ICBA

Independent Community Bankers *of* America®

2020 CRA MODERNIZATION – SUMMARY OF OCC FINAL RULE

June 10, 2020

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Table of Contents

2020 CRA Modernization – Summary of OCC Final Rule

Background:

The Community Reinvestment Act ("CRA") was enacted in 1977 to ensure that each insured depository institution serves the convenience and needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, consistent with [its] safe and sound operation.[1] In August 2018, the Office of the Comptroller of the Currency ("OCC") issued an Advanced Notice of Proposed Rulemaking ("ANPR") inviting public input on how best to improve the CRA regulatory framework.

Based on the public comments submitted in response to the 2018 ANPR, and in response to a nationwide outreach campaign undertaken by the OCC, the Federal Deposit Insurance Corporation ("FDIC"), and the Federal Reserve Board, the OCC and FDIC issued a Notice of Proposed Rulemaking ("NPR") on December 12, 2019.[2]

The NPR was designed to respond to feedback that the existing CRA framework had not kept pace with technological changes in the banking industry. It sought to clarify which activities qualify for CRA credit, to introduce quantitative metrics for CRA evaluations, and to modify assessment areas to account for non-traditional, Internet banks.

The OCC's Final Rule:

On May 20, 2020, the OCC released a Final Rule to "strengthen and modernize" the CRA.[3] The rule represents the first major overhaul of the CRA in decades. However, the FDIC and Federal Reserve Board did not join the OCC's final rule and will continue using the existing CRA framework. That means that the rule only applies to national banks whose primary regulator is the OCC.

Despite acknowledging that a majority of the over 7,000 comments received in response to the NPR opposed the rule, the OCC concluded that the changes were appropriate because the rule would increase the transparency and objectivity of exams. According to the agency, "The lodestar for this new CRA framework is increased transparency, objectivity, and consistency in application, which will help the OCC achieve the objective of the CRA—

1 12 U.S.C. 2903(a)(1).

2 85 Fed. Reg. 6, at 1204.

3 Available at: https://www.occ.treas.gov/news-issuances/federal-register/2020/nr-occ-2020-63a.pdf.

to encourage banks to meet the credit needs of their entire communities, including LMI individuals and areas."[4]

The Final Rule makes broad changes to the agency's enforcement of the CRA in several areas:

- **Qualifying Activities:** The Final Rule modifies the criteria used by the agency to determine which activities qualify for CRA credit. Some of these changes include granting CRA credit in middle-income areas and for activities that benefit the entire community. The agency has also created an illustrative list of qualifying activities.

- **Assessment Area:** Banks will continue to delineate assessment areas based on the location of their branch network. However, banks that receive a majority (50% or more) of their deposits from outside of their facilities-based assessment area will also be required to delineate deposit-based assessment areas in geographies where they receive a significant (i.e. greater than 5%) portion of their deposits.

- **Performance Evaluations:** In order to make CRA exams more objective, the final rule creates a series of new metrics to measure CRA performance. The CRA evaluation measure is designed to measure qualifying activity as a percentage of retail domestic deposits, and then compare that level to a benchmark. Metrics will also be used to assess the distribution of a bank's lending and its level of Community Development activity.

- **Data Collection:** The Final Rule will impose significant data collection and reporting requirements. Specifically, even small banks that do not opt-in to the new framework will be required to track and report the location of deposits.

Small Bank Opt-In:

Responding to ICBA's comments, the Final Rule increased the asset threshold for opting in to the OCC's new framework. The Final Rule includes a provision that would allow banks with less than $600 million in assets to choose whether to be evaluated using the small bank Lending Test from the prior CRA rule or to opt-in to the new rule's quantitative framework. Similarly, banks between $600 million and $2.5 billion in assets may choose to be evaluated using the previous rule's framework for Intermediate Small Banks ("ISBs") (i.e. the Lending Test and the Community Development Test) or to opt-in to the framework outlined in the new rule.

4 Final Rule at 18.

However, certain provisions of the new rule – including the requirement to track the location of retail domestic deposits and to delineate deposit-based assessment areas – apply to small banks whether or not they choose to opt-in to the new performance standards.

Qualifying Activities:

Illustrative List: The OCC will maintain an illustrative list of non-exhaustive examples of qualifying activities that meet, and may include activities that do not meet, the qualifying activities criteria described below. The list is intended as a reference and will be updated no less frequently than every 5 years through public notice and comment.

