



Jennifer Halferty ~ District One Fred Stump ~ District Two Bob Gardner ~ District Three
John Peters ~ District Four Stacy Corless ~ District Five

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5533 • FAX (760) 932-5531
Shannon Kendall, Clerk of the Board

Date: November 13, 2018

To: **Honorable Mono County Board of Supervisors**

From: Supervisor Jennifer Halferty

RE: **Approve Comment Letter in Response to the Office of the Comptroller of the Currency's (OCC)
Advance Notice of Proposed Rulemaking (ANPR) on the Community Reinvestment Act (CRA)**

DISCUSSION

The California Coalition for Rural Housing is engaging its members in ongoing advocacy efforts to protect the CRA. The OCC is accepting comments for its ANPR until the deadline of November 19, 2018. Additional information can be found at <https://ncrc.org/treasurecra>.

The Board is requested to discuss the points and information in the comment letter, provide any additional feedback or modifications, and then authorize the Board Chair to sign.

Please contact Supervisor Jennifer Halferty at jhalferty@mono.ca.gov or (760) 924-1806 if you have additional questions.

RECOMMENDATIONS

Approve comment letter, with any desired modifications, in response to an Advance Notice of Proposed Rulemaking, and authorize the Board Chair to sign.

FISCAL IMPACT

None.



Jennifer Halferty ~ District One Fred Stump ~ District Two Bob Gardner ~ District Three
John Peters ~ District Four Stacy Corless ~ District Five

BOARD OF SUPERVISORS COUNTY OF MONO

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517
(760) 932-5533 • FAX (760) 932-5531
Shannon Kendall, Clerk of the Board

November 13, 2018

Re: Docket ID OCC-2017-0008, “Reforming the Community Reinvestment Act Regulatory Framework”

Submitted via <https://www.federalregister.gov>

Dear Comptroller Otting,

Please stop your attack on the Community Reinvestment Act.

The CRA holds banks accountable to the needs of communities they have historically ignored or preyed upon. The federal statute requires each bank regulator, including the OCC, “to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities.” 12 USC 2901(b). Instead, the OCC seems to be seeking to dramatically lower the bar and make it easier for banks to pass CRA exams without consideration to the needs of local communities and by taking CRA away from its focus on low- and moderate-income neighborhoods.

The CRA has done tremendous good for California and the country. Banks that responded to an annual survey by the California Reinvestment Coalition lent over \$27 billion in 2016 in low income communities throughout California, and had over \$31 billion in total CRA activity, including investments, philanthropy, and contracting with minority- and women-owned businesses.

Mono County supports State and Federal laws that support affordable housing and broaden the opportunities for local, non-profit housing entities and instrumentalities of government to increase homeownership. In addition, we support increased financing, subsidy options, and tax incentives to support development of new, affordable housing units.

Locally, Mono County has benefited from CRA in affordable housing developments and homeownership lending. A specific example of CRA at work in our communities are two workforce ownership condominium developments in Mammoth Lakes that were financed via a local bank that received CRA credits on both the construction financing and on the homebuyer financing after the project was completed.

And yet, the CRA is still very much needed: too many low income, Black, Latino, indigenous, rural, and immigrant communities still lack access to the safe and affordable loans, investments, and household financial services they need.

Banks do not need relief from the CRA. CRA exam processes do not need to be simplified, watered down, or made easier to pass. For decades, over 98% of all banks have passed CRA exams with flying colors. Loosening or otherwise expanding what would count for CRA is simply deregulation by another name. We cannot afford to do that.

The CRA supports communities by holding banks accountable.

Banks should not be able to count for CRA credit loans and investments in upper or middle income neighborhoods, outside of where they take deposits, and to businesses with over a million dollars in annual revenue. And the OCC should not rate banks by a one-size fits all, single performance number approach, simply dividing the dollar value of CRA activity by asset size. Such an expansion of what qualifies for CRA, a move away from the historic focus on low income communities, and oversimplification of performance measures would gut the CRA almost entirely. We do not support any of these proposals. If allowed, history tells us that banks would revert to choosing the easiest, most lucrative activities that counted towards this single performance number test instead of actually serving the financial needs of their communities.

CRA should continue to be focused on activity in low- and moderate-income communities. Higher income communities do not lack for financial services. Having branches in low- and moderate-income areas must continue to be a focus of the CRA. Additional services in low- and moderate-income communities, such as improved access through technology should count towards CRA so long as this does not replace branch access. Many communities across California still rely on cash, in-person or multilingual financial services, which are best handled through branches.

Community input is critical to the success of CRA and should not be silenced. The idea for a one-size fits all single measure based on asset size cuts out the voice of community members that currently work to make banks aware of where credit and capital are most needed. Data furnished by banks to CRC indicate that those that had CRA agreements invested roughly twice as much in communities as banks without such agreements. Community need, and community input, are integral to understanding the context of CRA activities and should be kept, if not strengthened, as part of CRA exams.

CRA exams should restore consideration of fair lending law violations.

