

ABA Staff Analysis©: FDIC/OCC CRA Proposed Rule December 2019

On December 12, 2019, the FDIC and the OCC [proposed](#) major revisions to the regulations implementing the Community Reinvestment Act (CRA). These regulations have not been meaningfully updated in approximately 25 years, and policymakers, bankers, and others have recognized that the time has come for the CRA framework to reflect the digital transformation as it relates to the delivery of financial products and services. There is also broad recognition that CRA examinations are unpredictable and inconsistent.

The proposed rule aims to address these issues by (1) clarifying which bank activities qualify for CRA credit; (2) updating where activities count for CRA credit; (3) creating a new framework for measuring CRA performance; and (4) establishing new CRA-related data collection, recordkeeping, and reporting requirements.

While the Federal Reserve did not sign on to the proposal, Federal Reserve governors have acknowledged that the CRA regulatory framework is out of date and needs to be modernized. ABA strongly encourages Federal Reserve-regulated banks to stay up to date on CRA modernization efforts and to participate in the public comment process for the FDIC/OCC proposal.

Below is a summary of the key aspects of the proposed rule. This is a high-level overview and is not intended to capture all of the nuances of the proposal. Comments are due to the agencies 60 days after the proposal is published in the Federal Register.

Highlights of the Proposed Rule

1. The proposal would clarify and expand activities that receive CRA credit.

To give banks more certainty regarding whether their activities will receive CRA credit, the proposal would establish the following:

- **Criteria for Qualifying Activities.** The proposed qualifying activities criteria generally would include activities that qualify for CRA credit today as well as other activities that are consistent with the purpose of CRA, but may not qualify under the current regulatory framework. Examples of qualifying activities would include: activities supporting community support services (such as child care, education, and health services), essential community facilities, essential infrastructure that serves LMI individuals, naturally occurring affordable housing, rental housing for LMI individuals residing in high-cost areas, and activities in Indian country. Banks could receive pro rata credit for activities that partially, but not exclusively, benefit LMI individuals, such as financing mass transit that serves LMI neighborhoods and other geographies. Additionally, to incentivize banks to engage in certain activities, the proposal would double the value of those activities, including activities involving community development financial institutions (CDFIs), community development investments (not including mortgage-backed securities or municipal bonds), and other affordable housing-related community development loans.
- **Confirmation Process.** The proposal would establish a process under which a bank could request its regulator to confirm that an activity qualifies for CRA credit. Within 6 months, the agency will notify the requestor whether the activity qualifies (incorporating any conditions, if applicable). If the agency does not object within this timeframe, the activity would be confirmed as a qualifying activity.
- **Illustrative List of Qualifying Activities.** The agencies would be required to maintain on their website a non-exhaustive list of examples of qualifying activities and non-qualifying activities. In addition to updating the list in response to requests submitted pursuant to the confirmation process described

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above, the agencies will publish the qualifying activities list at least every three years for public notice and comment. If the agencies determine that a qualifying loan or community development investment no longer meets the eligibility criteria, that loan or investment will not be a qualifying activity for subsequent purchasers.

2. Some loans would no longer be qualifying activities or would receive only partial credit.

- Loans in Gentrifying Areas. The proposal responds to concerns that the current rules may contribute to displacement of residents in gentrifying areas. To address this issue, mortgage loans to high-income individuals living in low-income census tracts would no longer qualify for CRA credit.
- Loans and Investments Purchased and Sold. The proposal also seeks to address criticism that the current framework gives too much CRA credit to certain activities, such as credit for the full value of frequently traded mortgage-backed securities, regardless of how long such activities remain on a bank's balance sheet. The proposal would focus on a bank's balance sheet as a representation of the institution's ongoing commitment to CRA. Specifically, CRA qualifying loans and community development investments would be valued based on their average month-end on-balance sheet dollar value; qualifying retail loans originated and sold within 90 days of their origination date would be valued at 25 percent of their origination value.

3. The proposal would establish two types of assessment areas: facility-based assessment areas and deposit-based assessment areas.

This aspect of the proposal addresses concerns that the existing CRA regulations place too much emphasis on physical bank locations.

- Facility-Based Assessment Area. A bank must delineate a facility-based assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility *as well as* the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans.
- Deposit-Based Assessment Area. In addition, a bank that sources 50 percent or more of its retail domestic deposits from outside its facility-based assessment area(s) would be required to designate deposit-based assessment areas that include the non-overlapping geographies in which the bank sources 5 percent or more of its retail domestic deposits. Retail domestic deposits would include deposits provided by an individual, partnership, or corporations; they would not include deposits obtained via deposit brokers.

4. Banks could receive CRA credit for qualifying activities outside of their assessment areas.

Subject to certain conditions, the proposal would permit a bank to receive CRA credit for qualifying activities conducted outside of its assessment area(s) at the bank-level. Under this approach, a bank would still be expected to meet local community needs where it has branches and depositors, but would also be given flexibility to serve other communities, as these activities would be considered when calculating the overall dollar value of the bank's qualifying activities.

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5. The proposal would establish a new framework for measuring CRA performance.

