



The OCC's CRA Final Rule: Where Do You Fall and When Must You Comply?

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The Office of the Comptroller of the Currency (OCC) adopted a [Final Rule](#)^[i] on May 20, 2020, with the intent to strengthen and modernize the implementation of the Community Reinvestment Act (CRA). The Final Rule changes the evaluation of national banks and savings associations' CRA performance in four areas: (1) the definition of bank lending, investment and services (CRA activities) that qualify for positive CRA consideration; (2) the delineation of a bank's assessment area; (3) the methods for consistently evaluating CRA performance; and (4) data reporting.

The Final Rule will be effective October 1, 2020.^[ii] The new qualifying activities criteria section and qualifying activities confirmation process will be effective with the Final Rule. A qualifying activity is an activity that helps to meet the credit needs of a bank's entire community, including low-and-moderate income (LMI) individuals and communities.^[iii] The OCC has published a CRA Illustrative List of [qualifying activities](#) that will be maintained and updated at least annually.

There are different compliance dates for different portions of the revised rules. These dates vary based on the type of financial institution. Additionally, the type of financial institution also dictates which portions of the new rule apply. These compliance dates and the application of the specific rule sections are detailed in the following table:

Compliance Dates		
Bank Type	Qualifying Activities, Quantification, Qualifying Activities Value, General Performance Standards, and Presumptive Ratings	Assessment Area, Data Collection, and Recordkeeping Requirements as applicable

Small and Intermediate Banks	Not Applicable	January 1, 2024	N
Wholesale and Limited Purpose Banks	Not Applicable	January 1, 2023	J
All Other Banks	January 1, 2023	January 1, 2023	J

The definition of a “small bank”[\[iv\]](#) changed to \$600 million under the Final Rule and is now consistent with the Small Business Administration’s size standards defining small business concerns. “Intermediate banks” are defined as having more than \$600 million in assets but less than \$2.5 billion in assets.[\[v\]](#) Small and intermediate banks are exempt from the new general performance standards and the related data collection, recordkeeping, and reporting requirements, with the exception of the retail domestic deposit data[\[vi\]](#) requirements. A small or intermediate bank may opt into the general performance standards, in which case they will be subject to the data collection, recordkeeping and reporting requirements of the Final Rule.

The OCC is grandfathering CRA activities that would have received positive consideration in a CRA evaluation under the current framework and are on the bank’s balance sheet on the effective date of the Final Rule. The OCC is excepting home mortgage loans and consumer loans provided to middle and upper-income individuals in a LMI census tract from positive consideration in grandfathered CRA activities. Grandfathered activities will be considered qualifying activities for purposes of calculating the bank’s CRA evaluation measure, but they will be subject to more limited data collection, recordkeeping, and reporting requirements.[\[vii\]](#)

The OCC considered the impact of COVID-19 on its supervised national banks’ abilities to meet the compliance dates. The OCC determined that the economic challenges in LMI communities relating to the pandemic outweighed the concerns about the ability of banks to meet the compliance dates making it critical that implementation of the rule not be delayed.[\[viii\]](#)

The October 1, 2020 implementation date will soon be upon us. The OCC's transition provision^[ix] states that for any CRA performance evaluation conducted on or after October 1, 2020, and the compliance dates in the Final Rule applicable to the different types of banks, the provisions of the current regulation will remain in effect, acting as an alternate compliance option to maintain flexibility for banks that have a CRA evaluation during this period. Banks should evaluate their CRA activities to determine if activities not previously considered should be submitted for CRA positive consideration in their next CRA performance evaluation.

Financial institutions whose primary federal regulator is not the OCC remain subject to the current CRA rules as written. The Federal Deposit Insurance Corporation (FDIC) had originally joined the OCC in its proposed rulemaking in late 2019 but did not join the OCC in issuing the Final Rule. Commentary from FDIC Chair Jelena McWilliams indicates general support for the revised rule but places stronger emphasis on the role of banks in responding to COVID-19 related matters, hinting that this is not the time to issue a new final rule of such magnitude. While there is support, we do not know the extent to which the FDIC and OCC acted together in reviewing and incorporating comments received since the proposed rule was issued. It is possible that the FDIC will react differently than the OCC in terms of the comments received when the FDIC decides to act.

The Federal Reserve did not join the OCC and the FDIC in the CRA proposed rulemaking process last year. In comments released, the Federal Reserve provided a different view in how to address revisions to CRA regulation, but no proposed rules were issued. The Federal Reserve has not commented on the OCC's decision to issue the Final Rule.

In future articles, we will provide information and analysis about the more significant revisions contained in the OCC's Final Rule surrounding:

- Qualifying Activities
- General Performance Standards and Presumptive Ratings
- Assessment Areas, Data Collection and Reporting

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Financial Institutions with Community Reinvestment Act questions may contact any of Frost Brown Todd's [Financial Services attorneys](#) experienced with CRA matters. For more information, please contact [Nancy Presnell](#), or [Shannon Kuhl](#).

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

[\[i\]](#) OCC News Release 2020-63 OCC Finalizes Rule to Strengthen and Modernize Community Reinvestment Act Regulations issued May 20, 2020

[\[ii\]](#) OCC News Release 2020-63 Page 194 "...the first date of the first day of the first calendar quarter at least 60 days after the issuance of the final rule."

[\[iii\]](#) 12 CFR 25.04 Qualifying Activities

[\[iv\]](#) 12 CFR 25.03 Definitions: Small Bank

[\[v\]](#) 12 CFR 25.03 Definitions: Intermediate Bank

[\[vi\]](#) 12 CFR 25.22 Retail domestic data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards.

[\[vii\]](#) OCC News Release 2020-63 Page 174

[\[viii\]](#) OCC News Release 2020-63 Page 196

[\[ix\]](#) 12 CFR 25.01(c)(8) Transition provision.

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