



Jul 01, 2020

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The OCC's CRA Final Rule: Performance Standards – Is Your Calculator Handy?

The Office of the Comptroller of the Currency's ("OCC") Community Reinvestment Act ("CRA") final rule ("[Final Rule](#)") effective October 1, 2020 is designed to provide a quantitative measurement of a bank's CRA performance. The measurement of CRA performance requires the calculation of a bank's performance ratings and assessment area ("AA") performance ratings. This article discusses the standards as they apply to banks that are not small banks,[\[i\]](#) intermediate banks,[\[ii\]](#) wholesale bank,[\[iii\]](#) or limited purpose banks [\[iv\]](#) (unless these other banks opt-in to the general performance standards). Determining the general performance standards for banks (under new 12 CFR §25.13) is a four-step process:

- Calculate the qualifying activities value (for a description of qualifying activities please see our prior article in this series [The OCC's CRA Final Rule: What is a Qualifying Activity?](#));
- Adjust the qualifying activities value for partially qualifying activity and multipliers;
- Conduct the retail lending distribution test; and,
- Quantify the bank's CRA evaluation measure for the bank and for each assessment area.

Quantifying Qualifying Activities

A bank must calculate its qualifying activities value annually. The value will be based on the dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year. The quantified dollar value of qualifying activities calculation is required to determine the bank's performance standards and is the sum of:

Each of the above categories has a different means of identifying the "quantified dollar value" and may include any partially qualifying

activities discussed below. The community development service quantified dollar value is determined by multiplying the number of hours one or more employees spent performing the service by the annual compensation rate. The compensation rates are determined by the standard figure for the median hourly compensation value for the banking industry calculated using Call Report data, which is \$38 based on 2019 Call Report data. The quantified dollar value of an in-kind donation is the fair market value of the donation. The quantified dollar value of a qualifying loan or community development investment is, generally, the dollar value of the outstanding loan or investment, any binding commitment to lend, or any binding commitment to invest, applicable as of the close of business on the last day of the month. For those qualifying loans sold within 365 days of origination, the quantified dollar value of the loan is the dollar value of the loan at origination.

Use of Multipliers and Adjusters

Partially qualifying activities that benefit low-moderate income ("LMI") individual or families, CRA-eligible businesses or farms or LMI census tract or other identified areas of need will be multiplied by the percentage of the activity that is qualifying by the full dollar value of the qualifying activity. For instance, consider a donation of \$100 to an organization of which 25 % will be allocated to a specific LMI area. The full dollar amount of the donation is multiplied by 25% and the resulting \$25 is included in the qualifying activities calculation. The burden will be on the bank to demonstrate the impact of the investment, including support for the pro-rata share of credit.

Multipliers may be used to increase the value of certain qualifying activities. A two-part test for the use of multipliers is required. First, the bank must have a dollar value of qualifying activities approximately equal to the dollar value of the activities considered in the prior evaluation period. If so, the dollar value of a qualifying activity will be adjusted by multiplying the dollar value by two. The qualifying activities that are eligible for this multiplier are those that support minority depository institutions, women's depository institutions', Community Development Financial Institutions ("CDFI")

Fund and LMI credit unions, other community development investments and services, other affordable housing-related community development loans, and retail loans generated by branches in LMI census tracts. Activities relating to mortgage-backed securities are explicitly excluded from the application of this multiplier.

The Final Rule adopts a definition of a CRA desert and provides multipliers for qualifying activities in these areas. A CRA desert is an area where few banks have branches or non-branch deposit taking facilities, there is less retail or CD lending than would be expected based on demographic or other factors, or the area lacks community development organizations or infrastructure. The OCC will maintain an illustrative list of CRA deserts and banks must confirm with the OCC that an area is a CRA desert before receiving a CRA multiplier, even if the area in question is on the CRA desert list maintained by the OCC. The Final Rule includes a two times multiplier for qualifying activities in a CRA desert that is in addition to multipliers that apply based on the type of qualifying activity or whether the activity was generated by a branch in an LMI census tract.

