the Federal Deposit Insurance Corporation; and in testimony before the U.S. House Financial Services Committee.

# Presenter



Victoria is a member of Orrick's nationally-recognized Public Finance Department. Her practice focuses on the intersection between public finance and regulatory compliance. She works with state agencies, local governments, and lending institutions in structuring their public financing arrangements and advising on fair housing and CRA regulatory compliance.

Before practicing law, Victoria worked in outreach and operations for Mercy Corps' Community Investment Trust, an innovative communal ownership model designed to help local residents of all income levels invest in commercial real estate.

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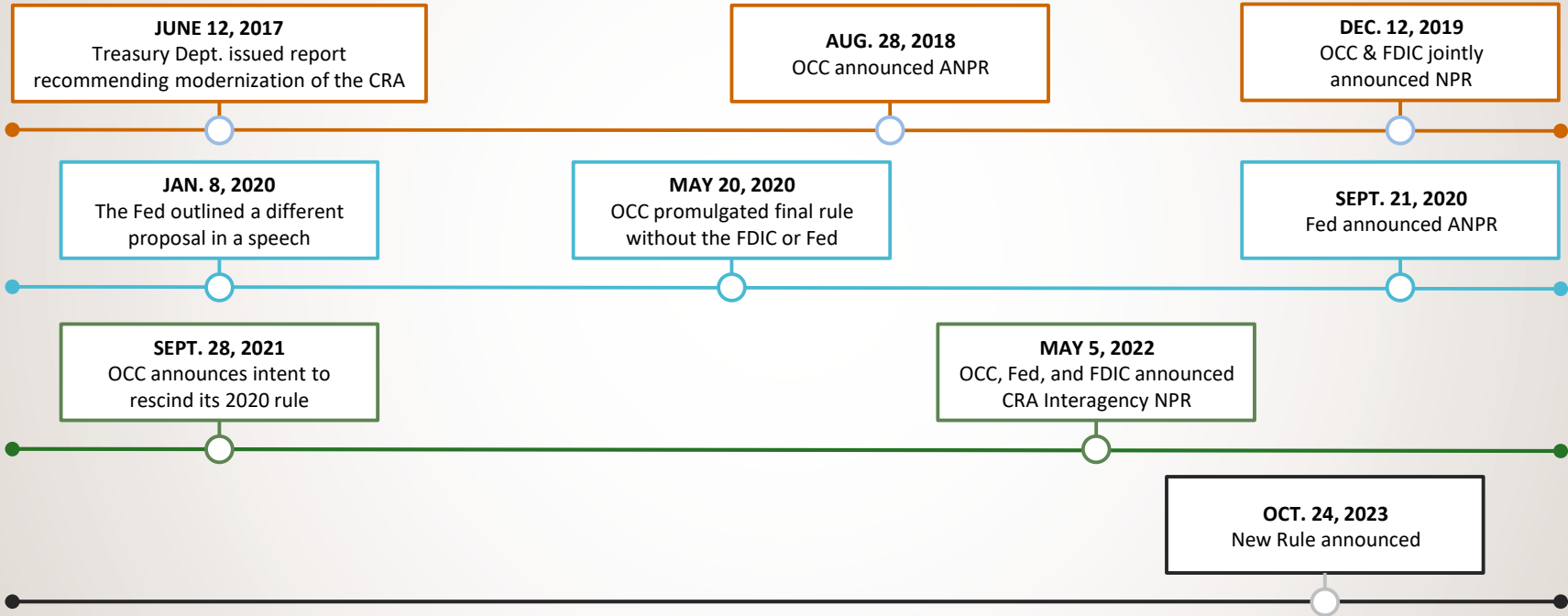
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# The Long and Winding Road to CRA Modernization



**June 17, 2010:** Fed, OCC, FDIC (and OTS) announce a series of public hearings to consider how to update CRA regulations “to reflect changes in the financial services industry, changes in how banking services are delivered to consumers today, and current housing and community development needs.”



