

The Office of the Comptroller of the Currency (OCC) finalized its attempt to “modernize” the Community Reinvestment Act (CRA) [on May 20, 2020](#). The Federal Deposit Insurance Corporation (FDIC) had joined the OCC proposal released in December 2019 but did not join the final rule. The Federal Reserve has already opted out of the proposal.

The CRA is intended to help reverse the effects of redlining, the intentional denial of loans and financial services to neighborhoods of color. The law requires banks to help meet the needs of low- and moderate-income (LMI) communities and to be responsive to *local community needs*. Since 1977, trillions of dollars have been invested in LMI communities as a result of the CRA.

The OCC rule, if it begins to take full effect as of January 1, 2023, would radically change the way the CRA is implemented, threatening the future of some LMI communities.

Below, we discuss how the final rule compares to proposed rule.

OVERVIEW

- a. **Woodstock Position:** CRA provides critical support for LMI communities. Decades of evidence demonstrate that this federal law effectively engages banks in providing credit to LMI communities. We agree with Governor Lael Brainard of the Federal Reserve that, while regulation change is needed, it deserves a thoughtful and well researched effort to avoid unintended consequences. The lack of interagency agreement about the current proposal will create confusion among banks and other stakeholders. The regulators should release a CRA modernization proposal only when all three regulators are in agreement.
- b. **Final Rule:** The final rule is mostly unchanged from the proposal, but there are some major revisions. For example, the final rule guts the proposed CRA grading system by taking out the numeric benchmarks that were to be used in determining a bank’s CRA grade. The OCC says that the benchmarks will be established in the course of a new rulemaking process. Another major feature of the final rule is that the FDIC did not join the OCC in issuing it. Correspondingly, the final rule applies to only the OCC-regulated banks. One commenter called this a “regulatory mess.” Unless this mess is fixed, some banks will be expected to comply with two different sets of CRA rules.

Effective Date: The OCC rules take effect on October 1, 2020. Full compliance, however, is not required until January 1, 2023, for large banks, and January 1, 2024, for intermediate and small banks. Before then, OCC-regulated banks will be able to take advantage of various pieces of the rule, such as the expansion of what is CRA-qualifying and the illustrative list of CRA-qualifying activities. Delaying compliance until 2023 gives the regulators time to get back to the drawing board and to release a

CRA modernization proposal when and only when all three regulators are in agreement.

The OCC Rule is organized into four sections: (1) Clarifying and expanding the types of activities that qualify for credit under the CRA, (2) Increasing the physical areas in which banks' CRA performance will be measured ("Assessment Areas"), (3) Creating a metric/quantitative method for measuring CRA activities, and (4) Requiring banks to collect new data.

CLARIFYING/EXPANDING CRA-QUALIFYING ACTIVITIES

1. A major feature of the OCC Rule is a list of CRA-Qualifying Activities giving banks more guidance on how they can get CRA credit. The OCC Rule expands the types of activities that receive credit under the CRA.

- a. **Woodstock Position:** Woodstock supports the additional clarity that a list provides to both banks and other stakeholders but opposes giving credit for projects that are not responsive to local community needs and do not primarily benefit LMI communities. There are many worthy causes, but LMI communities are the focus of the CRA. Adding activities that are not LMI-centered will divert resources away from LMI communities.
- b. **Final Rule:** The final list of CRA-Qualifying Activities is substantially the same as the proposed list but with some noteworthy changes as described below.

Stadiums: Automatic credit for improvements to athletic stadiums was stricken from the list of CRA-Qualifying Activities and replaced with improvements to "an athletic facility owned and operated for community benefit by a local nonprofit."