Confirmation of Qualifying Activity: A bank or other interested party may request confirmation from the OCC that an activity meets the qualifying activities criteria by submitting a standard form. If an inquiry is not confirmed or rejected as a qualifying activity within 90 days, the activity counts as though it had been confirmed as qualifying. When the OCC decides to approve a qualifying activity in response to a public request for confirmation, it may choose to update the illustrative list to reflect its decision to confirm the activity.

Qualifying Activities Criteria: The qualifying activities criteria are the standards that are used by banks and examiners to determine whether an activity counts for CRA credit. Even if an activity does not appear on the illustrative list, it may still be a qualifying activity if it meets the qualifying activities criteria. The qualifying activities criteria are summarized below:

- Retail Loans – Retail loans made to a LMI family, a CRA eligible small business, or a CRA eligible small farm are qualifying activities. Loans located in Indian Country also qualify. Finally, loans to small businesses and small farms located in LMI census tracts qualify.

- CD Loans, Investments, and Services[5] –
    - **Affordable Housing:** Loans that provide affordable housing, including housing where rents are not projected to exceed 30% of 80% of the area's median income, count as community development.
    - **Community Support Services:** Services including childcare, healthcare, or workforce development that partially or primarily serves LMI individuals.

5 Note that community development investments, except community development investments in mortgage-backed securities and municipal bonds, and community development services, will receive a 2x multiplier to their dollar value.

- o **Economic Development:** Activities that provide financing for or support businesses or farms including activities that promote job creation or job retention partially or primarily for low- or moderate-income individuals.
- o **Essential Community Facilities:** Facilities, including schools and hospitals – must partially or primarily serve LMI families, census tracts, disaster areas, etc.
- o **Essential Infrastructure:** Roads, telecommunication infrastructure, etc. – must partially or primarily serve LMI families, census tracts, disaster areas, etc.
- o **Support for Family Farms:** Financing for the purchase or lease of farmland, equipment, and other farm-related inputs, or for the receipt of technical assistance or the sale and trade of farm products.
- o **Federal, State, and Local Government Programs:** Programs that partially or primarily serve LMI families and are consistent with bona fide revitalization, stabilization, or recovery plans for LMI areas.
- o **Financial Literacy Education:** Education including homebuyer counseling.
- o **Owner-occupied and rental housing development:** Developments including construction, rehabilitation, improvement, or maintenance in Indian country or other tribal and native land.
- o **Qualified Opportunity Funds:** Funds that benefit LMI Opportunity Zones as defined in 26 U.S.C. 1400Z-1(a).
- o **Minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union:** Activities and ventures undertaken by a bank in cooperation with these institutions if the activity helps to meet the credit needs of local communities in which these institutions are chartered.

Qualifying Activities Quantification: To apply the CRA evaluation measure, it is necessary to quantify the value of qualifying activities. To do this, it is necessary to perform certain calculations and apply multipliers. For all activities, the quantified dollar value of a partially qualifying activity is calculated by multiplying the percentage of the activity that is qualifying by the full dollar value of the qualifying activity.

- CD Service Quantification – To calculate the value of CD services, multiply the number of hours spent performing CD services by $38.
- Monetary and In-Kind Donations – The value of the donation.

- Qualifying Loans and CD Investments – The value of qualifying loans and investments is the outstanding balance of the loan or investment as of COB on the last day of each month. Legally binding commitments to invest or lend are also granted CRA credit.
    - o For retail loans sold within 365 days of origination, credit is awarded equal to dollar value of the loan at origination.

The Final Rule provides the following formula for adding up qualifying activities:

*Quantified value of **CD Loans and Retail Loans** on balance sheet for at least 365 days, and **CD Investments** on balance sheet*	+	*One hundred percent of the origination value of **Retail Loans** sold within 365 days of origination*	+	***CD Services, Monetary Donations,** and, **In-kind Donations***

Multipliers: The value of the following activities is amplified by applying a 2 times (2x) multiplier:

- Activities provided to or that support minority depository institutions, women's depository institutions, Community Development Financial Institutions, and low-income credit unions, except activities related to mortgage-backed securities;
- Other community development investments, except community development investments in mortgage-backed securities and municipal bonds;
- Other community development services;
- Other affordable housing-related community development loans; and
- Retail loans generated by branches in low- and moderate-income census tracts.

