OCC BULLETIN 2018-17

Subject: Community Reinvestment Act
Date: June 15, 2018

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

Description: Supervisory Policy and Processes for Community Reinvestment Act Performance Evaluations

Summary

The Office of the Comptroller of the Currency (OCC) is fully committed to an effort to modernize the Community Reinvestment Act (CRA). The OCC has recently issued an Advance Notice of Proposed Rulemaking to obtain comments and feedback related to the modernization of the CRA regulatory framework. While modernization efforts are proceeding, the OCC is issuing this bulletin to inform national banks, federal savings associations, and federal branches and agencies (collectively, banks) about clarifications to OCC supervisory policies and processes regarding how examiners evaluate and communicate bank performance under the CRA. The OCC has clarified and simplified these policies and processes to promote the consistency and effectiveness of CRA performance evaluations. These supervisory policies and processes apply to each bank CRA evaluation.

Note for Community Banks

This bulletin applies to all national banks, federal savings associations, and federal branches and agencies subject to evaluation under the CRA.

Highlights

The CRA supervisory policy addresses the following areas for all CRA evaluations. These policy clarifications, which are effective immediately, address

- implementation of full-scope and limited-scope reviews;
- consideration of activities that promote economic development;
- use of demographic, aggregate, and market share data;
- evaluation of the borrower distribution of loans outside bank assessment areas (AA);
- evaluation frequency and timing;
- the CRA performance evaluation period; and
- evaluation of home mortgage loans.

Clarifications on standard processes related to CRA evaluations were communicated to examiners and became effective on May 2, 2017. These clarifications address

- the type of information considered and presented in the written performance evaluation (PE) and the process for sharing CRA evaluation data and ratings with OCC-supervised banks.
- factors considered when evaluating bank performance under the small- and large-bank lending tests.
- branch distribution when concluding on the availability and effectiveness of bank systems for delivering retail banking services.
- internal and external performance context factors when concluding on performance.
- consideration of CRA plans imposed as conditions of approval of corporate applications in the evaluation process.

These policies and processes apply to the evaluations of all OCC-supervised banks subject to the CRA, regardless of the bank's asset size or CRA evaluation type. Transitional procedures are being implemented. If banks with CRA evaluations in progress believe these policies will create a burden during an ongoing evaluation, they should raise this concern with their examiners.

Effective June 1, 2018, the OCC rescinded its previous “Large Bank CRA Examiner Guidance,” issued December 29, 2000, and transmitted publicly by OCC Bulletin 2000-35.

Background

The CRA requires the OCC to assess each bank’s record of helping to meet the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound operations. The OCC issues a public PE to document and communicate its conclusions with respect to a bank’s CRA performance. The PE for each bank contains analysis that supports and explains the overall CRA rating, as well as the assigned ratings in each state and multistate metropolitan area and conclusions for each AA. The CRA also requires the OCC to consider a bank’s CRA performance when reviewing the bank’s applications for branches, relocations, conversions, acquisitions, assumptions, and mergers.

The OCC and other federal banking agencies responsible for implementing the CRA[1] issue interagency CRA questions and answers (Q&A) and examination procedures to provide guidance on the interpretation and implementation of the regulations.[2] The OCC also provides supplemental guidance setting forth policies and procedures relevant to the evaluation process. To promote a consistent and effective evaluation process, the OCC is revising its CRA evaluation policies and updating and clarifying processes and practices, as described in this bulletin.

Clarifications to OCC Supervisory Policies Regarding CRA

Performance Evaluation Frequency and Timing

OCC policy governs the required frequency of CRA evaluations, subject to statutory limitations for smaller banks. For banks with total assets of more than $250 million, OCC policy requires evaluations generally be performed every 36 to 48 months. Banks with less than 30 rating areas at the previous CRA evaluation are subject to a 36-month evaluation cycle. Banks with 30 or more rating areas at the previous CRA examination are subject to a 48-month CRA evaluation cycle. Under the Gramm-Leach-Bliley Act of 1999 (GLBA), the OCC may conduct a CRA evaluation for banks with assets of $250 million or less no sooner than 48 months after the previous evaluation for banks with a satisfactory CRA rating and no sooner than 60 months after the previous evaluation for banks with an outstanding CRA rating (such banks are referred to as “GLBA banks” for purposes of this bulletin).

Examiners will determine the start date for the next CRA evaluation using the start date of the previous CRA evaluation. For the first evaluation after implementation of the revised policy, the previous evaluation start date generally will correspond to the date shown on the title page of the bank’s previous PE. The examination start date will be based on the start date cited in the request letter to the bank. In general, OCC policy provides a three-month scheduling window from the start date. OCC policy provides a six-month window for scheduling CRA evaluations for banks subject to the restrictions imposed under the GLBA.

