

OCC's CRA Final Rule

May 27, 2020

On May 20, 2020, the Office of the Comptroller of the Currency (OCC) issued as new final rule updating various aspects of the requirements of the Community Reinvestment Act (CRA). The rule is effective on October 1, 2020. Banks regulated by the OCC must comply with the final amendments by October 1, 2020, January 1, 2023, or January 1, 2024, as applicable.

Lack of Unity Among Regulators

While seeking to update CRA requirements, the OCC may be creating confusion because the other two Federal banking regulators, the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC), have not joined in this final rule. The FDIC had worked with the OCC through the stage of the earlier Proposed Rule, but declined to join in issuing the final rule, stating it did not wish to proceed "at this time." The Federal Reserve did not work with the OCC on this rule making effort, and did not join in the Proposed Rule. How the application of rule requirements between these agencies is to be resolved remains to be worked out, creating confusion for banks.

The OCC's New Final Rule

The OCC has stated that its new final rule seeks to make measurement and reporting of CRA activities more transparent and objectively measured, and seeks to make qualifying activities and assessment area definitions align better with current, changed banking business models, including internet banking. In doing so, the final rule focuses on definitions of and measurement of qualifying activities and assessment areas, more objective and consistent CRA activity measurement protocols, and faster, more transparent and objective reporting.

Qualifying Activities. The new framework sets forth qualifying activity criteria designed to capture:

- the activities that currently receive CRA consideration and are widely recognized by stakeholders as supporting community reinvestment and development.
- activities that are consistent with the statutory purpose of the CRA but that generally may not have previously received credit, such as: (1) certain activities in identified areas of

need beyond low-or-moderate income (LMI) areas (i.e., underserved areas, distressed areas, disaster areas, Indian country and other tribal and native lands); and (2) a limited set of activities that benefit a whole community, while maintaining an appropriate focus on (LMI) neighborhoods.

Where appropriate, the criteria exclude activities that may have qualified for CRA consideration in the past, like loans to middle- and upper-income borrowers in LMI census tracts, in order to emphasize activities that support LMI populations and areas and other communities of need.

Assessment areas. In order to create a framework that equalizes treatment between traditional branch-based banks and banks that gather deposits through the Internet and other non-branch-based channels, the final rule:

- retains the requirement that banks delineate assessment areas around their physical deposit-taking locations;
- sets the threshold percentage for requiring a bank to delineate these deposit-based assessments areas at a level that will generally capture banks whose business models are significantly different than the traditional branch models, such as Internet banks and banks with large amounts of deposits sourced outside of the area where its main office is located.

Measurements. To provide a more objective and consistent means of evaluating these activities, the final rule establishes an evaluation method that:

- assesses a bank's retail lending and community development activities by considering, in a quantitative manner: (1) the distribution of retail lending activities relative to LMI populations and LMI census tracts in a bank's assessment areas; and (2) the impact of all CRA activity, measured in dollars.
- provides quantitative credit for branches in, or that serve, LMI census tracts or other identified areas of need.
- includes a qualitative assessment of a bank's performance context. To promote more consistent consideration of these qualitative aspects, the final rule contains performance context factors that are based on the factors in the current regulation and on input from examiners.

Further, the OCC will issue guidance to help further standardize how examiners apply performance context in CRA evaluations.

Reporting. Based on the changes in the final rule, the OCC anticipates that examiners will be able to provide more consistent, useful and timely CRA evaluations. The OCC believes that over time, better data will allow the agency to adjust periodically the thresholds for delineating deposit assessment areas and for the level of performance necessary to achieve each rating category. Transparently reported objective measures will allow banks, regulators and others to more easily assess performance.

The final rule can be found here: <https://www.occ.gov/news-issuances/federal-register/2020/nr-occ-2020-63a.pdf>

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