The OCC may apply a multiplier as high as 4x to activities that are particularly innovative or that respond to a specific area of need in a community.

Assessment Area:

One of the main objectives of the OCC's rule was to update the CRA to better account for and evaluate Internet banks, which the OCC described as tech-focused banks that did not use a traditional network of branches to attract deposits, and other banks that received a significant portion of their deposits from outside of their traditional assessment areas. To do this, the Final Rule creates two classes of assessment areas – facilities-based and deposit-based assessment areas. The first category closely resembles the assessment areas from the current rule (with few differences) while the second category requires some institutions to delineate assessment areas in geographies where they collect a significant portion of deposits, even if they do not have a physical location in that geography.

Facilities Based Assessment Area: Banks must delineate an assessment area in each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans.

- Unlike the current rule, banks are not required to delineate assessment areas in geographies where they have a deposit taking ATM, but not a full-service branch.
- Banks must delineate whole geographies (i.e. whole counties, etc.) as assessment areas. Banks will no longer be permitted to adjust their assessment area to include only the portion of a county they can reasonably be expected to serve.

Deposit Based Assessment Area: "A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas where it receives 5 percent or more of its retail domestic deposits."[6]

To determine whether it is required to delineate deposit-based assessment areas, all banks will be required to track and monitor the location of their retail domestic deposits.

<u>Definition of "Retail Domestic Deposit"</u> – The definition of retail domestic deposit is similar to the OCC's definition in the proposal. However, some positive changes, such as the exclusion of sweep deposits and prepaid card accounts, were made in accordance with suggestions made in the ICBA comment letter. The final rule defines a retail domestic deposit is a deposit, as defined in the FDI Act, that is reported on Schedule RC-E of the Call Report, as item 1 or item 3. In addition, retail domestic deposits include non-brokered reciprocal deposits for the institution sending the non-brokered "reciprocal deposit." However, retail domestic deposit does not include

- A deposit obtained, directly or indirectly, from or through the mediation or assistance of a "deposit broker,"
- A deposit originated from an affiliated or non-affiliated broker-dealer sweep transaction,

6 Final Rule at 256.

- Held in a Health Savings Account,
- Held in a prepaid card account, or
- A non-brokered reciprocal deposit for the institution receiving a non-brokered "reciprocal deposit."

Military Banks: Rather than adhering to the above rule, a military bank's assessment area will consist of the entire area of the United States and its territories.

Performance Evaluations:

Banks above $2.5 billion in assets and small banks and ISBs that opt into the new framework will be subject to the new general performance standards. The new general performance standards were designed to make CRA exams more objective and data driven. The performance evaluation has 3 parts – the CRA Evaluation Measure, the Retail Lending Distribution Tests, and the Community Development Minimum.

CRA Evaluation Measure: Banks calculate their CRA evaluation measure by adding up the value of their qualifying activities and dividing that number by the amount of retail domestic deposits. Next, they add a variable calculated by dividing their number of branches located in or serving LMI census tracts divided by their total number of branches and multiplied by 0.02. Finally, this evaluation measure is compared to benchmarks determined by the OCC and published on a periodic basis through a notice and comment process. The formula for calculating the measure appears below:

$$\left(\frac{\textit{Annual Qualifying Activities Value}}{\textit{Average Quarterly Value of the Bank's Retail Domestic Deposits}}\right)$$

$$+$$

$$\left(\frac{\textit{The Number of Bank's Branches Located in or that Serve the LMI Cansus Tracts}}{\textit{Total Number of Branches}} \ast 0.02\right)$$

$$=$$

$$\textbf{\textit{CRA Evaluation Measure}}$$

The CRA evaluation measure is applied both at the whole-institution level and within each assessment area. This measure is similar to the measure that appeared in the proposal, but the modifier for branches located in LMI census tracts has been doubled and expanded to include branches that aren't located in, but primarily serve LMI census tracts.

Retail Lending Distribution Tests: In each assessment area, the OCC will apply retail lending distribution tests to a bank's retail lending product lines.

