
Section: **Chief Counsel**

Subject: **Impact of CRA Ratings on Licensing Applications**

To: Deputy Comptrollers, Department and Division Heads, All Examining and Licensing Personnel

Summary

This Policies and Procedures Manual (PPM) issuance establishes the framework for the evaluation of certain types of licensing applications when the applicant bank has an overall Community Reinvestment Act (CRA) rating of “Needs to Improve” or “Substantial Noncompliance” (together, less than satisfactory CRA performance rating) or a less than satisfactory CRA rating in one or more geographic rating areas. This PPM applies to all national banks, federal savings associations, and federal branches of foreign banks that are subject to the CRA (collectively, banks). It also applies to state-chartered institutions subject to the CRA that propose to convert to a federal charter.

Background and Highlights

The Office of the Comptroller of the Currency’s (OCC) regulations implementing the CRA list the application types for which a bank’s CRA rating of performance must be considered in the agency’s review: branch establishment, branch relocation, main or home office relocation, a Bank Merger Act (BMA) filing involving two insured depository institutions, conversion from state to federal charter, and conversion between federal charters (collectively, covered applications).¹

When the OCC reviews an application, the facts and circumstances pertaining to the specific transaction dictate whether the OCC will approve or deny the application. The CRA performance of an institution is one of a number factors that the agency considers in its review of a covered application.² The OCC’s longstanding practice is to subject covered applications from banks

¹ 12 CFR 25.29(a) and 195.29(a).

² In some instances, the CRA performance is taken into account in connection with consideration of the convenience and needs of the community to be served, and in other instances, the CRA performance is considered on a standalone basis. “In every case [under the Bank Merger Act], the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served...” 12 USC 1828(c)(5). “In determining whether to approve an application for an interstate merger transaction...the responsible agency shall comply with the

with significant CRA issues to enhanced scrutiny.³ This PPM provides clarity and guidance on that practice.

Framework

The OCC's framework applies to applicant banks proposing to participate in a covered application in two different situations—those with an overall satisfactory or better rating but with one or more geographic rating areas rated less than satisfactory and those with an overall less than satisfactory CRA rating.

I. Overall Satisfactory CRA Rating but Less Than Satisfactory Rating in One or More Geographic Rating Areas

For a bank with an overall satisfactory or better CRA rating, but a less than satisfactory CRA rating in one or more geographic rating areas, the general presumption is the CRA consideration is consistent with approval of the covered application, although the specific facts of a particular transaction may, on balance, result in a determination that the CRA consideration is not consistent with approval.

II. General Policy Regarding Overall Less Than Satisfactory CRA Rating

If an applicant bank has an overall less than satisfactory CRA rating, the OCC provides enhanced scrutiny of covered applications by the bank.⁴ As part of its enhanced scrutiny, the OCC requires the applicant bank to submit with its application a description, and appropriate supporting information, of how it would meet its CRA objectives in connection with the proposed transaction. The applicant bank also must describe in detail how approval of the covered application would allow the bank to improve its CRA performance. The OCC takes into account these descriptions and all the facts of record when considering the application. The OCC generally would find that the CRA consideration is consistent with approval of a covered application if the applicant bank demonstrates that approval, subject to conditions or otherwise, would help the bank to achieve its CRA objectives and would further the public policy goals of the CRA by encouraging the bank to help meet the credit needs of the communities it serves, consistent with its safe and sound operation.

The assessment of whether the CRA consideration is or is not consistent with approval of a covered application that involves a proposed transaction by a bank that has an overall less than satisfactory CRA rating is made based on the facts and circumstance involved. In making this assessment, the OCC considers:

responsibilities of the agency regarding such application under the [CRA]" and "take into account the most recent written evaluation under [the CRA]." 12 USC 1831u(b)(3).

³ The conclusion of whether the CRA consideration is or is not consistent with approval of an application is considered in conjunction with other legal and policy factors, such as those related to financial and managerial resources and future prospects. The relative importance of any one factor is considered based on the facts and circumstances involved in a particular case.

⁴ An overall less than satisfactory CRA rating is not a bar to approval of an application. Rather, the facts and circumstances of the application must be evaluated as discussed in this PPM.

