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## CLIENT ALERT

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### OCC and FDIC Propose New Community Reinvestment Act Rules

On December 12, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) issued a proposed rule that would result in major changes to the rules applying the Community Reinvestment Act (CRA), applicable to all federally insured depository institutions supervised by the FDIC and the OCC. If finalized, the proposal would produce extensive changes to the way these regulators review and score banks' lending and investing in low-income communities.

The proposed changes include:

- An expansion of the current measuring on a facilities (main office, branches and deposit-taking facilities) basis. The proposed rule will continue requiring delineation around such facilities. However, partly due to changes in banking such as internet banking, the proposed rule would add a requirement that banks delineate additional, deposit-based assessment areas, where banks have significant concentrations of retail domestic deposits, irrespective of physical presence.
- Currently, the activities of banks that qualify for CRA consideration are retail banking activities and community development activities. The proposed rule would add new criteria, including loans in "Indian" country; retail loans to an LMI individual, a small business, or a small farm in an LMI census tract; and community development activities providing funding or services to certain projects and activities. This would involve adding to the list of ventures undertaken with minority and women-owned depository institutions and low-income credit unions, such as Community Development Financial Institutions. The FDIC and OCC would be required to publish a non-exhaustive list of illustrative examples of qualifying activities. Parties will be able to seek agency determination of whether an activity is qualifying.
- Performance standards would be changed:
  - The new performance standards would assess two areas:
    - The number of qualifying retail loans to LMI individuals, small farms, and small businesses in an LMI census tract in an assessment area. This would require a bank to meet thresholds of each major retail product line that has at least 20 loans in that assessment area.
    - The quantified value of the bank's qualifying activities in relation to its assessment area and bank-level retail deposits would be measured by dividing the annual sum of a bank's total qualifying activities by the average of its quarterly retail domestic deposits. Credits could be added based on branch location in target areas divided by the bank's total number of branches.

- Additionally:
  - The FDIC and the OCC would be able to adjust the resulting presumptive rating by taking into account of facts and circumstances applicable to specific banks, and determining whether a bank was lending in a discriminatory or illegal manner.
  - Banks would continue to be able to elect to be evaluated under a strategic plan. A bank would be required to submit a strategic plan in two circumstances: (1) it is a small bank that that does not originate retail loans; or (2) it does not maintain retail domestic deposits on-balance sheet.
- Banks evaluated under the new standards would be required to collect, retain and report specified data related to their qualifying activities, retail domestic deposits, some non-qualifying activities, and assessment areas.
- There are specific proposed requirements and options for small banks (those with assets of \$500 million or less each of the last four calendar quarters):
  - Small banks could chose to be evaluated under current small bank standards or utilize the new standards for all banks.
  - Small banks utilizing the small bank performance standards would be required to collect and retain, but not report, data regarding their domestic deposits

It is important to note that the Federal Reserve has not joined the FDIC and OCC in publishing this proposed rule. Industry participants are obviously concerned lest the three bank regulators end up with inconsistent approaches to reviewing or grading CRA activities. The Federal Reserve has stated that it continues to work with the other two agencies to find a common approach to CRA rules revisions. Interested parties should stay focused on what actions the Federal Reserve takes in light of thesis proposed rule change.

Comments on the proposed rule are due 60 days after its publication in the Federal Register.

Buchalter is a leading firm representing financial institutions, including in complex commercial transactions and in mortgage lending. For further information on these proposed new CRA rules or to discuss other CRA issues, please contact Mike Flynn or Jason Goldstein, Co-Chairs of Buchalter's Mortgage Banking Practice Group, at [mflynn@buchalter.com](mailto:mflynn@buchalter.com) or [jgoldstein@buchalter.com](mailto:jgoldstein@buchalter.com).



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