

# Memorandum

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## OCC Seeks Comments on Modernizing Community Reinvestment Act Regulations

August 29, 2018

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On August 28, the Office of the Comptroller of the Currency (“OCC”) released an Advance Notice of Proposed Rulemaking (“ANPR”) seeking comment on the best ways to modernize the regulatory framework implementing the Community Reinvestment Act of 1977 (“CRA”). The ANPR follows recent recommendations by the U.S. Treasury Department for the Federal banking agencies to adopt certain reform the CRA regulations.<sup>1</sup> Notably, however, the OCC released the ANPR without being joined by the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation, which also have responsibility of implementing the CRA. Comptroller Otting has previously stated that he was “hopeful and confident” that the Federal Reserve and FDIC would join the OCC in efforts to reform and modernize the CRA, and an agency spokesperson recently stated that the OCC “will be sharing comments with fellow regulators.”

Prior to releasing the ANPR, the OCC 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 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 low- and moderate-income (“LMI”) areas, small businesses, and other communities in need of financial services.

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<sup>1</sup> See 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).

To that end, the OCC has invited comments on how to revise 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;
- develop metrics to increase the objectivity of performance measures;
- update assessment area definitions to accommodate digital lending channels, while retaining a focus on the communities in which bank branches are located;
- clarify and broaden the range of activities supporting community and economic development that qualify for CRA consideration; and
- enhance recordkeeping and reporting requirements under the CRA.

Additional detail regarding each of these topics of consideration is provided below.

## **1. Revising the Current Performance Evaluation Method**

The ANPR invites comment on ways to modify and streamline 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. The OCC suggested that one such alternative evaluation method could replace the existing performance tests and separately evaluate retail or community development 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 ANPR indicated that the OCC may consider a “more transformational approach” to the CRA regulatory framework that could include a metric-based performance measurement system with thresholds or benchmarks that correspond to the statutory CRA rating categories. In such a metric-based framework, the dollar value of CRA-qualified activity could be compared to readily available and objective criteria (such as the bank's 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. This use of quantitative benchmarks for specific ratings may increase the transparency of how a bank's CRA performance is evaluated and facilitate comparisons of the CRA performance of banks of different sizes and business models. The OCC asked several questions about a potential metric-based framework, including whether additional weight could be given to certain categories of CRA-qualified activity.

### 3. Redefining Communities and Assessment Areas

Under current CRA regulations, a bank's CRA performance evaluation is based primarily on the CRA-qualifying activities that occur in or serve a bank's assessment areas. Because these assessment areas are limited to the areas surrounding a bank's main office, branch offices, and deposit-taking ATMs, the assessment areas of some banks may not include a substantial portion of the areas in which they conduct activities that would otherwise qualify for CRA consideration.

The ANPR invites comments on ways to update how a bank's community is defined for purposes the CRA. Under an updated approach suggested by the OCC, banks would continue to receive consideration for CRA-qualifying activities within their branch and deposit-taking ATM footprint, but could also 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. This approach 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) in their assessment areas, enabling consideration of CRA-qualifying activities conducted within these areas. This approach would address concerns that the current CRA assessment areas can restrict bank lending or investment in areas of need. Such an expanded view of assessment areas may also accommodate banks that either operate without physical branches or with services that reach far beyond the geographic location of their physical branches. The OCC asked questions about how the current approach for delineating a bank's assessment areas could be upgraded, as well as questions on other approaches, such as weighting activities in certain geographic areas over others and requiring minimum levels of CRA performance in certain areas before activity in other areas could be receive credit.

### 4. Expanding CRA-Qualifying Activities

In light of concerns expressed by certain stakeholders regarding the need for more clarity as to which community development, small business, lending, and retail service activities will receive CRA consideration, the ANPR invites comment on regulatory changes that could ensure CRA consideration for a broader range of activities supporting community and economic development in banks' CRA performance evaluations, and set clear standards for determining whether an activity qualifies for CRA consideration. The OCC asked several questions about how CRA-qualifying activities would be better defined to address community needs, including whether certain types of loans and investments or services provided to particular recipients or communities should be presumed to receive CRA consideration. The OCC also asked questions about how CRA regulations should treat certain other activities, including investments in loan-backed securities, financial education or literacy programs, consumer lending, small business lending, among others, and how loan originations should be considered compared to loan purchases.

## 5. Recordkeeping and Reporting

The ANPR also invites comments on how to modernize CRA regulations to promote transparency and consistency in recordkeeping, reporting, and examination requirements. The OCC recognized in the ANPR that the current regulatory approach “does not facilitate regular tracking, monitoring, and comparisons of levels of CRA performance by banks and other stakeholders.” A modernized CRA framework that uses objective reportable metrics would have the advantage of allowing for better tracking by banks of their overall CRA level of performance on a regular, periodic basis. 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 asked several questions about new recordkeeping and reporting requirements, including the reporting of data using a use of a metric-based approach and the frequency of CRA reporting. The OCC also requested information on the economic impact of, and costs and benefits associated with, any proposed changes to the CRA regulations.

Notably, the ANPR makes no mention of the OCC’s recently announced expectations for any entity seeking a new national “fintech” charter to demonstrate a commitment to “financial inclusion.”<sup>2</sup> However, the OCC’s apparent openness in the ANPR to reconsidering the ways it delineates a bank’s community and categorizes CRA-qualifying activities may suggest that the OCC will also be open to innovative approaches to compliance with the “financial inclusion” requirement for fintech charter applicants.

The OCC will be accepting comments for 75 days following the publication of the ANPR.

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<sup>2</sup> For additional information regarding the OCC’s fintech charter, please see the Firm’s memorandum dated August 1, 2018, available [here](#).

For further information, please contact one of the following members of the Firm's Financial Institutions Group.

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