In lieu of the current CRA regulation's lending, investment, service, and community development tests, the proposal's new framework would evaluate a bank's CRA performance within each assessment area *and* at the bank level using three measures. Together, these three measures would generate a presumptive rating, which the agencies could adjust based on performance context factors or evidence of discriminatory or other illegal credit practices.

- **CRA Evaluation Measure.** The CRA evaluation measure is the sum of (1) a bank's qualifying activities divided by the value of the bank's retail domestic deposits and (2) the number of the bank's branches located in LMI census tracts, distressed areas, unerserved areas, and Indian country divided by its total number of branches, multiplied by 0.01. The average of a bank's bank-level CRA evaluation measures will correspond to the following CRA ratings:
 - **Outstanding.** 11 percent or higher
 - **Satisfactory.** 6 percent or higher
 - **Needs to Improve.** 3 percent or higher
 - **Substantial Noncompliance.** Less than 3 percent
- **Retail Lending Distribution Test.** This test evaluates the distribution of the number of a bank's loans in a major retail lending product line (i.e., a retail lending product line that comprises at least 15 percent of the bank's retail originations by volume) in an assessment area using (1) a geographic distribution test for small loans to businesses and farms and (2) a borrower distribution test for home mortgages, consumer loans, and small loans to businesses and farms.
 - **Geographic Distribution Test.** To pass the geographic distribution test for small loans to businesses/farms, a bank's percentage of such loans in LMI census tracts must meet or exceed the associated geographic demographic comparator or peer comparator.
 - **Geographic Demographic Comparator.** 55 percent of the percentage of businesses/farms in LMI census tracts in the assessment area.
 - **Geographic Peer Comparator.** 65 percent of the percentage of small loans to businesses/farms in LMI census tracts originated by all banks in the assessment area.
 - **Borrower Distribution Test.** To pass the borrower distribution test for mortgages to LMI, consumer loans to LMI, and small loans to small businesses and small farms, a bank must meet or exceed the associated borrower demographic comparator or the borrower peer comparator.
 - **Borrower Demographic Comparator.** 55 percent of the percentage of individuals in the assessment area who are LMI, or percentage of businesses or farms in the assessment area that are small businesses or small farms (as applicable)
 - **Borrower Peer Comparator.** 65 percent of the percentage of consumer loans to individuals who are LMI, small loans to businesses provided to small businesses, or small loans to farms provided to small farms (as applicable) by all banks in the assessment area.
- **Community Development Minimum.** To obtain an Outstanding or Satisfactory rating, banks would be required to make a minimum amount of community development loans or investments. Specifically, community development loans and investments divided by the average quarterly value of the bank's retail domestic deposits as of close of business each quarter must meet or exceed 2 percent.

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6. The proposal would retain the strategic plan option.

Under the proposal, certain banks would be required to adopt a strategic plan (i.e., banks that do not maintain retail domestic deposits on balance sheet and small banks that do not make retail loans), while all other banks would continue to have the option to submit a strategic plan for regulatory approval.

Strategic plans would be limited to a term of five years and would be subject to a public comment period. The proposal would also establish high-level content requirements for proposed plans, describe criteria for evaluating a plan, and would require regulators to respond to a proposed plan within 6 months of receipt. If the agency does not act within this time period, the plan will be deemed approved unless the agency extends the review period for good cause for no more than 90 days.

7. Small banks could opt in to the new framework.

The proposal would eliminate the existing intermediate small bank category and would permit banks with \$500 million or less in assets the option to opt-in to the new performance evaluation standards or choose to be evaluated under the existing regulatory framework for small banks. A bank would need to make this choice at least six months before the start of the evaluation period. Notably, certain new data collection requirements pertaining to depositor location would apply to small banks regardless of whether they choose to be evaluated under the new or existing performance standards.

8. The wholesale and limited purpose designation would be eliminated.

The proposal would remove the existing limited purpose and wholesale designations that permit certain banks to be evaluated solely on their community development activities. Under the proposal, these banks would be subject to the same standards that apply to all other banks, including deposit-based assessment areas (for banks that meet the concentration requirement) and the retail lending distribution test (for banks engaged in consumer lending as a major retail lending product line).

9. Banks would need to collect and report new data.

The proposal would impose significant recordkeeping requirements regarding the collection and maintenance of new data supporting the bank's performance. Each year, a bank would need to report extensive information regarding qualifying retail loans (including consumer loans), community development loans, community development investments, and community development services. Additionally, banks would be required to collect and maintain results of the borrower distribution and geographic distribution tests for major retail lending product lines and would be required to collect the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter.

10. Each year, regulators would release bank-specific and aggregate CRA data.

Each year, regulators will prepare an annual CRA disclosure statement for each bank and each county. These disclosures will be available to the public.

- Individual CRA Disclosure Statement. Individual bank disclosure statements will provide the value of the bank's qualifying retail loans, community development loans, community development investments, and community development services.

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- Aggregate CRA Disclosure Statement. Aggregate statements for each county will include data on home mortgage loans, consumer loans, small loans to businesses, and small loans to farms made by all banks that are subject to CRA data reporting requirements.

Questions? Contact ABA's [Krista Shonk](#) for more information.

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