
Special Alert: OCC and FDIC issue CRA modernization proposal

December 12, 2019

On December 12, 2019, the OCC and the FDIC jointly issued a notice of proposed rulemaking (NPR) to modernize the regulatory framework implementing the Community Reinvestment Act. The NPR generally focuses on expanding and delineating the activities that qualify for CRA consideration, providing benchmarks to determine what levels of activity are necessary to obtain a particular CRA rating, establishing additional assessment areas based on the location of a bank's deposits, and increasing clarity, consistency, and transparency in reporting.

The Federal Reserve Board did not join the OCC and the FDIC in promulgating the NPR, signaling the potential for substantially different regulations for OCC- and FDIC-supervised institutions versus Fed-supervised institutions. A dual-regulatory regime of this sort would be unprecedented, as the OCC, FDIC and Fed have had substantially identical CRA regulations since the law's inception more than 40 years ago. Despite the fact that the Fed did not join in the NPR, it has nevertheless articulated that uniform CRA regulation remains its goal.

Key components of the NPR include:

- **Additional Assessment Areas Based on Deposit Locations:** The NPR preserves and expands upon the current requirements tying assessment area delineation to locations where a bank has a physical presence. Under the NPR, banks sourcing 50 percent or more of their retail domestic deposits from outside their facility-based assessment areas must also designate as assessment areas those geographies where they receive five percent or more of those deposits. Additionally, the NPR allows banks to receive consideration for certain qualifying activities conducted outside of their assessment areas, such as in Indian country or rural areas.
- **Metric-Based Benchmarks:** The NPR establishes quantitative benchmarks for a bank's overall rating, which an examiner would have the discretion to adjust based on the bank's CRA performance context and any evidence of discriminatory or other illegal credit practices. The NPR requires examiners to evaluate (i) the level of a bank's retail lending activity to low- and moderate-income (LMI) individuals within its assessment areas; and (ii) the impact of all of the bank's CRA activity as a ratio of its retail domestic deposits.
- **Home Mortgage Lending Restriction:** The NPR provides that home mortgage loans made to high- and middle-income individuals living in LMI census tracts would no longer receive CRA consideration. Relatedly, mortgage-backed securities would be deemed a qualified investment only if backed by loans to LMI borrowers.

- **Increased Threshold for Small Business Loans and Small Farm Loans:** The NPR raises the eligible size of a loan that qualifies as a small business loan or small farm loan in an LMI area from \$1 million to \$2 million and indexes that ceiling to inflation.
- **List of Pre-Approved CRA Activities:** The NPR contemplates that regulators will provide a publicly available, non-exhaustive list of activities that would automatically receive CRA consideration. The NPR establishes a process for stakeholders to submit additional items for inclusion on the list.
- **Carve Out for Small Banks:** The NPR provides that small banks, defined as those with assets of \$500 million or less, would have the option to decide whether to be evaluated under existing CRA criteria or the revised framework.
- **Additional Reporting Requirements:** The NPR requires banks to collect and report additional data regarding their deposits and qualifying activities to assist with measuring and assessing their CRA activities.

The NPR follows the Advance Notice of Proposed Rulemaking (ANPR) published by the OCC in August 2018. The ANPR solicited public comment on dozens of questions regarding CRA modernization, citing the transformation of the financial services industry in the two decades since the regulations were last substantially revised. Approximately 1,500 comments were submitted in response to the OCC's ANPR.

For much of the past year, representatives from all three prudential regulators spoke publicly regarding efforts to jointly issue an NPR. Although the FDIC and the Fed did not join the OCC in its ANPR, they did review the comments submitted in response and met with various stakeholders around the country to discuss CRA modernization. The Fed published a report in June 2019 summarizing feedback received from over 400 bankers and community groups at a series of 29 roundtable discussions hosted between October 2018 and January 2019. The OCC also conducted additional outreach with CRA stakeholders and toured a number of cities over the summer, including Atlanta, Baltimore, Compton, New York City, and Washington, D.C., as well as Indian country in New Mexico.

The 60-day comment period for the NPR will run until approximately mid-February, depending on when the NPR is published in the *Federal Register*. Any interested party may submit written comments regarding the NPR, regardless of whether such party is an insured depository institution regulated by the OCC or FDIC.

If you have any questions regarding the CRA or other related issues, please visit our [Fair Lending practice page](#) or contact a Buckley attorney with whom you have worked in the past.