Until recently, ALL of the bank regulators considered unlawful discrimination in lending as a factor when issuing CRA exam ratings. The OCC has decided not to continue doing this even though the Federal Deposit Insurance Corporation and the Federal Reserve still do. At its core, CRA was a response to bank redlining of neighborhoods of color and was meant to operate in conjunction with other fair lending laws. Banks that violate fair housing and fair lending laws should not be given high CRA ratings or passing grades when they discriminate against the communities that the CRA is designed to protect.

We know who will suffer.

The CRA has encouraged banks to maintain branches in low- and moderate-income communities and expanded access to safe, no-overdraft accounts to help them avoid cascading fees. Despite this, there are still many bank deserts, particularly in low income communities of color and rural areas. Banks have not developed mobile technology to serve the needs of the lowest income families in our country, those that rely on cash, those that need multi-lingual services, or those that cannot afford reliable data plans. If the OCC no longer requires banks to maintain branches in these communities, the nation's largest banks will close them, creating even more bank deserts.

CRA has worked for decades to enable California families to attain the American dream of homeownership and wealth building. The National Community Reinvestment Coalition estimates that the OCC proposal could result in nearly \$23 Billion LESS in California and \$288 million LESS in our congressional district for home loans that remain the clearest path to wealth building in this country. The

OCC should penalize discriminatory and poor reinvesting banks, and reward those that enter into Community Benefits Agreements with local organizations that identify and help the bank meet local credit needs. This approach would lead to more homeownership opportunities; the OCC proposal would lead to less.

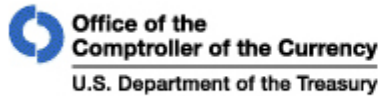
Affordable rental housing is perhaps the most acute need in most California communities including Mono County. If the OCC allows the banks to get CRA credit for more activities in more places while setting a low bar for satisfactory performance, affordable rental housing finance will drop precipitously. The overly simplistic formula for grading banks that the OCC is contemplating will mean the harder affordable housing deals are not done – those that help seniors, disabled persons, and rural communities. Further, the OCC's suggestion that lending that benefits higher income households could qualify would result in giving banks CRA credit for financing development that would price low- and moderate-income families out of their current communities. In gentrifying parts of the state, there is a need for creative financing to preserve affordable housing opportunities. But creative financing projects will take the biggest beating under an OCC system where banks could take the easiest path to comply. Banks should be encouraged to lend and invest in hard to develop communities and in creative ways that truly meet local needs and should be downgraded for financing displacement.

We need a stronger CRA, not a weaker one.

There is so much unmet need- we need banks to step up, not step away.

Sincerely,

Bob Gardner,
Mono County Board of Supervisors Chair



OCC BULLETIN 2018-24

Subject: Community Reinvestment Act
Date: August 28, 2018

To: Chief Executive Officers of All National Banks and Federal Savings Associations; Federal Branches and Agencies of Foreign Banks; Department and Division Heads; All Examining Personnel; and Other Interested Parties

Description: Advance Notice of Proposed Rulemaking

Summary

The Office of the Comptroller of the Currency (OCC) has published an advance notice of proposed rulemaking (ANPR) on its website inviting public comment on ways to transform or modernize the regulations that implement the Community Reinvestment Act (CRA). The ANPR solicits ideas on how to better achieve the statute's original purpose, encourage increased lending and investment where it is needed most, and reduce the burden associated with reporting and evaluating CRA performance. The OCC has also submitted the ANPR for publication in the *Federal Register*, with a 75-day comment period from the date of publication.

Note for Community Banks

The ANPR invites comment on the regulatory framework that applies to all national banks and federal savings associations (banks) subject to the CRA, including community banks.

Highlights

The ANPR invites comments on ways to transform or modernize the CRA regulatory framework with a specific focus on

- encouraging increased lending and services to people and in areas that need it most, including in low- and moderate-income areas.
- clarifying and expanding the types of activities eligible for CRA consideration.
- revisiting how assessment areas are delineated and used.
- establishing metric-based thresholds for CRA ratings.
- making bank CRA performance more transparent.
- improving the timeliness of regulatory decisions related to CRA.
- reducing the cost and burden related to evaluating performance under the CRA.

Further Information

Please contact Vonda Eanes, Director for CRA and Fair Lending Policy, at (202) 649-5470.