In some cases, a short-term delay of the start of a CRA evaluation may be appropriate based on specific circumstances, such as the timing of bank data reporting. Such a deferral may be implemented with approval from appropriate OCC officials for any bank except a de novo bank, for which a CRA evaluation start date will not be deferred. Expectations regarding a de novo bank’s obligations to help meet the credit needs of its community are established in the chartering process.

CRA Performance Evaluation Period

OCC policy provides that examiners will consider retail and community development (CD) activities in full calendar year increments, regardless of bank size. The evaluation period for small and intermediate small banks is expanded to three full calendar years. The evaluation period for large banks includes each full calendar year starting with the end date of the previous CRA evaluation.

Full-Scope and Limited-Scope Reviews

During a CRA evaluation, examiners must analyze and consider performance in all of a bank’s AAs, in keeping with regulatory requirements. Each AA is reviewed according to interagency examination procedures under either full-scope (FS) or limited-scope (LS) procedures.[3] FS procedures require analysis of both quantitative and qualitative data, while LS procedures focus primarily on quantitative data with consideration of qualitative data generally limited to demographic and competitive comparators.

Written PEs will include demographic data and contextual information in tables and narrative comments throughout to describe the institution and the institution's operations in the rating area[4] and to support conclusions on performance in FS areas. Contextual information includes, but is not limited to, economic conditions, the competitive environment, and needs and opportunities for lending and CD activities during the evaluation period.

When a bank has multiple AAs within a single state, at least one AA will be evaluated using FS procedures, while the remaining AAs in that state may be reviewed using FS or LS procedures, as appropriate. Narrative comments and conclusions for non-metropolitan statistical area (non-MSA) AAs within a single state will be presented in a combined narrative in the PE, using either FS or LS procedures, as applicable. If FS procedures are used, significant differences across portions of the combined non-MSA AA, such as in demographics, economic conditions, competition, other performance context factors, or gaps in lending or CD activities, will be described in the PE and considered when evaluating performance in the combined non-MSA area. Similarly, metropolitan divisions (MD) within the same MSA or multistate MSA will be combined and presented in the PE as a single AA. As rating areas, multistate MSAs are always evaluated using FS procedures.

Selecting Areas for FS Review

The OCC applies a comprehensive approach to selecting AAs for FS review through consideration of a variety of factors including whether an AA represents a significant portion of the bank's activity or whether the bank's activity represents a significant portion of total industry activity in an AA relative to deposit or loan market shares. Under the interagency examination procedures, considerations include the following:

- The bank's lending, investment, and service activity (as applicable) in each AA.
- Lending, investment, and service needs and opportunities (as applicable) in each AA.
- The number of banks in each AA and the importance of the examined bank to serving each of those AAs, particularly when relatively few financial services providers operate in an AA.
- The existence of any apparent anomalies in reported CRA or Home Mortgage Disclosure Act (HMDA) data for any particular AA.
- The length of time since each AA was reviewed under FS procedures.
- The bank's previous CRA performance in different AAs.
- Examiners' knowledge of the same or similar AAs.
- Issues raised in CRA evaluations of other banks and prior community contacts in the bank's AAs or similar AAs.
- Public comments about the bank's performance in specific AAs.

More than one AA may be selected for FS review in each state, when appropriate, but examiners are not required to select all AAs that meet the selection criteria. FS reviews rotate among a variety of AAs over time and may not apply to the same AAs for multiple consecutive evaluations.

Impact of Performance in LS Areas on Ratings

A bank's performance in both FS and LS AAs must be considered in rating area conclusions. As with the selection of FS areas, factors considered include the significance of each AA to the bank's operations in the rating area and the significance of the bank's activities relative to total industry activities in the AA in terms of deposit or loan market share. Conclusions will reflect the bank's performance across all AAs, including LS AAs, and, as a result, rating area performance conclusions may not be based solely on performance conclusions in the FS AA(s) to the exclusion of performance in the LS AA(s).

Evaluating Home Mortgage Loans

CRA regulations require the OCC to evaluate a bank's record of helping to meet the credit needs of its AA(s) through its lending activities by considering in most cases, among other things, a bank's home mortgage lending.[5] The OCC evaluates performance and bases PE conclusions on home mortgage lending in the aggregate. Home mortgage lending includes all home mortgage loans as defined under the HMDA, whether or not the bank is required to report under the HMDA. Examiners should consider and address any significant differences in the bank's lending record among the different types of home mortgage loans in evaluating performance.