Distribution tests are not applied at the whole-institution level. There are two types of distribution tests:

- Geographic distribution test – applies to a bank's home mortgage product line, small loan to a business product line, or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations per year in the assessment area during the evaluation period.

- Borrower distribution test – applies to each major retail lending product line with 20 or more originations per year in the assessment area during the evaluation period.

Major Retail Lending Product Line: These tests apply only to major retail lending product lines, which are product lines that "composed at least 15 percent of the bank's dollar volume of total retail loan originations and [were] the first or second largest retail lending product line by dollar volume."[7] At a bank's option, they may designate product lines that composed at least 15 percent of the bank's dollar volume of total retail loan originations, but that were not the first or second largest retail lending product line by dollar volume as major retail product lines.

- Consumer Loans – Under the proposed rule, banks would have been evaluated on their consumer loans if consumer lending accounted for 15% or more of their business in an assessment area. Under the prior CRA rule, evaluation of consumer lending was optional. Responding, in part, to ICBA's advocacy on the issue, the agency clarified in the final rule that each consumer lending product line counts as a separate "retail lending product line" for the purpose of the 15% threshold. That is, instead of grouping together credit card loans, personal loans, auto loans, etc., each category will be classified as an individual product line. Additionally, even if a consumer lending product line exceeds 15% of a bank's business in an assessment area, it is only mandatorily evaluated as a "major retail lending product line" if it is the bank's first or second largest product line by dollar volume in that assessment area.

Geographic Distribution Test: A bank's performance under the geographic distribution test is assessed by comparing the bank's retail loans in a major product line originated in low- and moderate-income tracts in the assessment area as a percentage of the bank's retail loans in a major product line originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

7 Final Rule at 239.

- Geographic Demographic Comparator – the percentage of relevant units [8] in the assessment area that are in low- and moderate-income census tracts.

- Geographic Peer Comparator – All peer loans in the relevant product line originated in low- and moderate-income areas in the assessment area as a percentage of all peer loans in the relevant product line in the assessment area, where peers are defined as all banks evaluated under the general performance standards.

In short, the test functions by evaluating the geographic distribution of a bank's retail lending compared against either the demographics of the assessment area (i.e. how many housing units, businesses, etc. are in LMI areas) OR to the distribution of retail loans made by other OCC supervised banks in the assessment area. Whichever comparator is more favorable to the bank may be used.

Borrower Distribution Test: The borrower distribution test functions similarly to the geographic distribution test – but it looks at the borrowers themselves rather than their geographic location in an LMI tract. For example, for the home mortgage lending product line test, the bank would be evaluated by comparing the bank's home mortgage loans originated to low- and moderate-income families in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated borrower demographic comparator or the associated borrower peer comparator. The test would be applied to all of a bank's major retail lending product lines in each assessment area.

- Borrower Demographic Comparator – the percentage of low- and moderate-income [families, households, businesses, etc.] in the assessment area.

- Borrower Peer Comparator – all peer product line loans originated to low- or moderate-income households as a percentage of all peer product line loans originated in the assessment area, where peers are all banks evaluated under the general performance standards.

If a bank fails either the geographic distribution test or the borrower distribution test in an assessment area, it cannot receive a satisfactory rating in that assessment area.

Community Development (CD) Minimum: A bank's level of community development activity (i.e. all qualifying activities that are not retail loans) as

8 For the home mortgage lending product line, it would be owner-occupied housing units, for small loans to business, it would be businesses, etc.

a percentage of retail domestic deposits must exceed a benchmark to be established and periodically updated by the OCC.

Presumptive Ratings: A bank is assigned a presumptive CRA rating in each assessment area and at the whole institution level. Presumptive ratings will be calculated by comparing a bank's CRA evaluation measure and its level of CD activity to performance standards benchmarks established by the OCC. [9] The performance standards will be periodically updated and based on the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities. Each update will be subject to a public notice and comment process.

To receive a presumptive rating of "outstanding" at the whole institution level, a bank must satisfy the following criteria:

- *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is outstanding (i.e. meets or exceeds the performance standard corresponding to a grade of outstanding).
- *Assessment area ratings.*
    - For banks with more than 5 assessment areas, the bank receives an assigned rating of outstanding in—
        - 80 percent of its assessment areas; and
        - Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas;
    - For a bank with five or fewer assessment areas, the bank receives an assigned rating of outstanding in—
        - 50 percent of its assessment areas; and
        - Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas.
- Community development minimum. The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers, divided by the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is outstanding (i.e. meets or exceeds the performance standard corresponding to a grade of outstanding).