Grovetta N. Gardineer
Senior Deputy Comptroller for Compliance and Community Affairs

Related Link

- "Reforming the Community Reinvestment Act Regulatory Framework" (PDF)

BILLING CODE: 4810-33-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2018-0008]

RIN 1557-AE34

Reforming the Community Reinvestment Act Regulatory Framework

AGENCY: Office of the Comptroller of the Currency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC or agency) invites comments on this advance notice of proposed rulemaking (ANPR) to solicit ideas for building a new framework to transform or modernize the regulations that implement the Community Reinvestment Act of 1977 (CRA). A new CRA regulatory framework would help regulated financial institutions¹ (banks) more effectively serve the convenience and needs of their communities by (1) encouraging more lending, investment, and activity where it is needed most; (2) evaluating CRA activities more consistently; and (3) providing greater clarity regarding CRA-qualifying activities. A transformed or modernized framework also would facilitate more

¹ 12 U.S.C. 2902(2) defines “regulated financial institution” to mean an “insured depository institution” as defined in 12 U.S.C. 1813. Twelve U.S.C. 1813(c)(2) defines “insured depository institution” to mean any bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation.

timely evaluations of bank CRA performance, offer greater transparency regarding ratings, promote a consistent interpretation of the CRA, and encourage increased community and economic development in low- and moderate-income (LMI) areas. Revisions of this nature are consistent with the original intent of the CRA: to help meet the credit needs of the communities that banks serve. In addition, these types of revisions would align with the transformation of the banking industry and reduce the complexity, ambiguity, and burden associated with the regulations.

DATES: Comments on this ANPR must be received on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESS: Comments should be directed to:

Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title “Reforming the Community Reinvestment Act Regulatory Framework” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—“Regulations.gov”*: Go to *www.regulations.gov*. Enter “Docket ID OCC-2018-0008” in the Search box and click “Search.” Click on “Comment Now” to submit public comments. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- *E-mail: regs.comments@occ.treas.gov.*

- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.
- *Fax:* (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0008” in your comment. In general, the OCC will enter all relevant comments received into the docket and publish your comment on the *Regulations.gov* website without change, including any business or personal information that you provide, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to www.regulations.gov. Enter “Docket ID OCC-2018-0008” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT:

OCC: Vonda J. Eanes, Director for CRA and Fair Lending Policy, Compliance Risk Policy Division, (202) 649-5470; Emily R. Boyes, Senior Attorney, (202) 649-6350, Karen E. McSweeney, Special Counsel, (202) 649-5490, and Allison Hester-Haddad, Counsel, (202) 649-5490, Chief Counsel’s Office; for persons who are deaf or hearing impaired, TTY (202) 649-5597; or Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background and Introduction

The Community Reinvestment Act of 1977² was enacted to encourage banks to help meet the credit needs of the communities that they serve, including LMI neighborhoods, consistent with the banks’ safe and sound operations. In passing the CRA, Congress established that (1) banks are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit services as well as deposit

² Pub. L. 95–128, 91 Stat. 1147 (October 12, 1977), *codified at* 12 U.S.C. 2901 *et seq.*

services; and (3) banks have a continuing and affirmative obligation to help meet the credit needs of the local communities in which they are chartered.³ The statute directed each appropriate federal financial supervisory agency (*i.e.*, the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, agencies)) to assess the record of a bank in meeting the credit needs of its entire community, including LMI neighborhoods;⁴ take this record into account when evaluating the bank's application for a deposit facility;⁵ and report to Congress the actions it has taken to carry out its CRA responsibilities.⁶ The CRA directed each agency to publish regulations to carry out the statute's purpose.⁷

Since the CRA's enactment, Congress has amended the statute numerous times, including in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989⁸ (which required public disclosure of a bank's CRA written evaluation and rating); the Federal Deposit Insurance Corporation Improvement Act of 1991⁹ (which required the inclusion of a bank's CRA examination data in the determination of its CRA rating); the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994¹⁰ (which (1) required an agency to consider an out-of-state national bank's or state bank's CRA rating when determining whether to allow interstate branches; and (2) prescribed certain requirements for the contents of the written CRA evaluation for banks with interstate branches); and the Gramm-Leach-Bliley Act of 1999¹¹ (which, among

³ 12 U.S.C. 2901(a).

⁴ 12 U.S.C. 2903(a)(1).

⁵ 12 U.S.C. 2903(a)(2).

⁶ 12 U.S.C. 2904.

⁷ 12 U.S.C. 2905.

⁸ Pub. L. 101-73, 103 Stat. 183 (August 9, 1989).

⁹ Pub. L. 102-242, 105 Stat. 2236 (December 19, 1991).

¹⁰ Pub. L. 103-328, 108 Stat. 2338 (September 29, 1994).

¹¹ Pub. L. 106-102, 113 Stat. 1338 (November 12, 1999).

other things, provided regulatory relief for smaller banks by reducing the frequency of their CRA examinations).

In 1978, consistent with Congress' statutory directive, the agencies promulgated the first CRA regulations.¹² They have since amended these regulations on several occasions, most significantly in 1995 and 2005.¹³ In addition, the agencies have periodically published interpretations of the CRA regulations in the form of Interagency Questions and Answers Regarding Community Reinvestment (Q&A guidance).¹⁴

The CRA requires each agency to prepare a written evaluation of a bank's record of meeting the credit needs of its entire community, including LMI neighborhoods, at the conclusion of its CRA evaluation.¹⁵ This report, known as a Performance Evaluation (PE), is required to be a public document that presents an agency's conclusions regarding a bank's overall performance for each "assessment factor" identified in the CRA regulations.¹⁶ A PE must also present facts and data supporting the agency's conclusions¹⁷ and contain both the bank's CRA rating and a description of the basis for the rating.¹⁸ A bank's CRA rating is considered, for example, in applications to merge or acquire another bank, open a branch, or relocate a main office or branch.¹⁹ A bank with a CRA rating below "satisfactory" may be restricted from certain activities until its next CRA evaluation, which is generally one or more years in the future.