- whether the overall less than satisfactory CRA rating was issued recently,⁵ the severity of the less than satisfactory rating (“Needs to Improve” or “Substantial Noncompliance”), and the progress made by the applicant bank to address the issues underlying the less than satisfactory CRA rating.
- whether approval of the covered application would result in a material increase in the size of the applicant bank or the scope of its activities, and how such increase would affect the bank’s ability to help meet the credit needs of the communities to be served.
- whether the proposed transaction would benefit the communities to be served, as well as the nature and extent of such benefits.⁶
- whether approving the covered application with conditions would (a) be sufficient to ensure that the pro forma organization will be able to achieve its CRA objectives, (b) clearly further the specific goals of CRA, or (c) significantly further fair access to banking services.

For example, the CRA consideration may be deemed to be consistent with approval where the facts and circumstances reflect that a bank with a “needs to improve” CRA rating had made substantial progress in addressing its issues and approval of the application would facilitate the bank’s ability to increase its CRA activities to the benefit of its communities. As another example, the CRA consideration may be inconsistent with approval, if the bank has a CRA rating of “substantial noncompliance,” there has been only minimal progress to address the underlying issues, and approval of the application would result in little or no benefit to the community served and would not improve or enable the bank to increase its CRA activities.

The determination whether the CRA consideration is either consistent or inconsistent with approval of a covered application is made by the Deputy Comptroller for Licensing, in consultation with the appropriate Deputy Comptroller for Supervision. The decision is guided by the framework laid out in this PPM and the OCC policy of ensuring that the CRA Performance Evaluation, including the assigned ratings, is a tool to achieve the underlying purpose of the CRA: to encourage banks to help meet credit needs by lending, serving, and investing in the communities in which they operate, across income levels and geographies.

Other Issues Affecting CRA Rating

In certain circumstances, evidence of discriminatory or other illegal credit practices related to CRA lending activities can result in a bank receiving an overall less than satisfactory CRA rating.⁷ In such instances, the general framework and considerations set out above apply.

⁵ Consideration of the timing of a less than satisfactory CRA rating relative to the filing of a covered application allows the OCC to make a qualitative assessment of the progress a bank has made to address the underlying issues. For example, it reflects negatively on a bank if the less than satisfactory rating has been outstanding for a long period of time, and the bank has only made minimal progress in addressing the underlying issues.

⁶ Examples of benefits that may be relevant to the determination may include (i) the acquisition of a failing bank, or (ii) the establishment of a branch (a) in, or bordering, a low- or moderate-income (LMI) census tract, or (b) that would reasonably be expected to serve a substantial number of LMI customers.

⁷ See OCC Bulletin 2017-40, “Community Reinvestment Act: Impact of Evidence of Discriminatory or Other Illegal Credit Practices on Community Reinvestment Act Ratings.”

Timing Considerations

The framework and considerations set forth in this PPM go into effect at the time the OCC has notified the bank it has received a less than satisfactory rating (overall or in one or more geographic rating areas). In addition, the framework and considerations generally apply to covered applications that have recently been submitted and are pending at the OCC at the time the OCC notifies the applicant bank that it will receive a less than satisfactory rating. Covered applications are no longer subject to the framework established in this PPM when the OCC notifies the applicant bank that it no longer has an overall less than satisfactory CRA rating or that the specific geographic rating area(s) is no longer rated less than satisfactory.

Appeal of CRA Rating When Applications Are Pending

If a bank appeals a less than satisfactory CRA rating (either overall or in a particular geographic rating area), the OCC makes a determination when the appeal is filed and accepted whether it would be more appropriate to hold a pending covered application in abeyance until the appeal is resolved or to rely on the OCC's then-available analysis of the bank's CRA activities and performance to evaluate the pending covered application. In making this determination, the OCC assesses whether approval of the application, with conditions or otherwise, would further the goals of the CRA and ensure that the bank will meet the credit needs of the communities to be served.

Communication With Banks

When a bank is notified that its overall CRA rating, or the rating in one or more geographic rating areas, is less than satisfactory, Supervision staff, with assistance as needed from the Licensing staff, should communicate the framework described in this PPM to appropriate bank staff, including, at a minimum, bank staff that are involved with licensing applications. In addition, the cover letter sent to the bank with the CRA Performance Evaluation should reference this PPM and strongly encourage bank staff to consult with OCC Supervision and Licensing staff prior to entering into any contract with respect to a transaction that would require a covered application. Such consultation allows OCC staff to provide the bank with any further guidance on the likely impact that the bank's CRA rating will have on a potential application.

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