# Regulators Stated Objectives

- Strengthen the regulations to “better achieve” the purposes of the CRA
- **Adapt to changes** in the banking industry (e.g., mobile and online banking)
- Provide greater “**clarity and consistency**” to how the regulations are applied (e.g., standardized metrics)
- Tailor performance standards to **account for differences in bank size, business models and local conditions**
- Tailor data collection and reporting requirements to better account for differences and use existing data
- Promote transparency and “public engagement” (e.g., **include HMDA data in performance evaluations**)
- Ensure that the CRA and fair lending practices are “mutually reinforcing”
- Promote consistency among the agencies

# Presentation Roadmap



- Institution size
- Changes in assessment areas
- Test #1: Retail Lending Test
  - Treatment of Mortgages
- Test #2: Retail Services and Products Test
- Test #3: Community Development Financing Test
  - Treatment of Mortgage-Backed Securities
- Test #4: Community Services Test
- Test #5: Community Development Test for Limited Purpose Banks
- Summary performance test weightings
- Ratings and conclusions
- Data disclosure and reporting requirements
- Strategic plans
- What happens now?

# A Bank's CRA Responsibilities are Determined by its Asset Size

## Large Banks

- Average assets of at least \$2 billion in both of the prior two calendar years
- Banks of over \$10 billion in assets have additional obligations

## Intermediate Banks

- Average assets of at least \$600 million in both of the prior two calendar years, and
- Less than \$2 billion in either of the prior two calendar years

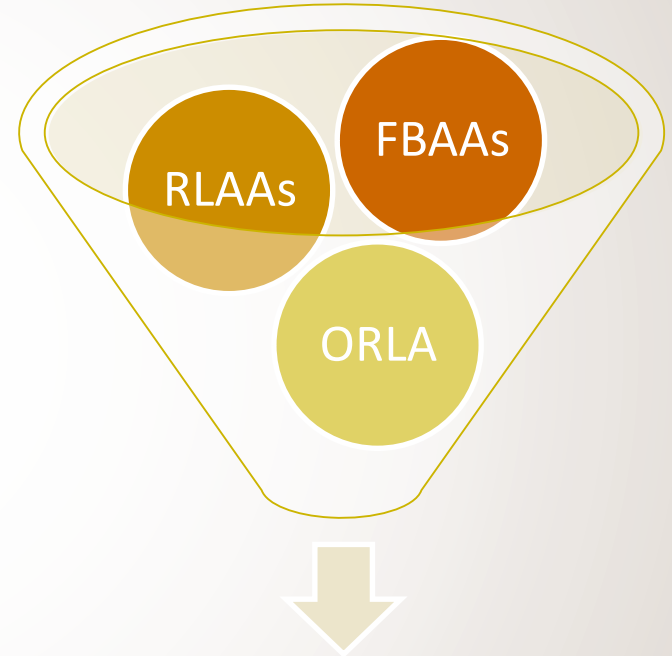
## Small Banks

- Average assets of less than \$600 million in either of the prior two calendar years

# Changes in Assessment Areas

## Facility-Based Assessment Areas (FBAAAs)

- **New & Existing Rule:** Banks delineate AAs based on the location of their facilities
  - Large Banks must include entire counties in their FBAAAs *and* the surrounding counties where the bank originated or purchased a "substantial portion" of its home mortgage, multifamily, small business/farm, and auto loans
  - Small/Intermediate Banks may delineate contiguous census tracts of partial counties