¹² 43 FR 47144 (October 12, 1978).

¹³ 60 FR 22156 (May 4, 1995); 70 FR 44256 (August 2, 2005). Although adopted individually by each agency, the regulations have generally been drafted on an interagency basis and released jointly.

¹⁴ The agencies have published the Q&A guidance for notice and comment prior to final publication in the *Federal Register*.

¹⁵ 12 U.S.C. 2906.

¹⁶ 12 U.S.C. 2906(b)(1)(A)(i).

¹⁷ 12 U.S.C. 2906(b)(1)(A)(ii).

¹⁸ 12 U.S.C. 2906(b)(1)(A)(iii). There are four statutory rating categories: outstanding, satisfactory, needs to improve, and substantial non-compliance (12 U.S.C. 2906(b)(2)).

¹⁹ 12 CFR 25.29 and 195.29.

II. The Changing Banking Environment

Over the past two decades, the financial services industry has undergone transformative changes, including the removal of bank interstate branching restrictions and the expanded role of technology in financial services. To better understand how banking products and services are delivered to consumers in this evolving industry and how these changes affect a bank's CRA performance, the agencies have solicited feedback from the banking industry, community groups, academics, and others (collectively, stakeholders) on several occasions. For example, in 2010, the agencies held a series of joint public hearings across the country and solicited written feedback regarding how to update the CRA regulations in light of, among other things, changes in how banking services were delivered to consumers.²⁰

From 2014 through 2016, the agencies again solicited feedback on the CRA, as part of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 review,²¹ and received more than 60 comments about the CRA regulatory framework. These comments raised issues related to regulatory burden, as well as broader issues related to modernizing the CRA regulations and related Q&A guidance. During 2017 and 2018, the OCC held numerous meetings with bankers, community groups, non-profit organizations, legislators, and other stakeholders and regulators to discuss the current CRA regulatory framework and to solicit input on how to improve the current regulatory framework.

During 2017 and 2018, the U.S. Department of the Treasury (Treasury Department) invited a diverse group of stakeholders to provide feedback on how the CRA regulations could

²⁰ See "Agencies Announce Public Hearings on Community Reinvestment Act Regulations," Joint Press Release (June 17, 2010) (available at <https://www.occ.gov/news-issuances/news-releases/2010/nr-ia-2010-65.html>).

²¹ See, e.g., 80 FR 7980 (February 13, 2015).

more effectively encourage economic growth in the communities that banks serve.²² On April 3, 2018, the Treasury Department issued recommendations to the agencies for broad changes to the fundamental administration of the CRA based on the feedback it had received. Specifically, the Treasury Department recommended updating the approach to delineating assessment areas to reflect the changing nature of banking; improving the evaluation process to increase the timeliness of evaluations and enable greater accountability for banks' CRA activity planning; increasing the clarity and flexibility of CRA evaluations to foster transparency and effectiveness in CRA rating determinations; and incorporating performance incentives to encourage banks to meet the credit and deposit needs of their communities.²³

As the financial services industry continues to evolve, many stakeholders believe that the statutory purpose of the CRA—to encourage banks to help meet the credit needs of the communities they serve, including LMI areas, in a manner that is consistent with their safe and sound operation—is not fully or effectively accomplished through the current regulations. Although aspects of the current CRA regulatory framework may be sufficient for certain locally focused and less complex banks, stakeholders have expressed concern that the current CRA regulatory framework no longer reflects how many banks and consumers engage in the business of banking. Stakeholders have also identified concerns about the lack of clarity, consistency, and certainty with respect to current CRA regulatory requirements.

III. Objectives of the ANPR

The OCC has reached out to and engaged with over 1,000 stakeholders on the existing CRA framework and whether it is meeting the credit needs of communities, given the changing

²² Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (April 3, 2018) (available at <https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf>).

²³ *Id.* at 2.

landscape of the financial services industry and banking. The OCC's goal for issuing this ANPR is to obtain additional public input on how to revise the CRA regulations to encourage more local and nationwide community and economic development—and thus promote economic opportunity—by encouraging banks to lend more to LMI areas, small businesses, and other communities in need of financial services. The agency invites comments on how to revise the CRA regulations to bring greater clarity, consistency, and certainty to the evaluation process, as well as to provide flexibility to accommodate banks with different business strategies. The OCC also invites comments on how to update assessment area definitions to accommodate digital lending channels, while retaining a focus on the communities in which bank branches are located. Additionally, the agency invites comments on clarifying and broadening the range of activities supporting community and economic development that qualify for CRA consideration.