9 The performance standard benchmark levels have not yet been published by the OCC. The agency is in the process of collecting additional data and they will be published after a public notice-and-comment process.

To receive a rating of "satisfactory," similar standards would apply, but the CRA evaluation measure and CD minimum would only be required to exceed the threshold associated with a satisfactory rating [10] and a bank with more than 5 assessment areas would only be required to receive a "satisfactory" or higher rating in 80% of its assessment areas.

Performance Context: In an attempt to account for qualitative factors not accurately captured by a dollar figure, the OCC has retained performance context factors. Therefore, the final rule will continue to assess qualitative factors, like responsiveness, through the application of performance context factors and allow for the application of multipliers for qualitative factors in some cases.

The OCC will provide a standard form on their website to submit information relevant to consideration of performance context.[11]

Performance context review will consider the following factors:

- The bank's explanation of how its capacity to meet the performance standards was affected by:
    - The bank's product offerings and business strategy;
    - The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;
    - The innovativeness, complexity, and flexibility of the bank's qualifying activities;
    - The bank's development of business infrastructure and staffing to support the purpose of this part; and
    - The responsiveness of the bank's qualifying activities to the needs of the community.
- The bank's explanation of how its opportunity to engage in qualifying activities was affected by:
    - The demand for qualifying activities, including, for example, credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan [12] or a U.S. Department of Housing & 274 Urban Development Consolidated Plan [13]
    - The demand for retail loans in LMI census tracts; and
    - Demographic factors (e.g., housing costs, unemployment rates variation).

10 Which, to restate, has not yet been published by the OCC.

11 This form is provided for in the text of the rule, but is not yet available on the OCC's website.

12 as provided for in 12 CFR 1290.6(a)(5).

13 as provided for in 24 CFR part 91.

- The bank's competitive environment, as demonstrated by peer performance.
- Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and
- Any other information deemed relevant by the OCC.

Banks' CRA ratings may be adjusted down, below the level implied by the application of the quantitative performance metrics, if the bank is found to have engaged in discriminatory credit practices or other illegal credit practices.

Strategic Plan: Subject to the OCC's approval, banks may continue to be evaluated using a Strategic Plan. However, the OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations unless otherwise determined in writing by the OCC.

Data Collection, Recordkeeping, and Reporting:

Small Bank Data Collection: "A small or intermediate bank evaluated under the small and intermediate bank performance standards … must collect and maintain data on 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 during the examination period until the completion of its next CRA evaluation."[14]

General Performance Standards Data Collection: Banks subject to the general performance standards (i.e. banks above $2.5 billion in assets OR small banks and ISBs that choose to opt-in) must collect and maintain the following data and supporting documentation:

Performance Standards Data:

- Retail lending distribution test ratios [15] for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;
- CRA evaluation measure and each assessment-area CRA evaluation;
- Community development minimum and each assessment-area level community development minimum; and
- Presumptive ratings.

14 Final Rule at 286.

15 calculated under 12 CFR § 25.12.

Qualifying Activities and Retail Domestic Deposit Data:

1. Qualifying loan data. Except as provided in the rules for community development services data [16] for each qualifying loan, collect:
    - A unique number or alpha-numeric symbol to identify the relevant loan file;
    - An indicator of whether the loan is a retail loan or a community development loan;
    - Date of:
        - o Origination for loans originated by the bank, if applicable;
        - o Purchase for loans not originated by the bank, if applicable; and
        - o Sale if the loan is a retail loan and sold by the bank within 365 days of origination;
    - An indicator of whether the loan was originated or purchased by the bank;
    - The loan amount at origination or purchase;
    - The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;
    - The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract;
    - Portion of the community development loan that is partially qualifying, if applicable;
    - An indicator of whether a multiplier applies;
    - The income or gross annual revenue of the borrower; and
    - The qualifying activities criteria that the loan satisfies (i.e. what makes the loan a qualifying activity) or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.
2. Other loan data. A bank must collect and maintain the following data and supporting documentation for originations of non-qualifying home mortgage loans, small loans to businesses, small loans to farms, and consumer loans by the bank:

16 Described in subsection (8) on page 12 of this summary

- A unique number or alpha-numeric symbol to identify the relevant loan file;
- The date of origination;
- The loan amount at origination;
- The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and
- The income or gross annual revenue of the borrower.