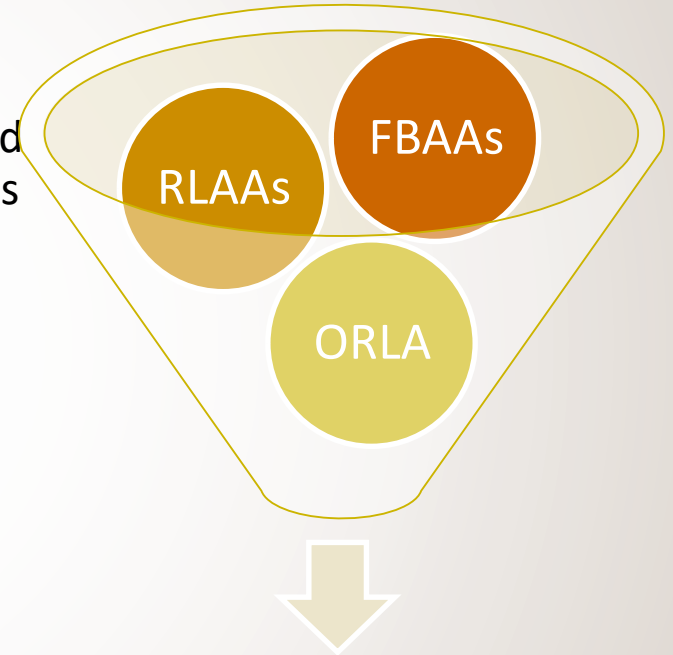




# Changes in Assessment Areas

## Retail Lending Assessment Areas (RLAAs)

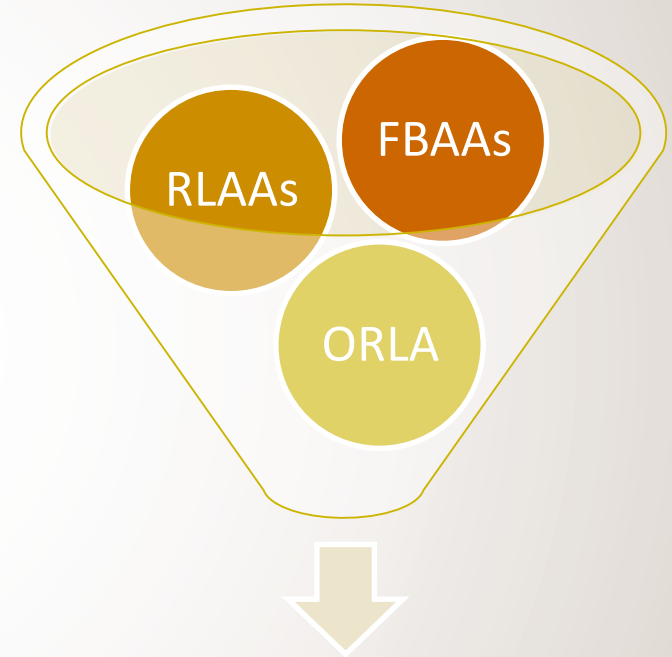
- Relevant to Large Banks that conduct  $\geq 20\%$  of their home mortgage, multifamily, small business/farm, and auto (for certain banks) lending outside of their FBAAs
- RLAAs are created for such banks in geographic areas where for each of the prior two years, the bank **originates** either:
  - 150 home mortgage loans; or
  - 400 small business loans
- Geographic area means a single MSA, or, for nonmetropolitan areas, all counties of a state with home mortgage and small business loan originations that do not have FBAAs



# Changes in Assessment Areas

## Outside Retail Lending Areas (ORLAs)

- The nationwide area outside of FBAAAs and RLAAs where the bank has originated or purchased Major Product Lines (defined later)
- Applies to:
  - Large Banks
  - Small and Intermediate Banks that
    - Originated or purchased more than 50% of their home mortgage, multifamily, small business/farm, or certain automobile loans outside of their FBAAAs in the each of the previous two years or
    - The bank opts in to have its ORLA assessed



