

# Regulatory Alert

## Regulatory Insights



December 2019

### Proposed revisions to CRA Regulations

#### Key points

- The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) have jointly issued proposed revisions to their Community Reinvestment Act (CRA) regulations; the Federal Reserve Board (FRB) has not joined in the release but continues to work with the other two agencies toward a common final rule.
- The proposed revisions would:
  - Permit banks to receive CRA credit for certain activities outside of their CRA assessment areas
  - Require banks to identify additional assessment areas when they receive a significant portion of their retail domestic deposits (50 percent or more) from outside of their physical locations.
  - Measure both the number and dollar value of CRA qualifying activities to assess performance.
  - Increase transparency with regard to activities that qualify for credit and performance measures, including calculations, needed to reach individual ratings.
- Consistent with ongoing tailoring efforts, small banks would be provided flexibility to opt into the new framework or remain with the current regulations.

*The proposed rule is the first attempt to extensively revise the CRA implementing regulations since 1995. The OCC, FDIC and FRB all agree that an update, or modernization, of the regulations is needed given the changing financial services landscape, including the introduction of mobile and digital banking. The proposal will expand qualifying CRA credit for all entities, though the impact of the revisions will depend greatly on the type of bank and how and where it obtains its deposits.*

#### Clarifying and expanding qualifying credit

The proposed rule would:

- Define a “qualifying activity” as an activity that helps meet the credit needs of a bank’s entire community, including low- and moderate-income individuals and communities. The agencies would recognize

“qualifying activity” substantively conducted by the bank.

- Establish criteria for the types of activities that qualify for CRA credit. The expanded scope of qualifying activities would include:
  - Home mortgage and consumer loans provided in Indian Country (as defined in 18 USC 1151)

- Small business and small farm loans provided in all census tracts, and business and farm loans in low- and moderate-income neighborhoods (LMI) up to \$2 million per loan (an increase from the previous thresholds of \$1 million for small business loans and \$500,000 for small farm loans)
- Community development (CD) activities such as “naturally occurring affordable housing” (unsubsidized rental housing with rents affordable to LMI individuals); activities that support another bank’s loans, investments or services; essential community facilities, such as schools and hospitals; essential infrastructure, such as roads, mass transit, and water supply; and services not related to financial services including volunteer hours
- Provide credit for the average month-end outstanding amount on a bank’s balance sheet of any qualifying loan or CD investment (adjusted by multipliers as outlined in the proposal) to promote ongoing commitment to CRA activities
- Remove the requirement that distressed and underserved middle-income areas must be “non-metropolitan” areas
- Require the agencies to publish periodically a non-exhaustive, illustrative list of qualifying activities and non-qualifying activities
- Establish a process for banks to seek agency confirmation that an activity is a qualifying activity.

### Expanding where CRA activity counts

To recognize changes in the banking industry, including the increasing number of banks that operate primarily through the Internet or otherwise serve customers located far from the bank’s physical locations, the proposal would require a bank to:

- Delineate a “facility-based” assessment area where it has a main office, branch, or deposit-taking facility, as well as any surrounding geographies where the bank has originated or purchased a substantial portion of its loans. Banks may choose the geographic level at which to delineate these areas (e.g., metropolitan statistical area)
- Delineate separate, non-overlapping “deposit-based” assessment areas where they receive five percent or more of the retail domestic deposits, if the bank receives a significant portion, such as 50 percent or more, of its retail domestic deposits outside of its facility-based assessment areas. The

“deposit-based” assessment area must be delineated at the smallest geographic level where the bank receives five percent or more of total retail domestic deposits.

- “Retail domestic deposits” would be defined as total domestic deposits of individuals, partnerships, and corporations, excluding brokered deposits, municipal deposits, and deposits from foreign governments or entities.

### Modifying the method for measuring CRA performance

The proposed rule would establish new general performance standards that would be used by all banks other than small banks. Small banks, defined as banks with assets of \$500 million or more, would be allowed to opt into the general performance standards or continue to be evaluated under the current regulations. For banks subject to the new standards:

- The general performance standards would assess 1) the distribution (i.e., number) of qualifying retail loans to LMI individuals, small farms, small businesses and LMI communities (for major retail lending product lines) and 2) the quantified value of the bank’s qualifying activities (including CD loans and investments) relative to its assessment area and bank-level retail domestic deposits.
  - Major retail lending product lines would be defined at the bank level (15 percent of the bank’s overall dollar volume of retail loan originations) and subject to retail lending distribution tests at the assessment area level.
- Performance measures for each assessment area and at the bank level would be compared to benchmarks and thresholds established prior to the evaluation period. Minimum levels of CD lending and investment would be required to achieve certain CRA ratings.
  - Banks would apply the tests and the agencies would validate their performance.
- CRA ratings would be determined based on an evaluation of whether the bank has met all of the performance standards, including the applicable thresholds/benchmarks, associated with a given rating category in each assessment area and at the bank level. The agencies would be permitted to adjust ratings based on certain performance context considerations or findings of discriminatory or other illegal credit practices.

## Data collection, recordkeeping, and reporting

Banks evaluated under the general performance standards would be required to collect and maintain, in machine readable form:

- Results of their retail lending distribution tests, CRA evaluation measures calculations, and presumptive ratings determinations (based on the thresholds/benchmarks provided by the agencies).
- Data and supporting documentation for all qualifying activities, CD investments on-balance sheet, and CD services and monetary and in-kind donations, including dollar value, location, how the activity satisfies the qualifying activities criteria, and whether it serve a particular assessment area as well as certification from each party conducting qualifying activities on behalf of the bank.

Banks would be required to annually report their retail lending distribution test results, CRA evaluation measures calculations, and presumptive ratings determinations. Additional reporting requirements apply to retail loans, retail domestic deposit data, and performance context information.

## Compliance

Compliance with the assessment area, data collection and recordkeeping requirements would be required one year after the effective date of the final rule; Compliance with the reporting requirements would be required two years after the effective date of the final rule.

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