For qualifying activities determined to be responsive, innovative or complex, banks may request a determination that an activity is eligible for an increased multiplier of up to four times as part of the qualifying activity confirmation process or during a CRA evaluation.

CRA Evaluation Measure

The CRA evaluation measure will be determined annually as part of a bank's performance evaluation to determine the bank's presumptive rating. The CRA evaluation measure is the sum of:

Retail Lending Distribution Test

The distribution of loans in each of the bank's assessment areas will be subject to a geographic distribution test and a borrower distribution test. First, the bank must determine its major retail lending product lines. A major retail lending product is one that for the two years prior to the beginning of the evaluation period

composed at least 15% of the bank's dollar volume of total retail loan originations and was the first or second largest retail lending product line by dollar volume.

The geographic distribution test is conducted in each assessment area with 20 or more originations per year for the home mortgage business product line, small loan to a business product line, or small loan to a farm product line. The test compares the percentage of loans originated in LMI census tracts to either the specified geographic demographic comparator or the geographic peer comparator. These comparators differ based on whether the product line is for home mortgages, small loans to a business, or small loans to a farm. For example, the geographic demographic comparator for the home mortgage product line is the percentage of owner-occupied housing units in the assessment area that are in LMI census tracts while the peer comparator is all peer home mortgage loans originated in LMI areas by other banks (also being evaluated under general performance standards in 12 CFR §25.13) as a percentage of all peer home mortgage loans in the assessment area.

The borrower distribution test is conducted in each assessment area with 20 or more originations per year for the for the home mortgage business product line, automobile lending product line, small loan to a business product line, or small loan to a farm product line. The test compares the percentage of loans originated to LMI families in the assessment area to either the percentage of LMI families in the assessment area or a peer comparator.

Community Development Minimum

Banks will also be measured according to a community development minimum which will be the quotient of a bank's total quantified dollar value of community development loans and investments during the evaluation period (including any applicable multipliers) divided by the average quarterly value of the bank's total retail domestic deposits.

Performance Standards

The Final Rule includes the use of thresholds and benchmarks for delineating deposit-based assessment areas and the levels of performance necessary to achieve certain ratings of outstanding, satisfactory, needs to improve, and substantial noncompliance. While the proposed rule included thresholds for each of the three components of the evaluation, the OCC is releasing the Final Rule without the thresholds. The OCC has issued a Request for Information (“RFI”) to gather information and plans on conducting additional analysis. The OCC will issue another Notice of Proposed Rulemaking (“NPR”) to explain the process to calibrate the requirements for each of the evaluation measures. At the end of the comment period to the NPR the OCC will set specific benchmarks, thresholds and minimums that will be periodically reviewed and adjusted. The chart below will be updated with the published benchmarks, thresholds and minimums.

A bank is expected to use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

Small banks, intermediate banks, wholesale and limited purpose banks, and those banks under a strategic plan will not be evaluated under the general performance standards. The OCC will rate these banks as described in §25.14, §25.15 and Appendix A of the Final Rule.

In our final article, we will provide information and analysis surrounding assessment areas, data collection and reporting. To be certain you receive these future articles, please [visit our newsletter sign-up page](#). Be sure to select the Coronavirus Updates as well as any industries or practice groups from whom you would like to receive updates.

For more information, contact [Nancy Presnell](#) or any attorney in Frost Brown Todd’s [Consumer Financial Services and Consumer Protection](#) team.

[i] “Small bank” means a bank that had assets of \$600 or less in four of the previous five calendar quarters. 12 CFR §25.03.

[ii] “Intermediate bank” means a bank with total assets greater than \$600 million and less than or equal to \$2.5 billion. 12 CFR §25.03.

[iii] “Wholesale bank” means a bank that is not in the business of extending home mortgage, small loans to businesses, small loans to farms, or consumer loans to retail customers, and which has been designated as a wholesale bank. 12 CFR §25.03.

[iv] “Limited purpose bank” means a bank that offers only a narrow product line which has been designated as a limited purpose bank. 12 CFR §25.03.

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