The following sections of the ANPR invite comments from all stakeholders on changing the current approach to performance evaluations; developing metrics to increase the objectivity of performance measures; updating how communities and assessment areas are defined to accommodate banks with different business strategies and allow banks to help meet the needs of underserved communities; broadening the range of qualifying activities to better support the purpose of the CRA; and enhancing recordkeeping and reporting. The OCC invites all comments and suggestions for other ways to improve the CRA regulatory framework.

IV. Current CRA Regulatory Approach

A. Current Performance Evaluation Methods

The OCC's current CRA regulations provide different methods to evaluate a bank's CRA performance depending on the bank's asset size and business strategy.²⁴ Some stakeholders have expressed the view that the current regulatory framework is too complex, the asset thresholds for the performance tests and standards have not kept pace with bank asset sizes, and the standards are not applied transparently or consistently in performance evaluations.

Under the current framework,

- small banks (banks with less than \$313 million in assets) are evaluated under a retail lending test that may also consider community development (CD) loans. CD investments and services may be considered for an outstanding rating at the bank's option, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
- intermediate small banks (ISB) (banks with asset sizes between \$313 million and \$1.252 billion) are evaluated under the retail lending test for small banks and a CD test. The ISB CD test evaluates all CD activities together.
- large banks (banks with more than \$1.252 billion in assets) are evaluated under the lending, investment, and service tests. The large bank lending and service tests consider both retail and CD activity, while the investment test focuses on qualified CD investments.
- wholesale and limited purpose banks are evaluated under a CD test that considers activities in a much broader geographic area than the area that is considered for large banks or ISBs.

²⁴ The asset sizes are adjusted annually based on the Consumer Price Index.

- a bank whose business predominantly consists of serving the needs of military personnel who are not located within a defined geographic area is evaluated under the performance test or standards applicable to its size and business model; such a bank, however, may delineate its entire deposit customer base as its assessment area.

- any bank can elect to be evaluated under a strategic plan that sets out measurable, annual goals for lending, investment, and service to achieve a satisfactory or outstanding rating. A strategic plan must be developed with community input and approved by the bank’s primary regulator.

Additionally, although the small bank, ISB, and large bank lending tests share some common elements, other elements are unique to each test. For example, to facilitate the evaluation of performance under the large bank lending test, the CRA regulations require that certain data on small business, small farm, and CD loans be collected and reported annually. Small banks and ISBs are not required to report this data.

Finally, the OCC also considers applicable performance context information to inform its conclusions and CRA ratings in all cases.

B. Community and Assessment Areas

The CRA statute does not define “community.” The statute requires the OCC to state conclusions, supported by facts and data, on banks’ performance in metropolitan areas and—for banks with branches in more than one state—in the nonmetropolitan area of a state where a bank has one or more domestic branches.²⁵

²⁵ 12 U.S.C. 2906(b)(1)(B), (d)(3)(A). “Domestic branch” is defined as any bank branch office or other bank facility that accepts deposits, located in any state (12 U.S.C. 2906(e)(1)). For banks that maintain domestic branches in two or more states, the OCC must prepare separate written evaluations of performance in each state in which banks maintain one or more domestic branches. For banks that maintain domestic branches in two or more states within a

The current CRA regulations also do not expressly define “community”; they implement the concept by requiring a bank to delineate one or more “assessment area(s)” in which the agency evaluates the bank’s record of helping to meet the credit needs of its “community.”²⁶

The current CRA regulations specify what must be and what cannot be included in the assessment area delineation. The current interpretation of the regulations limits assessment area(s) to the area(s) surrounding a bank’s main office, branch offices, and deposit-taking automated teller machines (ATMs).

A bank’s CRA performance evaluation is based primarily on the CRA-qualifying activities that occur in or serve a bank’s assessment area(s). For some banks, their assessment area(s) may not include a substantial portion of the area(s) in which they conduct activities that would otherwise qualify for CRA consideration. The activities that occur outside of the bank’s assessment area that do not have a purpose, mandate, or function of serving the bank’s assessment area generally will not receive consideration unless the agency concludes that the bank has been responsive to the needs of its assessment area(s). Even then, the current CRA regulations and Q&A guidance generally limit consideration of CD activities to the broader statewide or regional areas that includes the bank’s assessment area(s).²⁷ Stakeholders have expressed concern that, in practice, the lack of clarity in the regulations and guidance limits banks’ willingness or ability to engage in CD activities outside of their assessment area(s).

The current assessment area definition was developed when banking was based largely on physical branch locations as the primary means of delivering products and services. While

multistate metropolitan area, the OCC must prepare a separate written evaluation of performance within the multistate metropolitan area (12 U.S.C. 2906(d)(1)(B), (d)(2)).

²⁶ 12 CFR 25.41 and 195.41.