Mass Transit & Infrastructure: Credit for mass transit and other infrastructure improvements was essentially unchanged in the final rule. The OCC says that, in response to concerns that giving credit to activities that are not LMI-centered would divert resources away from LMI communities, it changed "Essential infrastructure that benefits or serves LMI individuals" to "Essential infrastructure that *partially or primarily serves* LMI individuals." This is a distinction without a difference. Additionally, the final list includes even more examples of infrastructure projects that would receive credit such as "Financing of a community-wide solar plus energy storage system to reduce utility costs and help maintain affordability for a multifamily housing complex in an LMI community."

Hospitals: "Essential community facilities," such as hospitals that partially benefit LMI individuals, were kept on the list.

Middle-income housing in high-cost areas: Housing for middle-income individuals in high-cost areas was stricken from the list.

2. The OCC Rule gives double-credit to investments and the value of other qualifying activities to Community Development Financial Institutions (CDFIs).

- a. **Woodstock Position:** Woodstock supports this provision. CDFIs, through investments, loans, and other services, are highly effective in providing benefits to LMI communities. Regulators should take steps, however, to ensure that providing double credit does not result in banks providing half the investment amount.
 - b. **Final Rule:** The final rule retains this provision. In response to the concern that double-credit could result in banks reducing their investments, the final rule provides that a bank is not eligible for double-credit until the quantified dollar values of its current period community development (CD) activities are approximately equal to the quantified dollar values of CD activities considered in its prior evaluation period.
3. Under the proposal, banks' efforts to provide safe and affordable products and services to LMI borrowers would receive no consideration.
 - a. **Woodstock Position:** Woodstock opposed this change. Safe and affordable products and services are key to expanding access to mainstream financial services for the unbanked. Unbanked households are especially vulnerable to high-cost alternative financial service providers, such as payday lenders and check cashers.
 - b. **Final Rule:** The final rule is essentially unchanged. As in the proposal, affordable products and services are considered as part of "performance context," but there is no explanation as to how performance context is factored into the overall CRA evaluation. The OCC plans to issue guidance on application of the performance context factors. As a substitute for a qualitative evaluation, the final rule expands the use of "multipliers" in the quantitative assessment. For example, if, at a bank's request, the OCC determines that an activity is responsive, innovative, or complex, the OCC will apply a multiplier of up to four times the activity's quantified dollar value. The resulting number after applying the multiplier will be added to the bank's total dollar value of CRA-qualifying activities.
4. The OCC Rule establishes a process for updating the List of Qualifying Activities.
 - a. **Woodstock Position:** We support a public comment process for each update of the List of Qualifying Activities.

Final Rule: The OCC will update the list periodically. Periodic updates, which the OCC considers "interpretative rules," are exempt from notice and comment under the Administrative Procedure Act. The updated list will be published in the *Federal Register* every five years. That publication will be subject to public comment.
5. The OCC Rules establishes a process by which a bank can submit an online form to seek agency confirmation that an activity is a qualifying activity.
 - a. **Woodstock Position:** Woodstock supports establishing a process that creates additional certainty and clarity for banks and other stakeholders. However, we seek transparency and would like the process to include a means by which

impacted communities can have the opportunity to comment on proposed activities.

Final Rule: The approval process is mostly unchanged from the Proposal. To respond to concerns like ours above, the final rule allows any interested party to request confirmation that an activity is a qualifying activity. This change does not resolve our concern.

ASSESSMENT AREA REFORM

1. The old rule used a “facility-based” method for establishing assessment areas. Under this method, the bank assessment area is defined based on the location of its physical branches, headquarters, etc. The OCC proposed adding a “deposit-based” method that would apply to banks that receive 50 percent or more of their deposits from outside their facility-based assessment areas. Under the deposit-based method, an area from which the bank receives 5 percent or more of deposits, based on the physical address of the depositor, would become part of the bank’s assessment area.
 - a. **Woodstock Position:** Woodstock supports expanding assessment area definitions to capture online banks and the growing online deposit base of traditional banks. The old CRA framework is woefully inadequate in how it treats internet banks—banks that primarily or exclusively do business over the internet.