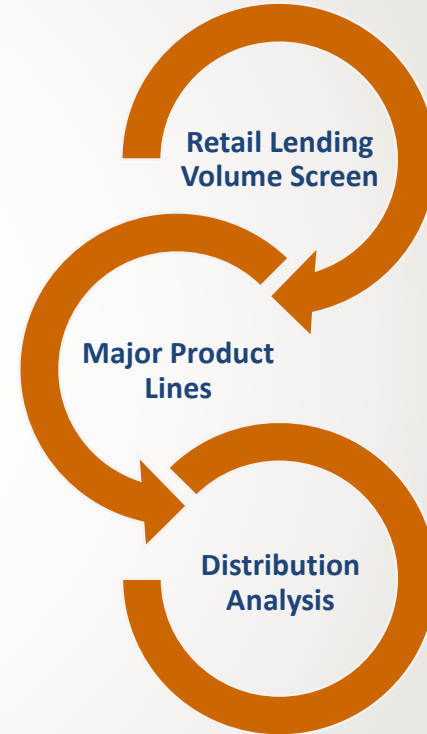
## Testing Framework Overview

<b>Small Banks</b>	Small Bank Lending Test (default) Or Retail Lending Test (opt-in) 100%			
<b>Intermediate Banks</b>	Retail Lending Test 50%		Intermediate Bank Community Development Test (default) or Community Development Financing Test (opt-in) 50%	
<b>Large Banks</b>	Retail Lending Test 40%	Retail Services and Products Test 10%	Community Development Financing Test 40%	Community Development Services Test 10%
<b>Limited Purpose Banks</b>	Community Development Financing Test for Limited Purpose Banks 100%			

# Test #1: Retail Lending Test

(40% weight for Large Banks; 50% for Intermediate Banks)

- Measures how well a bank's retail lending meets assessment area needs
- Applies to Large Banks, Intermediate Banks, and Small Banks that opt-in
- Two-Part Test:
  - (1) Retail Lending Volume Screen
  - (2) Retail Lending Distribution Analysis



# Test #1: Retail Lending Test – Retail Lending Volume Screen

## Retail lending volume screen (pass/fail)

- Assess a bank's volume of home mortgage, multifamily, small business/farm, and certain auto lending relative to its deposit base, compared to other banks in each FBAA
- Threshold set at 30% of market volume benchmark

## 30% threshold not met or exceeded

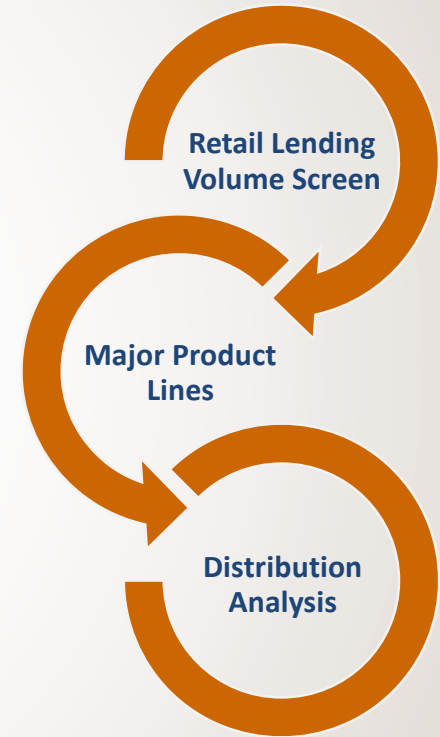
- **Acceptable basis determination** based on:
  - Dollar volume of non-auto consumer loans
  - Institutional capacity
  - Presence or lack of other lenders
  - Safety and soundness
  - Business strategy
- **If no acceptable basis, the bank will receive a rating of Substantial Noncompliance or Needs to Improve on Retail Lending Test for the FBAA**

### Example:

- A bank's volume metric lending-to-deposits ratio is 20% (\$2m / \$10m)
- The market benchmark is 40% (\$40m / \$100m)
- **The bank's metric is 50% of the market benchmark (20% / 40%)**

# Test #1: Retail Lending Test – Distribution Analysis

- Major Product Lines
  - FBAAAs & ORLAs (if product line  $\geq 15\%$ )
    - Closed-end home mortgage loans
    - Small business
    - Small farm
    - Auto loans for certain lenders
  - RLAAAs (where relevant)
    - Closed-end home mortgage loans
    - Small business loans
- Auto loans as a product line
  - Majority auto lenders: auto loans are  $> 50\%$  of bank's combined home mortgage, multifamily, small biz/farm, and auto lending
  - Opt-in



