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The OCC's CRA Final Rule: Have You Found Your Assessment Area?

The Office of the Comptroller of the Currency (OCC) Community Reinvestment Act (CRA) final rule ("[Final Rule](#)") effective October 1, 2020 includes updated requirements on the delineation of assessment areas, annual reporting, and records to be maintained for a CRA evaluation. It is applicable to banks supervised by the OCC, and was not adopted by the FDIC or the Federal Reserve and does not apply to banks supervised by the latter. This final article in our series analyzing the Final Rule reviews facility and deposit-based assessment areas, and data collection reporting.

Assessment Areas

The process of delineating one or more assessment areas is detailed in §25.09 of the Final Rule. The Final Rule retained the current regulation's requirement that banks delineate assessment areas that include their physical deposit-taking locations and added a requirement to include as an assessment area those areas generating deposits outside of the physical locations. Small, intermediate banks, wholesale banks, limited purpose banks and large banks all follow the same rules for assessment area delineation. However, military banks must designate the entire United States and its territories as their assessment area.

The OCC states in the Final Rule that the addition of deposit-based assessment areas is intended to further the purposes of the CRA statute and keep pace with changes in the banking industry, especially in regard to the increase in Internet banks. The facility-based and deposit-based assessment area delineation can only change once a year and may not change within the annual period used to determine the CRA evaluation measure.

Facility-Based Assessment Area

The facility-based assessment areas are those areas that include where the bank maintains a main office, a branch, or a non-branch

deposit-taking facility that is not an ATM, as well as surrounding location(s) in which the bank originated or purchased a substantial portion of qualifying retail loans.

The facility-based assessment area must be delineated to consist of either a whole metropolitan statistical area (MSA); the whole nonmetropolitan area of a state; one or more whole contiguous metropolitan divisions in a single MSA; or one or more whole contiguous counties. A facility-based assessment area may not extend beyond an MSA or state boundary unless the assessment area is in a multistate MSA.

Deposit-Based Assessment Area

The Final Rule requires banks to identify deposit-based assessment areas in addition to the traditional physical deposit-taking locations if the bank receives more than fifty percent of their retail domestic deposits from outside of its facility-based assessment areas (fifty percent threshold). A bank that meets this fifty percent threshold must then delineate those areas from which it received five percent or more of its retail domestic deposits (five percent threshold). Retail domestic deposits are those deposits defined in section 3(l) of the FDIC (12 USC 1813(l)) and reported on Schedule RC-E of the Call Report as item 1 or item 3, or a non-brokered reciprocal deposit. A retail domestic deposit does not include a deposit obtained from a deposit broker, a broker-dealer sweep transaction, a Health Savings Account, a prepaid card account, or a non-brokered reciprocal deposit received from another bank.

Deposit-based assessment areas may be defined at any geographic level up to the state level, including at the metropolitan division, MSA, or non-MSA level. However, the deposit-based assessment area cannot overlap a physical deposit-taking location assessment area.

Data Collection and Reporting

Banks Evaluated Under the General Performance Standards or a Strategic Plan

Banks evaluated under §25.13, the general performance standards, or §25.18, a bank under a strategic plan, shall collect and maintain specific information until the completion of the CRA evaluation period.

- Performance Standards
 - Retail lending distribution tests ratios for the borrower distribution and geographic distribution tests for each major retail lending product line in each applicable assessment area.
 - The CRA evaluation measure and each assessment-area CRA evaluation measure.
 - The community development minimum for the bank and each assessment area.
 - The presumptive ratings.
- Qualifying loan data reflecting
 - Partially qualifying percentages, qualifying activity multiplier indicators, whether the activity satisfies or is on the illustrative list, the number of loans originated in low-moderate income (LMI) census tracts, the number of loans originated to LMI borrowers, the number of loans originated to CRA-eligible businesses or farms for each county or county equivalent.
- Community development investment data as of the close of business on the last day of the month for each month that the investment is on the balance sheet including the quantified dollar value of monetary and in-kind donations if applicable.
- Community development services data including the portion that is partially qualifying and an indicator of whether a multiplier applies.
- Grandfathered qualifying activities.
- Retail domestic deposit data including the value and associated address of each retail domestic deposit account as of the close of business on the last day of each quarter during the evaluation period.

- The delineated assessment areas, showing the geographies within the area.
- Deposit-taking facility indicating whether it is a branch or a non-branch deposit-taking facility.

Banks in this category must annually report information concerning the CRA Evaluation measure (for a discussion of the CRA Evaluation measure please see our previous article [*The OCC's CRA Final Rule: Performance Standards – Is Your Calculator Handy?*](#)), as well as the quantified dollar value of the bank's CRA activities and the average quarterly retail domestic deposits. The Performance Lending Standards and the Presumptive Rating are to be reported to the OCC at the end of the evaluation period.

Banks Evaluated under the Small and Intermediate Bank Performance Standards

A small or intermediate bank evaluated under §25.14 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.

The deposit data is to be maintained for the duration of the evaluation period. Of course, a small or intermediate bank should continue to ensure records are maintained to substantiate CRA performance under the performance evaluation standards of Appendix A of the Final Rule.

Small and intermediate banks are not required to directly report information to the OCC annually. The information and data collected will be requested and reviewed by the OCC as part of CRA evaluations.

Banks Evaluated under the Wholesale and Limited Purpose Bank Performance Standards

A wholesale or limited purpose bank evaluated under the performance standards of §25.15 shall collect and maintain specific information regarding community development loans, investments,

services, grandfathered community development activities, retail domestic deposits, the delineated assessment areas and deposit-taking facilities. The detail of the data is as that described for banks evaluated under the general performance standards to be collected until the completion of the CRA evaluation

Reporting of the CRA Evaluation measure shall be reported annually, as well as the quantified dollar value of the bank's CRA activities and assessment area data. The Performance Context information must be delivered before the beginning of the bank's CRA performance evaluation.

The Final Rule details a transition period to allow banks to revise their systems for collecting, maintaining, and reporting data. To understand when your bank must start collecting, maintaining and reporting data, please see [*The OCC's CRA Final Rule: Where Do You Fall and When Must You Comply?*](#)

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

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