Final Rule: The final rule is substantially the same as the proposal with respect to establishing deposit-based assessment areas for banks that receive 50 percent or more of their deposits from outside their facility-based assessment areas.

- b. **Woodstock Position:** Data on the geographic location of deposits must be made publicly available. Without this information, communities would be unable to clearly understand which banks to include in their assessment area. Further, because an assessment area can be as small as a single county, it is unknown whether the deposit-based method will meaningfully expand services and investments to LMI communities in need, or rather, allow a bank to satisfy the CRA by doing the minimally required activity in a small area.

Final Rule: The OCC acknowledges the lack of available data regarding the geographic location of deposits and the lack of transparency caused by not knowing the assessment areas until after CRA examinations are complete. Nevertheless, based on “supervisory experience,” the OCC declined to change its proposed method of establishing deposit-based assessment areas. As for the size of the assessment areas, the final rule allows a bank to delineate its deposit-based assessment areas at any geographical level up to the state level instead of requiring it to delineate at the smallest geographical area where it receives 5 percent or more of deposits.

OBJECTIVE MEASURE OF CRA ACTIVITY

Under the OCC Rule, a CRA evaluation has two major tests: (1) a CRA-activity test and (2) a Retail Lending Distribution Test.

CRA-Activity Test

1. The CRA-activity test is quantitative. The OCC had proposed giving an “Outstanding” CRA rating to a bank if they scored 11 percent or above¹ on a metric consisting of:

$$\frac{\text{Total Dollar Amount of Bank's CRA Activities}}{\text{Total Dollar Amount of Bank's Deposits}}$$

- b. **Woodstock Position:** Woodstock opposes a purely quantitative evaluation of CRA activity because it ignores the non-monetary or difficult-to-monetize ways in which a particular activity is responsive to local community needs. Also, allowing banks to aggregate their CRA activities into dollars will allow them to focus on simpler, higher-dollar investments and to pay minimal attention to strategic but smaller CRA activities and to the entire universe of LMI communities within their assessment areas.

Final Rule: There are two main differences between the rule and the proposal.

Benchmarks: Acknowledging a lack of data, the final rule omits *all* numerical benchmarks, including the 0-11 percent scale to be used in assigning a grade. The OCC states that a future rulemaking will outline a process by which the benchmarks will be set.

“Significant Portion”: In the proposal, a bank could not receive a satisfactory or an outstanding rating unless it also received that rating in a “significant portion” of its assessment areas and in those assessment areas where it holds a significant amount of deposits. The proposal suggested that 50 percent could be considered a “significant portion.” The final rule does not use the term significant portion. Instead, the final rule provides that for a bank with more than five assessment areas, to receive a presumptive rating of satisfactory or outstanding, the bank must receive at least the corresponding rating in: (1) 80 percent of its assessment areas, and (2) in assessment areas from which the bank receives at least 80 percent of its deposits. For a bank with five or fewer assessment areas, the final rule states that, to receive a presumptive rating of satisfactory or outstanding, a bank must receive at least the corresponding rating in: (1) 50 percent of its assessment areas, and (2) in the assessment areas from which it receives at least 80 percent of its deposits.

2. Under the OCC Rule, bank branch distribution is measured separately. A bank’s CRA-activity score could increase by up to one percentage point based on the percent of a bank’s branches in LMI areas. Under the OCC’s proposal, a bank with a high 30 percent of its branches in LMI census tracts would receive only an additional .3 percentage points on the CRA-activity test.

¹ Six percent to eleven percent would be “Satisfactory,” three percent to six percent would be “Needs to Improve,” and less than three percent would be “Substantial Noncompliance.”

- a. **Woodstock Position:** Treating branch distribution as extra credit of minimal value lessens the importance of branches in the CRA evaluation framework. Bank branches still provide a valuable service to communities and are particularly vital in “banking deserts,” areas with little to no access to mainstream financial services.

