

Frequently Asked Questions Regarding Notice of Proposed Rulemaking to Rescind the OCC's June 2020 CRA Rule

These frequently asked questions (FAQ) relate to the Office of the Comptroller of the Currency's (OCC) proposal to rescind and replace the Community Reinvestment Act (CRA) rule issued on June 5, 2020 (June 2020 CRA rule). The FAQs provide information on the rulemaking process and the OCC's consideration of potential CRA issues during any transition from the June 2020 CRA rule to a rule largely based on the rules adopted jointly by the OCC, the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) in 1995, as revised (1995 rules).

General

1. What happens to the June 2020 CRA rule during the OCC's rescind-and-replace rulemaking process?

The June 2020 CRA rule and related guidance will continue to apply during the rescind-and-replace rulemaking process unless and until the rule is replaced by a different final rule. OCC Bulletin 2020-99¹ provides information on the implementation of the June 2020 CRA rule. OCC Bulletin 2020-99 remains in effect during the rulemaking process. OCC Bulletin 2021-24² explains that the OCC will not object to national banks or federal savings associations (collectively, banks) suspending development of systems for, or other implementation of, provisions of the June 2020 CRA rule with a compliance date of January 1, 2023, or January 1, 2024. Additionally, the OCC will not implement or rely on evaluation criteria in the June 2020 CRA rule pertaining to quantification of qualifying activities, assessment areas, general performance standards, data collection, record keeping, and reporting.

2. Why did the OCC propose to rescind the June 2020 CRA rule and replace it with the 1995 rules issued jointly by the agencies?

Promoting fair access to financial services and treating customers fairly is fundamental to the OCC's mission, and strong CRA regulations are key to meeting that mission. While the OCC's June 2020 CRA rule took an important first step toward strengthening the 1995 CRA framework, more changes and improvements should be made for the following reasons:

- Implementation of the June 2020 CRA rule revealed to the OCC some of the rule's complexities and demonstrated where there were opportunities for improvement;
- Implementation of the June 2020 CRA rule and responses to the December 2020 CRA notice of proposed rulemaking (NPR) made clear the extent of the burden associated with the data collection and reporting integral to the June 2020 CRA rule; and

¹ For more information, refer to OCC Bulletin 2020-99, "Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions."

² For more information, refer to OCC Bulletin 2021-24, "Community Reinvestment Act: Implementation of the June 2020 Final Rule."

- The COVID-19 pandemic’s disproportionate effect on minorities and rural and low- to moderate-income communities provided further evidence of the need to better address the financial services needs of vulnerable communities coming out of the pandemic.

3. Does that mean the OCC will work with the other agencies on a modernized CRA final rule?

Yes. The OCC, the Board, and the FDIC have issued a statement³ publicly acknowledging that they are committed to working together to strengthen and modernize the CRA regulations.

Rulemaking Process and Timeline

4. What is the process for issuing a rule?

The OCC, as with all other federal agencies, must follow the Administrative Procedure Act when issuing a rule. Before issuing new rules or making changes to existing rules, agencies first publish NPRs in the *Federal Register*. NPRs request comments from the public on proposed changes. The public comment period typically lasts between 30 to 60 days.

In the case of the OCC’s rescind-and-replace rulemaking process for the June 2020 CRA rule, OCC staff will consider the public comments and will make final determinations on how to proceed. The OCC will publish any final rule in the *Federal Register* with the date when the rule will take effect. The effective date is determined by statutory requirements. In most cases, the date is no sooner than 30 days after publication in the *Federal Register* and on the first day of a calendar quarter.

5. What is the difference between an ANPR and an NPR?

Before a formal rulemaking process begins, federal agencies may issue an advance notice of proposed rulemaking (ANPR) that precedes an NPR. For example, the OCC may issue an ANPR to solicit general comments and public input on an issue or area that may be the subject of a future NPR, as the Board did with its CRA ANPR in 2020. After reviewing the comments received on the ANPR, the OCC may then move forward with an NPR, which may be followed by a final rule.