# Test #1: Retail Lending Test – Distribution Analyses



- Geographic Distribution Analysis
  - Measures bank's proportion of loans made in LMI census tracts
- Borrower Distribution Analysis
  - Measures bank's proportion of loans to LMI and small business/farm lenders
- Market and Community Benchmarks
  - Market benchmarks (**unknown during assessment year**) based on performance of reporting banks
  - Community benchmarks (**unknown prior to assessment year**) based on public data

Retail Lending Distribution Analysis Performance Ranges			
	Market Benchmarks	OR	Community Benchmarks
<b>Outstanding</b>	115%		100%
<b>High Satisfactory</b>	105%		80%
<b>Low Satisfactory</b>	80%		60%
<b>Needs to Improve</b>	33%		30%
<b>Substantial Noncompliance</b>	< 33%		< 30%

# Test #1: Retail Lending Distribution Analysis for Closed-End Home Mortgage Loans

Distribution Metric	Community Benchmark		Market Benchmark
<b>Geographic Distribution Metric</b>	Data Point	Percentage of owner-occupied residential units in low-income census tracts or moderate-income census tracts, as applicable, in assessment area	Percentage of home mortgages in low-income census tracts or moderate-income census tracts in assessment area, as applicable, by all lender-reporters
	Data Source	American Community Survey (Census)	HMDA Data
<b>Borrower Distribution Metric</b>	Data Point	Percentage of low-income families or moderate-income families, as applicable, in assessment area	Percentage of home mortgages to low-income borrowers or moderate-income borrowers in assessment area, as applicable, by all lender-reporters
	Data Source	American Community Survey (Census)	HMDA Data



# Mortgage Loans Under the New Rule

Originated or purchased closed-end home mortgage loans are a Major Product Line evaluated under the Retail Lending Test

 However, **mortgage loans purchased for the sole or primary purpose of inappropriately enhancing a bank's retail lending performance will not be considered** in a performance evaluation

- Inappropriate enhancement includes:
  - The **subsequent resale** of some or all of those loans; and
  - An indication that some or all **have been considered in multiple banks' CRA evaluations**
- A bank that has a **business strategy of purchasing loans** (other than to improve CRA performance) will not be deemed to have inappropriately enhanced its performance. Examples of such strategies:
  - To provide liquidity to originating lenders that lack secondary market access; and
  - To purchase distressed closed-end home mortgage loans from Ginnie Mae servicers

Note that all home mortgage and multifamily lending is considered in calculating the retail lending volume screen and auto lender determination

# Test #2: Retail Services and Products Test

(10% Weight for Large Banks)

- Measures how well a bank's products and services meet community credit needs
- Predominantly qualitative but includes quantitative components
- Evaluates responsiveness of:
  - **Delivery systems**
    - Branch availability and services
    - Remote service facility availability
    - Digital/other delivery systems (required for Large Banks with >\$10B in assets and banks with no branches, optional for other Large Banks)
  - **Credit products**
  - **Deposit products** for Large Banks with >\$10B in assets and other Large Banks that opt-in
- Intermediate Banks may request consideration of activities under Retail Services and Products Test in its Community Development Test



# Test #3: Community Development Activities

- The Fed, FDIC, and OCC will jointly issue and maintain a publicly-available illustrative list of loans, investments, and services that qualify for CD consideration
- Banks may request a confirmation of eligibility for a proposed activity



# Test #3: Community Development Financing Test

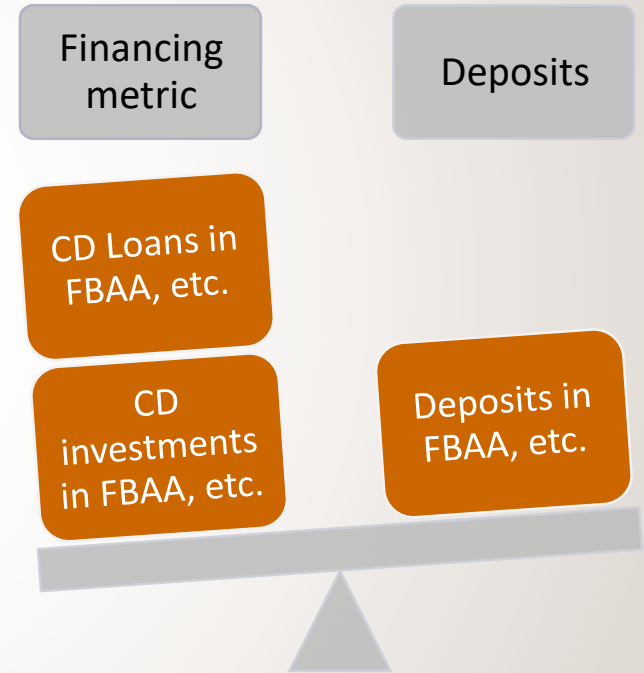
(40% Weight for Large Banks; 50% for Intermediate Banks That Opt-in)