Final Rule:

Doubling the credit: The final rule changes the formula to essentially double the value of branches. Under the example above, the bank would receive an additional .6 percentage points on the CRA-activity test. The maximum credit that a bank could receive would remain only 1 percentage point. This formulation still gives banks inadequate credit for branches in LMI communities.

Adjacent branches: The final rule changes the formula by making it possible for a bank to receive credit for a branch that is *adjacent* to an LMI community. The rule states that a bank will receive credit for branches that are “located in or that serve” LMI communities. Giving credit to adjacent branches dilutes the value of branches that are actually in the community.

Multiplier: To give more weight to bank branches, the final rule gives double credit to retail loans generated by branches in LMI census tracts (“a two times multiplier”).

3. Banks will continue to receive credit for purchasing mortgage-backed securities (MBS) but only for the dollar value of the MBS for the period that the investment remains on-balance sheet.
 - a. **Woodstock Position:** Woodstock supports this change because it would limit the degree to which a bank receives full credit for MBS investments that are made just prior to a CRA evaluation and held in the investment portfolio solely for CRA credit.
 - b. **Final Rule:** The OCC Rule retained this provision as proposed.

Retail Lending Distribution Test

1. The OCC proposed a series of lending testing that would evaluate a bank a pass/fail basis. A bank passes if it passes both a Geographic Distribution Test that looks at *where* loans were made and a Borrower Distribution Test that looks at *to whom* the loans were made. Under the OCC proposal, both tests would have applied to the bank’s small loans to businesses and small loans to farms. Only the Borrower Distribution Test, however, would have applied to the bank’s home mortgage lending and consumer lending. For each test, a bank would pass if it met certain benchmarks on a “Demographic Comparator” or a “Peer Comparator.”

Geographic Distribution Test

For the Geographic Distribution Test, the Demographic Comparator would be 55 percent of the percentage of businesses (or farms, if applicable²) in LMI tracts in the bank's assessment area. The Peer Comparator would be 65 percent of the percentage of small loans to businesses (or small loans to farms, if applicable) in LMI tracts made by all banks in the assessment area.

Example – Geographic Distribution Test – Demographic Comparator: First Bank makes 5 percent of its small loans to businesses in LMI census tracts in its assessment area while 10 percent of businesses in the bank's assessment area are in LMI census tracts. First Bank would score 50 percent and would fail to meet its Geographic Distribution Test - Demographic Comparator.

Example – Geographic Distribution Test – Peer Comparator: First Bank makes 7.5 percent of its small loans to businesses in LMI tracts in its assessment area while all other banks, on average, make 10 percent of their small loans to businesses in LMI tracts in the assessment area. First Bank would score 75 percent and would pass its Geographic Distribution Test - Peer Comparator.

To pass the Geographic Distribution Test, a bank must meet or exceed *either* the Demographic Comparator *or* the Peer Comparator. Therefore, First Bank would pass the Geographic Distribution Test under the examples above.

Borrower Distribution Test

For the Borrower Distribution Test, the Demographic Comparator would be 55 percent of the percentage of LMI borrowers in the assessment area (or small businesses in the case of loans to small businesses). The Peer Comparator would be 65 percent of the percentage of loans made to LMI borrowers by all banks in the assessment area (or to small businesses in the case of loans to small businesses).

Example – Borrower Distribution Test - Demographic Comparator: First Bank makes 7 percent of its home mortgage loans to LMI borrowers in its assessment area while 10 percent of borrowers in the assessment area are LMI. First Bank would score 70 percent and would pass its Demographic Comparator.

Example – Borrower Distribution Test - Peer Comparator: First Bank makes 7.5 percent of its home mortgage loans to LMI borrowers in its assessment area while all other banks, on average, make 15 percent of their home mortgage loans to LMI borrowers in the assessment area. First Bank would score 50 percent and would fail to meet its Peer Comparator.

As with the Geographic Distribution Test, to pass the Borrower Distribution Test, a bank must pass meet or exceed *either* the Demographic Comparator *or* the Peer Comparator. Therefore, First Bank would pass the Borrower Distribution Test under the example above.