Use of Demographic, Aggregate, and Market Share Data

For banks that report under the HMDA, the OCC compares the bank's lending distributions to demographic data and aggregate data under the applicable lending test, regardless of whether the bank is a national bank or federal savings association. Aggregate data include loans originated or purchased by lenders that report under the HMDA and/or are subject to CRA small business/small farm reporting requirements. The OCC also compares a non-HMDA reporting bank's lending distributions to aggregate HMDA data (based on banks that report under the HMDA), in addition to comparing the bank's data to demographic data. The OCC considers this information in context, recognizing that the analysis for non-HMDA reporting banks is typically based on a sample of loans, rather than on total bank originations and purchases over the evaluation period.

In addition, the OCC uses a bank's market share and market rank data to evaluate the adequacy of performance under the large bank lending activity criteria.

Evaluating Borrower Distribution of Loans Outside Bank AAs

The CRA Questions and Answers (Q&A) provide that as long as the bank has adequately addressed the needs of borrowers within its AA(s),[6] examiners may consider the borrower distribution of loans originated or purchased outside of a bank's AA(s). Lending to LMI persons and small businesses and farms outside a bank's AA(s), however, does not compensate for poor lending performance within the bank's AA(s).

The OCC, in evaluating the borrower distribution of loans outside a bank's AA(s), evaluates lending state by state and compares the level of bank lending to statewide demographic comparators. The evaluation of performance need not include all states where the bank originated or purchased loans, but instead examiners will select states for evaluation where the level of bank lending is sufficient to conduct a meaningful analysis of borrower distribution.

Activities That Promote Economic Development

Bank activities may be considered to support CD under the CRA regulations through activities that promote economic development if those activities meet both a "size" and a "purpose" test. The size test refers to size eligibility requirements detailed in the CRA regulations.[7] The purpose test explains the phrase "promote economic development" and is intended to ensure activities have a CD purpose. Loans, investments, and services that help to create, retain, and/or improve jobs for LMI individuals, in LMI geographies, or in areas targeted for redevelopment by federal, state, local, or tribal governments are among activities listed as meeting the purpose test because they promote economic development.[8]

The OCC considers a loan, investment, or service as helping to retain jobs if a bank can demonstrate that the jobs retained were at risk of loss. This policy differentiates between loans made in the ordinary course of business and loans that demonstrate a CD purpose as described in the law, implementing regulations, and official guidance.

Finalizing CRA PEs With Open Investigations Involving Potential Discriminatory or Other Illegal Credit Practices

In some cases, the processes used by the OCC or other federal agencies to identify, evaluate, validate, and resolve findings based on evidence of potential discriminatory or other illegal credit practices can be protracted. When a CRA PE is ready for issuance, the OCC will assess the time frame within which any pending matters involving potential discriminatory or other illegal credit practices are likely to be determined or resolved by the OCC or another federal agency. Generally, a PE will not be delayed if such matters cannot be resolved within 90 days after a PE is considered final for issuance to the bank. Any findings of discriminatory or illegal credit practices after the issuance of a PE generally will be considered in the subsequent CRA PE and a statement to that effect is included in each PE.

Clarifications of OCC Supervisory Processes—Effective Immediately

Consideration of Performance Context in the Evaluation Process

Performance context is a broad range of economic, demographic, and bank- and community-specific information that an examiner reviews to understand the circumstances in which a bank's record of performance should be evaluated. The OCC presents performance context information throughout the PE, depending on the type of information and context in which factors are considered. Performance context information is included in the description of the institution (information pertaining to the bank on an enterprise-wide basis), the description of the bank's operations in the state or multistate MSA, and in narrative comments supporting conclusions on performance in FS areas. Identified performance context factors will be incorporated into discussions regarding bank performance throughout the PE, when applicable.

Consideration of Lending Activity in the Overall Large Bank Lending Test Rating

The OCC considers loan volume in combination with other factors when concluding on performance under the large bank lending activity performance criteria. Good or excellent loan volume cannot compensate for a lack of lending in LMI geographies or to LMI borrowers. For example, excellent volume would not support an outstanding rating on the lending test if only an adequate proportion of those loans were made to LMI borrowers or in LMI geographies.