## Quantitative Community Development Financing Metric

- Dollar value of a bank's **CD loans and investments**, divided by dollar value of its deposits
- Performance assessed at the FBAA, state, multistate MSA, and institutional levels against local and national benchmarks

## Quantitative Community Development Investment Metric

- Only for banks > \$10 billion
- Dollar value of **CD investments, excluding MBS**, divided by dollar value of its deposits
- Can only positively contribute to a bank's grade



# Test #3: Community Development Financing Test

## Qualitative Impact and Responsiveness Review



Reviews how a bank's CD activities are impactful and responsive in meeting community development needs.

**Meeting multiple factors will contribute positively to an activity's review.**

- Benefits or serves:
  - persistent poverty counties
  - census tracts with a poverty rate of 40% or higher
  - geographic areas with low levels of community development financing
  - LMI households
  - Small businesses or farms with gross annual revenues  $\leq$  \$250,000
  - Native Land Areas
- Supports an MDI, WDI, LICU, or CDFI, excluding certificates of deposit with terms < 1 year
- Directly facilitates the acquisition, construction, development, preservation or improvement of affordable housing in High Opportunity Areas
- Is a grant donation
- Is an investment in projects financed with LIHTCs or NMTCS
- Reflects bank leadership through multi-faceted or instrumental support
- Is a new community development financing product or service that addresses community development needs for LMI households
- Other

# Mortgage-backed Securities Under the CD Financing Test



- **Quantitative consideration:** Purchases of mortgage-backed securities (MBS) are an affordable housing activity under the CD Financing Test if the MBS has a **primary purpose of community development by containing a majority of:**
  - Single-family mortgage loans to LMI borrowers (location of property irrelevant), or of
  - Loans financing multifamily affordable housing.
- For an MBS to be considered under the CD Financing Test, a majority of its underlying loans must not have been originated or purchased by the bank.
- **Qualitative consideration:** MBS purchases are subject to an impact and responsiveness review. The agencies note:
  - “a small dollar loan or investment... can have a greater impact than a larger dollar loan or investment...such as a MBS” and that going forward they
  - "remain sensitive to commenter views that MBS are lower in impact and responsiveness to community credit needs than other qualifying affordable housing activities [and] **will continue to monitor the impact of including MBS in the affordable housing category**"
- The Bank Community Development Investment Metric and Nationwide Community Development Investment Benchmark exclude MBS, because they do not involve the complexities associated with other CD investments

# Test #4: Community Development Services Test

(10% Weight for Large Banks; Limited Purpose Banks May Opt-in)