3. Number of home mortgage. For the home mortgage product line, for each county or county equivalent:
   - The number of loans originated;
   - The number of loans originated in low- and moderate-income census tracts; and
   - The number of loans originated to low- and moderate-income borrowers.
4. Number of small loans to businesses. For the small loan to a business product line, for each county or county equivalent:
   - The number of loans originated;
   - The number of loans originated in low- and moderate-income census tracts; and
   - The number of loans originated to CRA-eligible businesses.
5. Number of small loans to farms. For the small loan to a farm product line for each county or county equivalent:
   - The number of loans originated;
   - The number of loans originated in low- and moderate-income census tracts; and (iii) The number of loans originated to CRA-eligible farms.
6. Number of consumer loans. For each consumer loan product line (credit cards, auto loans, personal loans, etc.), for each county or county equivalent:
   - The number of loans originated; and
   - The number of loans originated to low- and moderate-income borrowers.

7. Community development investment data. Except as provided in the rules for recording community development services data [17], for each community development investment:

    - A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;
    - Date of community development investment by the bank;
    - The outstanding dollar value of the community development investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet, if applicable;
    - The quantified dollar value of the monetary donation, if applicable;
    - The quantified dollar value of the in-kind donation, if applicable;
    - The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;
    - Portion of the community development investment that is partially qualifying, if applicable;
    - An indicator of whether a multiplier applies; and
    - The qualifying activities criteria the community development investment satisfies or that it is on the illustrative list and whether it serves a particular assessment area, if applicable.

8. Community development services data. For each community development service:

    - A unique number or alpha-numeric symbol identifying the community development service;
    - The quantified dollar value of the community development service;
    - A description of the community development service;
    - The date the community development service was performed;
    - The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; portion of the community development service that is partially qualifying, if applicable; an indicator of whether a multiplier applies; and

17 Subsection (8) on page 12 of this summary.

- The qualifying activity criteria that the community development service satisfies or that it is on the illustrative list.

9. Grandfathered qualifying activities. For each activity that qualifies as a grandfathered activity: [18]

   - A unique number or alpha-numeric symbol identifying activity;
   - The outstanding dollar value of the activity, as of the close of business on the last day of the month, for each month that the activity is on-balance sheet,
   - A description of the activity, including whether it is a retail loan, community development loan, or community development investment;
   - The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;
   - Portion of the activity that is partially qualifying, if applicable;
   - An indicator of whether a multiplier applies; and
   - A statement certifying that the activity would have received positive consideration in a CRA performance evaluation on the date prior to the final rule's effective date.

10. Retail domestic deposit data. The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

Assessment Area Data:

A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

- County or county equivalent;
- Metropolitan division;
- Nonmetropolitan area;
- Metropolitan statistical area; or
- State.

18 A grandfathered activity is "an activity that would have received positive consideration in a CRA performance evaluation on the date prior to the final rules' effective date and is on a bank's balance sheet on the effective date of this rule is a qualifying activity." Final Rule at 244.

Deposit-taking facilities:

For each deposit-taking facility, a bank must collect and maintain:

- An indicator of whether it was a branch or a non-branch deposit-taking facility; and
- The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

Conclusion

The OCC's Final Rule represents a significant change in CRA evaluations for National Banks. In general, ICBA believes the Final Rule represents an improvement over the proposal in several key areas. Because the opt-in thresholds were raised from $500 million to $600 million and $2.5 billion, a significant majority of community banks will be able to choose whether to be evaluated under the existing CRA framework or the new general performance standards. In addition, the illustrative list should provide a helpful guide to the kinds of activities that qualify for CRA credit, and provide for more objective CRA exams. However, some parts of the rule, such as the data collection requirements, will have a negative impact on small banks.

Because the OCC's rule does not affect the CRA evaluations of banks that have the FDIC or the Federal Reserve Board as their primary regulator, it is worth noting that currently, only a portion of the industry should expect their evaluation process to change. However, banks not regulated by the OCC should continue to follow this issue because the FDIC and the Federal Reserve Board may update their own frameworks in the future.