²⁷ See Q&A guidance §__.12(h)-6. For banks evaluated pursuant to the CD test for wholesale or limited purpose banks, the agencies also consider qualified investments, CD loans, and CD services that benefit areas outside the bank’s assessment area(s), if the bank has adequately addressed the needs of its assessment area(s) (12 CFR 25.25(e)(2) and 195.25(e)(2)).

some banks continue to conduct most of their CRA-qualifying activities within their assessment area(s), in part because of the current framework for evaluating CRA performance, banking has evolved and the cost of operating branches has increased. Changes in the industry offer more opportunities for banks to engage in business outside of the geographies surrounding physical branches. Numerous factors, including technological advances in the delivery of banking services, shifting business models, and changes in consumer behavior and preferences permit banks to engage in the business of banking regardless of whether they have branches or, if they do, the location of their branches.

C. Questions Regarding Current Regulatory Approach

The OCC invites comments on changes to transform or modernize the current CRA regulatory framework, including with respect to the following questions:

- 1. Are the current CRA regulations clear and easy to understand?*
- 2. Are the current CRA regulations applied consistently?*
- 3. Is the current CRA rating system objective, fair, and transparent?*
- 4. Two goals of the CRA are to help banks effectively serve the convenience and needs of their entire communities and to encourage banks to lend, invest, and provide services to LMI neighborhoods. Does the current regulatory framework support these goals in light of how banks and consumers now engage in the business of banking?*
- 5. With the statutory purpose of the CRA in mind, what aspects of the current regulatory framework are most successful in achieving that purpose?*
- 6. If the current regulatory framework is changed, what features and aspects of the current framework should be retained?*

V. A Modernized CRA

A. Revising or Transforming the Current Regulatory Approach

1. Revising the Current Performance Evaluation Method

The OCC invites comments on ways to modernize the current regulatory framework by modifying and streamlining the existing CRA performance tests, such as by implementing an alternative evaluation method or by increasing and enhancing the use of metrics within the performance tests. One such alternative evaluation method could replace existing performance tests and standards and separately evaluate retail or CD activities for all banks, accounting for variations in size, business model, and other factors. This approach could include updated metrics that take into account information on a bank's performance context, such as the demographic characteristics and the economic and financial conditions of specific communities.

2. Metric-Based Framework

The OCC also invites comments on a more transformational approach to the CRA regulatory framework that could (1) increase the transparency of how a bank's CRA performance is evaluated by using quantitative benchmarks for specific ratings and clear standards for quantifying CRA activities; (2) define "community" more broadly to include additional domestic geographies in which the bank engages in the business of banking; and (3) expand the types of activities that would receive CRA consideration in a CRA evaluation, with a focus on lending, investments, and services for LMI geographies and individuals and other geographies and populations in need of financial services. Such an approach could simplify and improve the implementation of the CRA while better effectuating the law's directive to encourage banks to serve their entire communities, including LMI neighborhoods, consistent with safe and sound operations.

One approach is to create a metric-based performance measurement system with thresholds or ranges (benchmarks) that correspond to the four statutory CRA rating categories.²⁸ These benchmarks could represent the overall or “macro” benchmarks for obtaining a particular rating and could be composed of the “micro” components of CRA qualifying lending, investments, and services. These components could be aggregated to achieve the overall benchmark or level of performance. This approach would allow flexibility to accommodate bank capacity and business models while facilitating the comparison among banks of all sizes and business models and the evaluation against an objective, transparent threshold.

In a metric-based framework designed to bring clarity to the determination of CRA ratings, the benchmarks representing the dollar value of CRA-qualified activity could be compared to readily available and objective criteria, such as, a percentage of domestic assets, deposits, or capital from the bank’s balance sheet, to calculate a ratio that could correspond to the benchmark established for each rating category. For example, a bank with \$1 billion in total assets that conducted \$100 million of CRA-qualifying activities in the aggregate would achieve a 10-percent ratio, if total assets were used for the denominator.

The OCC invites comments on the above approaches, including with respect to the following questions:

7. *How could an alternative method for evaluating CRA performance be applied, taking into account the following factors: bank business model, asset size, delivery channels, and branch structure; measures or criteria used to evaluate performance, including appropriate metrics; and consideration for qualifying activities that serve areas outside a bank’s delineated assessment areas?*

²⁸ As noted in footnote 18, the four statutory rating categories are outstanding, satisfactory, needs to improve, and substantial non-compliance (12 U.S.C. 2906(b)(2)).

8. *How could appropriate benchmarks for CRA ratings be established under a metric-based framework approach, taking into account balance-sheet items, such as assets, deposits, or capital and other factors, including business models?*
9. *How could performance context be included in such a metric-based approach?*
10. *In a metric-based framework, additional weight could be given to certain categories of CRA-qualifying activities, such as activities in certain geographies, including LMI areas near bank branches; activities targeted to LMI borrowers; or activities that are particularly innovative, complex, or impactful on the bank's community. How could a metric-based framework most effectively apply different weighting to such categories of activities? For example, should a \$1 loan product count as \$1 in the aggregate, while a \$1 CD equity investment count as \$2 in the aggregate?*
11. *How can community involvement be included in an evaluation process that uses a metric-based framework?*
12. *For purposes of evaluating performance, CD services are not currently quantified in a standard way, such as by dollar value. Under a metric-based framework, how should CD services be quantified? For example, a bank could calculate the value of 1,000 hours of volunteer work by multiplying it by an average labor rate and then include that number in the aggregate total value of its CRA activity.*