6. Why doesn’t the OCC know what the changes to the CRA rule will be if there is a published NPR?

NPRs contain proposed changes and are not final rules. The Administrative Procedure Act generally requires that federal agencies consider, and respond to, public comments received in response to NPRs before agencies can issue final rules.

³ Refer to News Release 2021-77, “Interagency Statement on Community Reinvestment Act Joint Agency Action.”

OCC staff will follow this review process for the CRA rule. Because the NPR to rescind and replace the June 2020 CRA rule⁴ is outstanding, the OCC cannot predetermine how the review will proceed, including whether there will be a final rule and if so, what will be in it.

7. What is the next step for the rescind-and-replace NPR?

After considering public comments, the OCC will make final determinations on how to proceed.

8. How long is the public comment period?

The comment period is for 45 days and closes on October 29, 2021.

9. If the OCC issues a final rule to rescind and replace the June 2020 CRA rule, when would the rescission become effective?

After reviewing public comments on the rescind-and-replace NPR and if the OCC proceeds with a final rule, the OCC would determine the effective date to rescind the June 2020 CRA rule.

10. What is the OCC's plan for changing references to the June 2020 CRA rule in related regulations or guidance? How would rescinding the June 2020 rule affect those regulations or guidance?

The OCC would update guidance and propose to update references to the June 2020 CRA rule in related regulations as necessary. The OCC expects there to be minimal updates because much of the June 2020 CRA rule has not yet become effective.

Bank Type

11. Does my bank type, for purposes of the CRA, change now that OCC has proposed to rescind the 2020 rule?

Banks should refer to OCC Bulletin 2021-5⁵ to determine bank type based on the June 2020 CRA rule, which remains in effect unless and until a replacement rule is finalized and implemented. The OCC will consider any comments on this issue in response to the rescind-and-replace NPR.

⁴ For more information, refer to 86 Fed. Reg. 52026.

⁵ For more information, refer to OCC Bulletin 2021-5, "Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA."

Qualifying Activities

12. Would the OCC qualified activity determinations made under the June 2020 CRA rule continue to apply if the OCC rescinds the June 2020 CRA rule?

As indicated in the rescind-and-replace NPR's preamble, under the proposal, an activity that meets the qualifying criteria on the date it is conducted would remain a qualifying activity for the bank that undertook the activity. This includes legally binding commitments to lend or invest in activities qualified at the time of the commitment. For banks or interested parties that received confirmation letters for qualifying activities under the June 2020 CRA rule, those letters would apply only while the June 2020 CRA rule is in effect. The OCC will consider any comments on this issue in response to the rescind-and-replace NPR.

13. Would banks receive consideration for CRA qualifying activities approved by the OCC under the June 2020 CRA rule if their CRA examination happens after revised rules based on the 1995 rules were finalized?

Under the proposed rule, activities that meet the qualifying criteria in 12 CFR 25.04 under the June 2020 CRA rule would receive CRA consideration if the activity was originated, made, purchased, or conducted while the June 2020 CRA rule is in effect. The bank would receive this consideration regardless of the timing of their CRA examination, which covers the period of time that the activity was originated, made, purchased, or conducted.

14. Will partial credit for certain qualifying activities continue to apply?

Banks would receive partial credit for qualifying activities conducted while the June 2020 CRA rule is in effect.

15. Would the rescission of the June 2020 CRA rule affect how the U.S. Small Business Administration's Paycheck Protection Program loans are considered?

Banks would receive consideration for Paycheck Protection Program loans based on when the activity was conducted and as explained in the FAQs attached to OCC Bulletin 2021-12.⁶

16. Will the OCC continue to consider activities in all federally declared disaster areas declared in 2020 and 2021?

Under the proposal, activities in disaster areas that qualify under the June 2020 CRA rule at the time they are conducted would receive consideration in a bank's CRA examination. The OCC will consider comments that it receives on disaster areas in response to the rescind-and-replace NPR.

⁶ For more information, refer to OCC Bulletin 2021-12, "Community Reinvestment Act: Interagency Frequently Asked Questions Related to the COVID-19 Pandemic."