² Under the Proposal, the Geographic Distribution test would have applied only to a product line with 20 or more originations in the assessment area during the evaluation period. **Final Rule:** The test applies only to a product line with 20 or more originations *per year*.

Final Rule: The final rule omits the 55 percent and 65 percent benchmarks. The OCC states that a future rulemaking will outline a process by which the benchmarks will be set. The “pass/fail” nature of the tests was unchanged.

2. Under the OCC’s Proposal, the Geographic Test would not have applied to home mortgages, eliminating the incentive for banks to make mortgage loans in LMI communities. The OCC wants to eliminate the incentive for banks to make mortgage loans to middle- and upper-income borrowers in LMI communities because such loans, in the OCC’s view, promote displacement and gentrification.
 - a. **Woodstock Position:** This drastic change would have been an over-correction. Gentrification and displacement are serious problems, but eliminating CRA credit for *all* mortgages made in LMI communities to borrowers who, while not LMI, are also not rich is going too far. In Chicago, a middle-income family of four earns between \$71,300 to \$107,000 per year. Making a mortgage to such a family in an LMI community does not contribute to gentrification or displacement.

Final Rule: Responding to concerns like ours, in the final rule, the Geographic Test applies to home mortgage lending in addition to small loans to businesses and small loans to farms. This is a win.

3. Under the proposal, retail loans that are sold within 90 days of their origination would be valued at 25 percent of their origination value.
 - a. **Woodstock Position:** Mortgage lending is facilitated by securitizing loans and quickly selling them in the secondary market. It does not make sense to discount mortgage originations to LMI borrowers just because the bank sells the loans within 90 days of origination. Woodstock opposes this discounting because it will discourage loan originations. LMI borrowers need traditional bank mortgages to ensure a robust and equitable housing market.

Final Rule: Responding to concerns like ours, under the final rule, retail loan originations sold at any time within 365 days will receive full credit. This is a win.

4. The proposal would broaden the definitions of small loan and small business under the CRA. Currently, a small loan is a loan of \$1 million or less, and a small business is a business with annual revenues of \$1 million or less. For both definitions, the dollar-amount threshold would be raised to \$2 million. Loans of \$1 million to \$2 million and loans to businesses with \$1 million to \$2 million of revenues would receive credit under the new Retail Distribution Test.
 - a. **Woodstock Position:** Approximately 95 percent of businesses earn \$1 million or less. Expanding the definition of small loan and small business will encourage banks to make bigger loans to bigger businesses, and, correspondingly, banks would make fewer smaller loans to smaller businesses. This would harm small, locally owned businesses with revenues of \$1 million or less.
 - b. **Final Rule:** The final rule changes \$2 million to \$1.6 million for the definitions of both small loan and small business, and the final rule changes the term “small business” to “CRA-eligible business.” In addition, the final rule requires that the

\$1.6 million thresholds be adjusted for inflation once every five years to keep pace with inflation. These changes do not meaningfully address our concerns.

DATA COLLECTION/REPORTING

1. Banks would be required under the proposal to collect data necessary to make the calculations and assessment area determinations outlined above. For example, banks would be required to collect and maintain the value of each retail domestic deposit and the address of each depositor. This data would not be required to be reported to the regulator.
 - a. **Woodstock Position:** Woodstock supports deposit data collection, but data, including the geographic distribution of deposits, which is key to the numeric evaluation of CRA performance under the proposal, must be available to allow communities to understand the metrics used to measure performance in LMI communities.
 - b. **Final Rule:** Banks must “collect and maintain” deposit data, but there are no reporting or disclosure requirements for this data. The full extent of the data reporting requirements are not clear. The OCC states there will be future guidance, and certain provisions of the final rules reference a data reporting form. The links contained in the rules for the form go to the OCC home page. Presumably, the form does not yet exist.