3. Redefining Communities and Assessment Areas

To recognize evolving banking practices, the OCC invites comments on ways to update how a bank's community is interpreted for purposes of implementing the CRA. Under an updated approach, banks would continue to receive consideration for CRA-qualifying activities

within their branch and deposit-taking ATM footprint and could receive consideration for providing these types of beneficial activities in LMI areas outside of their branch and deposit-taking ATM footprint and other underserved areas. An updated approach to defining assessment areas could allow a bank to include additional areas tied to the bank's business operations (*e.g.*, areas where the bank has a concentration of deposits or loans, non-bank affiliate offices, or loan production offices). Under such an approach, banks could include these additional geographies in their assessment areas, enabling consideration of CRA-qualifying activities conducted within these areas. Such an approach could address concerns that the current CRA assessment areas can restrict bank lending or investment in areas of need, by expanding the circumstances in which banks receive consideration for CRA-qualifying activities beyond their delineated assessment areas. Providing consideration for activities conducted in targeted areas or areas that have historically been largely excluded from consideration such as remote rural populations or Indian country, for example, could help promote services and activities in those areas as well. It may also accommodate banks that either operate with business models that have no physical branches or banks with services that reach far beyond the geographic location of their physical branches. While the OCC would continue to assess CRA performance as required by statute, qualifying activities outside of the areas where a bank has its main office, branch offices, and deposit-taking ATMs could be considered and assessed in the aggregate, at the bank level, in addition to activities in its traditional assessment areas or local geographies.

The OCC invites comments on this approach, including with respect to the following questions:

- 13. How could the current approach to delineating assessment areas be updated to consider a bank's business operations, in addition to branches and deposit-taking*

ATMs, as well as more of the communities that banks serve, including where the bank has a concentration of deposits, lending, employees, depositors, or borrowers?

14. Should bank activities in the LMI geographies surrounding branches and deposit-taking ATMs, or in other targeted geographic areas, be weighted (and if so, how), or should some other approach be taken to ensure that activities in those areas continue to receive appropriate focus from banks, such as requiring banks to have some minimum level of performance in the metropolitan statistical area (MSA) and non-MSA areas in which they have domestic branches before receiving credit for activity outside those areas?

B. Expanding CRA-Qualifying Activities

The OCC invites comments on the type and categories of activities that should receive CRA consideration. Within the current regulation's performance tests and standards, CRA activities are generally considered in two categories—retail and CD—with the objective of encouraging banks to engage in a broad range of CRA-qualifying activities that are within LMI and other areas specified in the regulations and that benefit LMI individuals, small businesses, and small farms. For the most part, CRA-qualifying activities are defined by the regulations and further described in the Q&A guidance. The statute, however, requires the agencies to consider low-cost education loans provided to low-income borrowers, and it permits the agencies to consider activities undertaken by a non-minority-owned bank in conjunction with a minority- or women-owned bank or low-income credit union (MWLI), provided these activities benefit the MWLI's local community.

Some stakeholders have expressed concerns about which activities receive CRA consideration. These stakeholders generally express a desire for more clarity and certainty

regarding which CD, small business, lending, and retail service activities will receive CRA consideration.

The OCC invites comments on regulatory changes that could ensure CRA consideration for a broad range of activities supporting community and economic development in banks' CRA performance evaluations, while retaining a focus on LMI populations and areas, and set clear standards for determining whether an activity qualifies for CRA consideration. The OCC recognizes that providing greater clarity on qualifying activities could be beneficial in supporting the goals of the CRA for all banks, including those with more traditional business models.

Additionally, under the current regulatory framework banks receive CRA consideration for certain small business loans. The CRA regulatory definition of a small business loan mirrors the definition found in bank Call Reports.²⁹

The OCC also considers whether a large bank uses innovative or flexible lending practices in addressing the credit needs of LMI borrowers or geographies. Depending on the facts and circumstances, a bank that develops a unique approach or lending program targeted to support the needs of borrowers or small businesses in LMI geographies, LMI borrowers, or small businesses may be eligible to receive consideration under CRA for those activities.

The OCC invites comments on the role of small business credit in LMI areas or for LMI small business owners, and under what circumstances small business loans should receive CRA consideration.

²⁹ Loans to small businesses are defined as those with original amounts of \$1 million or less reported on the institution's Call Report as either "loans secured by nonfarm residential property" or "commercial and industrial loans." In addition to receiving consideration for business loan in amounts of \$1 million or less, a bank may also receive CRA consideration for business loans of more than \$1 million if the loan has a primary purpose of "community development" as that term is defined in the CRA regulations.