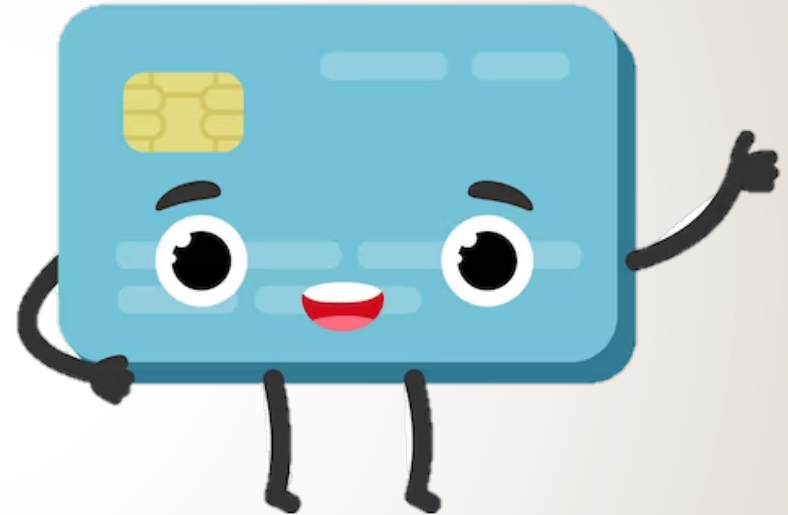


- Qualitative review components: Extent to which a bank provides CD services and their impact and responsiveness
- Quantitative review components: Hours spent on CD services, number of CD services offered



# Limited Purpose Banks

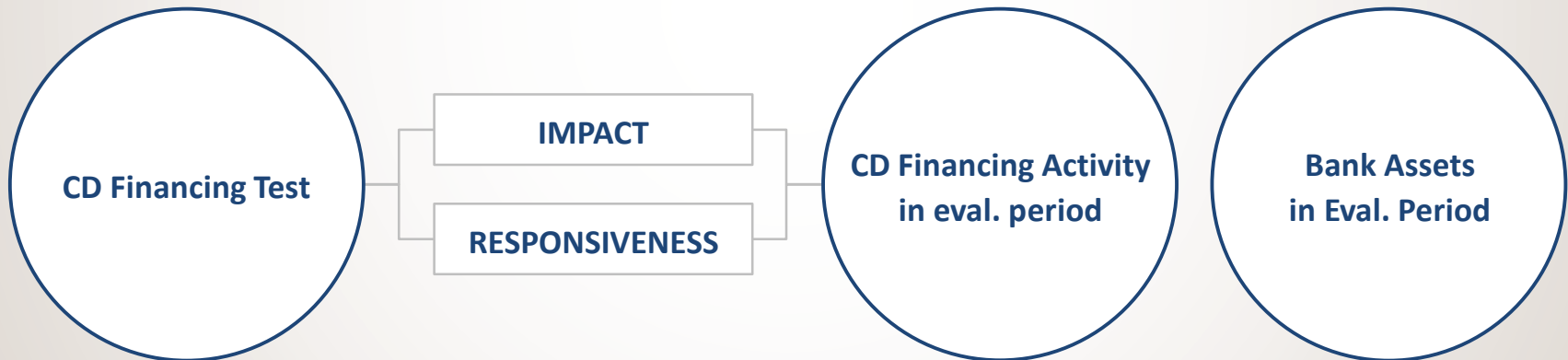
- Wholesale and Limited Purpose Banks are now joined under a single category as Limited Purpose Banks
- Defined as banks that are not in the business of extending loans in any of the Major Product Lines, except on an incidental and accommodation basis
- Banks must apply to be designated Limited Purpose





# Test #5: Limited Purpose Bank Community Development Financing Test

- Measures CD financing activities relative to assets
- Nationwide benchmarks comparing to limited purpose and all reporting banks
  - Additional investment metric for banks > \$10 billion
- Evaluates activity impact and responsiveness
- Can opt into CD services test to boost satisfactory rating to outstanding



# Summary of Performance Test Weightings

## LARGE BANKS – FOUR TESTS:

- Retail Lending Test (40 percent) – measured at the facility-based assessment area (FBAA), retail lending assessment area (RLAA), and outside retail lending area (ORLA) level
- Retail Services and Products Test (10 percent) – measured at the FBAA level
- Community Development Financing Test (40 percent) – measured at the FBAA, MSA, state and nationwide level
- Community Development Services Test (10 percent) – measured at the FBAA, MSA, state and nationwide level

## INTERMEDIATE BANKS – TWO TESTS:

- Retail Lending Test (50 percent) – measured at the FBAA level
- Existing community development test (50 percent) or can opt into the new Community Development Financing Test – measured at the institutional level

## SMALL BANKS – ONE TEST:

- Existing lending test (100 percent) or can opt into the new Retail Lending Test