Qualifying Activity Confirmation Request System

17. What will happen to the qualifying activity confirmation request system?

The qualifying activity confirmation request system will continue to operate, and the OCC will continue to provide written confirmation on whether activities meet the qualifying activity criteria in 12 CFR 25.04, as long as the June 2020 CRA rule remains in effect. The OCC is considering whether to implement a qualifying activities confirmation process based on the community development (CD) definition in the 1995 rules, as interpreted through the Interagency CRA Q&As,⁷ while the OCC is working on the interagency CRA rulemaking process.

Transition Period

18. How should banks keep track of activities that qualify under the June 2020 CRA rule but would not qualify if the 1995 rules are reinstated?

Under the proposal, the criteria in effect on the date the activity is made, purchased, or conducted would determine whether the activity qualifies for CRA consideration. Banks should retain information on the activity date and how the activity meets the criteria or definitions in the June 2020 CRA rule or 1995 rules, as applicable.

19. Will the OCC use the June 2020 CRA rule definitions and publish the lists of distressed or underserved census tracts, bank types, and the banking industry compensation amount until it takes further action on the proposal to rescind the June 2020 CRA rule?

Yes. Definitions and other provisions of the June 2020 CRA rule that were effective on October 1, 2020 will remain in effect during the rescind-and-replace rulemaking process unless and until the rule is replaced by a final rule.

Examination Administration

20. Can a large bank under the 1995 rules that became an intermediate bank under the June 2020 CRA rule choose to be evaluated as a large bank for the period it was an intermediate bank?

Yes. As explained in the Interagency CRA Q&As for the 1995 rules, a bank may elect to be assessed as a large bank if it optionally chose to collect and report large bank CRA data during the relevant period. This option is addressed by the June 2020 CRA rule in 12 CFR 25.42 in appendix C.

Assessment Areas

21. How will activities outside an assessment area be considered?

⁷ For more information, refer to News Release 2016-82, “Agencies Release Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment.”

Activities conducted outside a bank's assessment area while the June 2020 CRA rule is in effect will be considered as set forth in that rule and in OCC Bulletin 2020-99. The OCC will consider comments that it receives on this issue in response to the rescind-and-replace NPR.

Targeted Geographic Areas

22. The June 2020 CRA rule includes target areas, such as Indian country or tribal and other native lands, where banks can receive credit for certain qualifying activities. If the June 2020 CRA rule is rescinded, how will activities outside an assessment area be considered?

Banks will continue to receive consideration for activities that meet the criteria in 12 CFR 25.04 and are conducted in the targeted areas identified in the June 2020 CRA rule while the June 2020 CRA rule is in effect. The OCC will consider comments that it receives on this issue in response to the rescind-and-replace NPR.

Strategic Plans

23. Will banks operating under a strategic plan still get credit for target geographic market assessment areas?

Activities conducted in any target geographic market assessment areas while the June 2020 CRA rule is in effect will be considered as set forth in that rule and in OCC Bulletin 2020-99. The OCC indicates in the rescind-and-replace NPR's preamble that the agency proposes to allow banks to maintain any strategic plans approved under the June 2020 CRA rule and will not require these banks to amend their strategic plans. The OCC believes that permitting strategic plan banks to maintain their target market assessment areas is consistent with the 1995 rules and would cause the least disruption during the transition from the June 2020 CRA rule to a modernized interagency CRA final rule. The OCC will consider comments that it receives on this approach in response to the rescind-and-replace NPR.

Public Comments

24. How can the public express comments and communicate with the OCC regarding provisions of the June 2020 CRA rule that they would like the OCC to retain?

Interested parties can submit comments on the rescind-and-replace NPR on the *Federal eRulemaking Portal—Regulations.gov*. Commenters also may submit comments via mail or hand delivery/courier. Refer to *Federal Register* vol. 86, no. 178, page 52026, for more information.

Interested parties would have another opportunity to submit comments at such time as an interagency CRA rule may be proposed.

25. Does the proposed rescission of the June 2020 rule affect the OCC's processing of bank licensing applications?

Attachment to OCC Bulletin 2021-50

The proposed rescission of the June 2020 CRA rule would not change the OCC's process for accepting and considering comments on bank licensing applications. That process is the same for the June 2020 CRA rule as for the 1995 rules.