The OCC invites comments on qualifying activities, including with respect to the following questions:

15. *How should “community and economic development” be defined to better address community needs and to incentivize banks to lend, invest, and provide services that further the purposes of the CRA? For example, should certain categories of loans and investments be presumed to receive consideration, such as those that support projects, programs, or organizations with a mission, purpose, or intent of community or economic development; or, within such categories, only those that are defined as community or economic development by federal, state, local, or tribal governments?*
16. *Should there be specific standards for CD activities to receive consideration, such as requiring those activities to provide identified benefits to LMI individuals and small business borrowers or to lend to and invest in LMI communities or other areas or populations identified by federal, state, local, or tribal government as distressed or underserved, including designated major disaster areas (hereinafter referred to as “other identified areas” or “other identified populations”)?*
17. *Are there certain categories of CD activities that should only receive consideration if they benefit specified underserved populations or areas, such as providing credit or technical assistance to small businesses or small farms; credit or financial services to LMI individuals or other identified populations (such as the disabled); or social services for LMI individuals or job creation, workforce development, internships, or apprentice programs for LMI individuals or other identified populations?*

18. *Should consideration for certain activities that might otherwise qualify as CD be limited or excluded? For example, how should investments in loan-backed securities be considered?*
19. *How should financial education or literacy programs, including digital literacy, be considered?*
20. *Should bank activities to expand the use of small and disadvantaged service providers receive CRA consideration as CD activities?*
21. *The current regulatory framework provides for CRA performance evaluations to consider home mortgage, small business, and small farm lending, and consumer lending in certain circumstances. Should these categories of lending continue to be considered as CRA-qualifying activities or should consideration in any or all of these categories be limited to loans to LMI borrowers and loans in LMI or other identified areas?*
22. *Under what circumstances should consumer lending be considered as a CRA-qualifying activity? For example, should student, auto, credit card, or affordably priced small-dollar loans receive consideration? If so, what loan features or characteristics should be considered in deciding whether loans in these categories are CRA-qualifying?*
23. *Under what circumstances should small business loans receive CRA consideration? For example should consideration be given to all loans to businesses that meet the Small Business Administration standards for small businesses?*
24. *How should small business loans with a CD purpose be considered?*

25. *Should a bank's loan purchases and loan originations receive equal consideration when evaluating that bank's lending performance?*
26. *Should loans originated by a bank to hold in portfolio be weighted differently from loans originated for sale? If so, how?*
27. *Should bank delivery channels, branching patterns, and branches in LMI areas be reviewed as part of the CRA evaluations? If so, what factors should be considered?*
28. *The CRA states that the agencies may take into consideration in the CRA evaluation of a non-minority-owned and non-women-owned financial institution (majority-owned institution) any capital investment, loan participation, and other venture undertaken in cooperation with MWLIs, even if these activities do not benefit the majority-owned institution's community, provided that these activities help meet the credit needs of local communities in which the MWLIs are chartered. What types of ventures should be eligible for such consideration, and how should such ventures be considered?*

C. Recordkeeping and Reporting

The OCC also invites comments on how to modernize CRA regulations to promote transparency and consistency in recordkeeping, reporting, and examination requirements. The current regulatory approach does not facilitate regular tracking, monitoring, and comparisons of levels of CRA performance by banks and other stakeholders. One advantage of a modernized CRA framework that uses objective reportable metrics could be to allow for better tracking by banks of their overall CRA level of performance on a regular, periodic basis. If a metric-based framework and clarified standards for identifying and measuring qualifying activities were

implemented, such an approach could also allow stakeholders to better understand the level of a bank's CRA performance on a straightforward and timely basis.

This type of framework may involve an updated approach to the OCC's CRA-related data collection to be used for monitoring and assessing banks' CRA performance. Additionally, under a metric-based framework, the ability to differentiate among activities based on their location, type, or other factors may involve additional recordkeeping and reporting.

Such reporting could also support comparison among banks, their peer groups, or the entire industry and would support understanding of industry-wide activity and trends.

The OCC invites comments on CRA recordkeeping and reporting requirements. The OCC notes that additional feedback on recordkeeping and reporting may be necessary if a new framework is proposed in a future rulemaking.

29. Could the reporting of data gathered using a metric-based approach on a regular, periodic basis better support the tracking, monitoring, and comparison of CRA performance levels?

30. How frequently should banks report CRA activity data for the OCC to evaluate and report on CRA performance under a revised regulatory framework?

31. As required by law, and to the extent possible, the OCC attempts to minimize regulatory burden in its rulemakings consistent with the effective implementation of its statutory responsibilities. The OCC is committed to evaluating the economic impact of, and costs and benefits associated with, any changes that are proposed to the CRA regulations. Under the current regulatory framework, what are the annual costs, in dollars or staff hours, associated with CRA-related data collection, recordkeeping, and reporting?

D. Additional Options or Approaches

The OCC invites other ideas and options for modernizing the CRA regulatory framework not identified in this ANPR.

[THIS SIGNATURE PAGE RELATES TO THE ADVANCE NOTICE OF PROPOSED RULEMAKING TITLED “REFORMING THE COMMUNITY REINVESTMENT ACT REGULATORY FRAMEWORK.”]

Dated:

Joseph M. Otting,
Comptroller of the Currency