## LIMITED PURPOSE BANKS – ONE TEST:

- Modified community developing financing test (100 percent)

# Strategic Plan Option

- Alternative method of evaluation
- Plan content
  - **Justification for strategic plan election**
  - Appropriateness of geographic coverage of plan
  - Measurable goals (for each retail lending major product line)
- Delineation of AAs done in same manner as for other banks
- Banks with multiple AAs can establish separate plans
- Must post strategic plan to website (federal banking agencies will also post to their website)
- Existing plans remain in effect
- **Plans submitted before November 1, 2025, will be evaluated under current rules**

# Downgrades Due to Illegal and Discriminatory Credit Practices

## Current standard maintained:

- New Rule continues to limit potential rating downgrades to Illegal or discriminatory credit practices

## Express inclusion of:

- Military Lending Act violations
- Servicemembers Civil Relief Act violations, and
- UDAAP violations
- As well as ECOA, FHA, and TILA violations

## Rating impact based on:

- Root cause of the violations
- Severity of consumer harm
- Duration of time violations occurred
- Pervasiveness of violations
- Degree to which bank has an effective compliance program

# Retail Loan Reporting Requirements



What Type of Loan is Being Reported?	Home Mortgage Loans		Small Business & Farm Loans	Auto Loans
Who Must Report?	Large Bank HMDA Reporters	Large Bank Non-HMDA Reporters	Large Banks	Large Bank Majority Auto Lenders
What Information Needs to Be Reported?	<ul style="list-style-type: none"> <li>Location of mortgage applications, originations or purchases outside of MSAs with branches</li> </ul>	<ul style="list-style-type: none"> <li>Unique Loan ID</li> </ul>	<ul style="list-style-type: none"> <li>Unique Loan ID</li> </ul>	<ul style="list-style-type: none"> <li>Unique Loan ID</li> </ul>
		<ul style="list-style-type: none"> <li>Date of Loan Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Date of Loan Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Date of Loan Origination or Purchase</li> </ul>
		<ul style="list-style-type: none"> <li>Loan Amount at Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Loan Amount at Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Loan Amount at Origination or Purchase</li> </ul>
		<ul style="list-style-type: none"> <li>State, County, and Census Tract</li> </ul>	<ul style="list-style-type: none"> <li>State, County, and Census Tract</li> </ul>	<ul style="list-style-type: none"> <li>State, County, and Census Tract</li> </ul>
		<ul style="list-style-type: none"> <li>Gross Annual Income in Credit Decision</li> </ul>	<ul style="list-style-type: none"> <li>Indicator for Business/farm revenue category</li> </ul>	<ul style="list-style-type: none"> <li>Indicator for Business/farm revenue category</li> </ul>
		<ul style="list-style-type: none"> <li>Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Origination or Purchase</li> </ul>	<ul style="list-style-type: none"> <li>Origination or Purchase</li> </ul>
			<ul style="list-style-type: none"> <li>Indicator of loan type indicated on Call Report or Report of Assets and Liabilities</li> </ul>	

# Other Reporting Requirements

- CD financing activity (Large, Limited Purpose and opting-in Intermediate Banks)
  - Amount, origination date, sold/pay-off date, CD activity type, impact and responsiveness
  - Intermediate banks opting in to CD test must collect and maintain, but not report
- CD services (Large Banks)
  - Number of service hours, date, name of organization or entity, CD activity type, impact and responsiveness
- Deposits (Large Banks > \$10 billion)
  - Dollar amount at county level based on deposit location (including deposits from foreign individuals)
- Retail services and products (Large Banks)
  - Number/location, LMI responsiveness
  - For banks > \$10 billion, Large Banks with no branches, and opting-in Large Banks:
    - Digital delivery products, accounts opened and maintained

# What Happens Now?

- New tests, data collection and maintenance commence January 1, 2026
- Reporting commences January 1, 2027
- How should banks evaluate the impact of the New Rule?:
  - Assessment Areas
  - Major Product Lines
  - CD Activities
  - Data collection and reporting practices
  - Strategic Plan option
- Potential legal challenge

# Questions?



**Thank You!**