Comparing Bank Performance to Demographic Factors

The OCC assesses bank performance relative to defined demographic factors, beginning with the base quantitative analysis described in the interagency CRA examination procedures. In addition,

- loan distributions are considered in the context of lending volume. When volume is limited, examiners assess whether the distributions suggest a willingness or unwillingness to lend to LMI segments.
- a limited percentage of owner-occupied housing units in LMI tracts does not automatically explain or elevate bank performance. Examiners consider the actual number of owner-occupied housing units in each geography. For example, a small percentage of the total may represent several thousand housing units. Examiners also determine whether the bank makes loans to investors (non-owner-occupant borrowers) as well as owner-occupant borrowers in considering the opportunities to lend across geographies of different incomes.
- Poverty-level data do not automatically explain poor borrower distribution of home mortgage loans. The computation of poverty level applies to multiple income ranges that are not comparable to the calculation of income for a family of four that is used for CRA borrower income distributions. As a result, the percentage of families below the poverty level deducted from the percentage of low-income families does not determine the lending opportunities to low-income borrowers. High rates of poverty, however, may indicate fewer opportunities to lend to LMI borrowers.

Branch Proximity

The CRA large bank service test includes an evaluation of the availability and effectiveness of a bank's systems for delivering retail banking services, including the current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies. Any conclusion that a branch outside an LMI geography serves the needs of residents of the LMI area must be supported by evidence showing that the branch actually serves customers in the LMI area. For example, bank marketing practices that target LMI areas—such as bank lending distributions that indicate the bank is serving credit needs of the LMI area, evidence that bank customers reside in LMI geographies, or relevant demographic changes during branch tenure in a particular location—may be considered.

Communication with OCC-Supervised Banks

To confirm factual accuracy of the data that will be reflected in the PE, during the course of the evaluation, examiners should provide the following to the bank for review: PE data tables, the description of the institution, descriptions of operations in each rating area, the scope of the evaluation, and community profiles for FS areas. Examiners may not share narrative comments reflecting the analysis of, or conclusions regarding, the bank's performance until the OCC considers the PE final for release to the bank.

Consideration in the CRA Evaluation Process of CRA Plans Imposed as Conditions for Approval of Corporate Applications

The OCC periodically has conditioned approval of a corporate application on a requirement that the bank establish a CRA Plan to address identified deficiencies in CRA performance. A CRA Plan typically requires the bank to establish goals based on performance criteria relevant to the applicable CRA evaluation procedures (i.e., small bank, intermediate small bank, large bank, wholesale or limited purpose bank, or strategic plan). The OCC evaluates bank performance under such a CRA Plan during the bank's scheduled CRA evaluation. Examiners determine whether CRA Plan goals for each applicable performance test (i.e., lending, service, investment, or CD) were met according to the terms of the plan. In evaluating compliance with the CRA Plan, examiners may consider performance context factors related to the bank's ability to meet plan goals, such as dramatic shifts in economic conditions. Examiners consider the results of performance related to the CRA Plan under each applicable test when assigning overall CRA evaluation test ratings at the state, multistate, or institution levels, as applicable. This approach recognizes the importance of a CRA Plan as well as overall bank CRA performance.

Use of Benchmarks or Thresholds

In assessing and concluding on a bank's performance and in assigning ratings, the OCC considers the environment within which the bank operated during the evaluation period, including performance context as described above. Examiners may use demographic data or other comparators when assessing bank performance but should not apply standardized, artificial benchmarks to gain perceived consistency in ratings across institutions. Such practice fails to account for each bank's performance context, including whether activities are responsive to credit and CD needs and opportunities.

Presenting Performance at the MSA or Combined Statistical Area Level

To simplify and improve interagency consistency in the presentation and analysis of performance, OCC PE tables present data, and narrative comments address performance at the MSA level even when a bank has defined two or more MDs as separate AAs within the same MSA or multistate MSA. Similarly, examiners may present combined data and comments related to MSAs within the same combined statistical area. Examiners may consider relevant MD-level performance context factors, as appropriate, in evaluating performance. For CRA evaluations in progress at the time this bulletin is issued, examiners are permitted to include tables in the PE setting forth data at the MD level, if the examiner performs the data analysis and concludes on performance at the MD level.

Further Information

Please contact a supervisory office or the OCC's CRA and Fair Lending Policy Division at (202) 649-5470 for further information.

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[1] The two other responsible federal agencies are the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.
[2] Refer to "Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Guidance," 81 Fed. Reg. 142, July 25, 2016.
[3] The interagency examination procedures explain differences between areas that are reviewed using FS procedures and areas that are not. The term "limited-scope" is used to describe those areas that do not receive FS reviews.
[4] A "rating area" is a state or multistate MSA.
[5] 12 CFR 25.22(a) & 195.22(a).
[6] Refer to Q&A § __ .22(b)(2) & (3)—4.
[7] 12 CFR 25.12(g)(3) & 195.12(g)(3).
[8] Refer to Q&A § __ .12(g)(3)—1.