**REQUEST OF COMMENTS**

**CRA MODERNIZATION PROPOSAL**

**ISSUED 12/12/19 BY OCC AND FDIC**

1. Are the proposed criteria for determining which activities would qualify for credit under the CRA sufficiently clear and consistent with the CRA’s objective of encouraging banks to conduct CRA activities in the communities they serve?
2. Are there other criteria for determining which activities would qualify for CRA credit that the agencies should consider?
3. Under the proposal, CD activities conducted in targeted areas, such as Indian country or distressed areas, would qualify for CRA credit. Should there be any additional criteria applicable to the types of CD activities that qualify for CRA credit in these areas? If so, what should those criteria be?
4. Under the proposal, the small business and small farm revenue thresholds and the size thresholds for a small loan to a business and a small loan to a farm would increase to $2 million. Do these increases appropriately incentivize banks to engage in small business and small farm lending activities, or should other changes be made to the revenue and loan size thresholds?
5. The agencies plan to publish the illustrative list on their websites and to update the list both on an ongoing basis and through a notice and comment process. Should the list instead be published as an Appendix to the final rule or be otherwise published in the Federal Register? In addition, how often should the list be updated?
6. The proposal includes a process for updating the illustrative list on an ongoing basis through submission of a form to seek agency confirmation. The agencies considered an alternative process where an agency would accept all requests from banks for confirmation that an activity is a qualifying activity, aggregate these requests, publish the list of requested items in the Federal Register for public comment and feedback, and update the list following this process once every six months. What process, including any alternative process, should the agencies adopt to update the illustrative list of qualifying activities?
7. Are certain types of retail loans more valuable to LMI individuals and geographies than other types? If so, which types? Should the regulations recognize those differences? If so, how? For example, could multipliers be used to recognize those differences and provide incentives for banks to engage in activities that are scarce but highly needed?
8. The use of multipliers is intended to incentivize banks to engage in activities that benefit LMI individuals and areas and to other areas of need; however, multipliers may cause banks to conduct a smaller dollar value of impactful activities because they will receive additional credit for those activities. Are there ways the agencies can ensure that multipliers encourage activities that benefit LMI individuals and areas while limiting or preventing the potential for decreasing the dollar volume of activities (e.g., establishing a minimum floor for activities before a multiplier would be applied)?
9. The proposal quantifies the value of CD services based on the compensation for the type of work engaged in by the employees providing the services as reflected in the Bureau of Labor Statistics calculation of the hourly wage for that type of work. Alternatively, CD services could be valued based on a standardized compensation value for the banking industry or occupation type. For example, the median hourly compensation value for the banking industry is approximately $36, when calculated using Bureau of Labor Statistics data. Would using standardized compensation values reduce the burden associated with tracking CD services while still appropriately valuing CD services? If so, how should the agencies establish the standardized compensation values?
10. Should the range of retail banking services provided—such as checking accounts, savings accounts, and certificates of deposit—be considered under this proposal? If so, how could retail banking services be quantified? For example, could the types of checking and savings accounts that are offered by a bank (e.g., no fee, fixed fee, low interest-bearing, high interest- bearing) be considered in performance context?
11. Are the proposed methods for delineating assessment areas clear, simple, and transparent?
12. The proposal would allow banks to choose how broadly to delineate their facility-based assessment areas, but it would require banks with a significant portion, such as 50 percent or more, of their retail domestic deposits outside of their facility-based assessment areas to delineate their deposit-based assessment areas at the smallest geographic area where they receive five percent or more of their retail domestic deposits. The requirement to designate deposit-based assessment areas would impact Internet banks that do not rely on branches or ATM facilities to collect deposits as well as traditional banks that, in addition to their branches and ATM facilities, collect a significant portion of their deposits online outside of their branch and ATM footprint. Do these approaches strike the right balance between allowing flexibility and ensuring that banks serve their communities? If not 50 percent, what threshold should be used to determine if a bank has a significant portion of its deposits outside of its facility-based assessment areas and why? In addition, is receiving at least five percent of domestic retail deposits from a given area the appropriate threshold for requiring a bank to delineate a deposit- based assessment in that area, or should some other threshold be implemented? If so, why?
13. The deposit-based assessment area delineation requirements are intended to ensure that banks serve the communities in which they operate. However, under the proposed regulation, it is possible that few banks would be required to delineate a deposit-based assessment area in less populous areas or states, despite having a significant market share in those areas (although banks with branches in those areas would be required to delineate facility- based assessment areas and banks may receive credit for qualifying activities outside of their assessment areas conducted in these areas or states). Does this framework provide sufficient incentives for banks to conduct qualifying activities in these less populous areas? Alternatively, should banks be required to delineate separate, non- overlapping assessment areas in each state, MSA, MD, or county or county equivalent in which they have at least a certain percentage of the deposit market share—regardless of what percentage of the bank’s retail domestic deposits are derived from a given area—and, if so, what should the percentage of the deposit market share be?
14. The proposed rule would define retail domestic deposits as total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC-E, item 1, of the Call Report, excluding brokered deposits. Is there another definition— including the alternatives described above—that would better reflect a bank’s capacity to engage in CRA qualifying activities?
15. The proposal focuses on quantifying qualifying activities that benefit LMI individuals and areas and quantifies a bank’s distribution of branches by increasing a bank’s quantified value of qualifying activities divided by retail domestic deposits (a bank’s CRA evaluation measure), expressed as a percentage, by up to one percentage point based on the percent of a bank’s branches that are in specified areas of need. Banks with no branches in these areas will not receive any CRA credit for their branch distribution under this method, even if there are very few specified areas of need in the areas they serve. Does this appropriately incentivize banks to place or retain branches in specified areas of need, including LMI areas? Does it appropriately account for the value of branches in these areas?
16. Under the retail lending distribution tests, the proposal would consider the borrower distribution of any consumer loan product line that is a major retail lending product line for the bank. The agencies defined a major retail lending product line as a retail lending product line that comprises at least 15 percent of the bank-level dollar volume of total retail loan originations during the evaluation period, but also considered setting the threshold between 10 and 30 percent. Should the agencies consider a different threshold? Additionally, applying the retail lending distribution test to only major retail lending product lines means that not all retail lending product lines will be evaluated for every bank. Are there any circumstances in which applying the retail lending distribution test to a consumer lending product line should be mandatory, even if it is not a major retail lending product line (e.g., if the consumer lending product line constitutes the majority of a bank’s retail lending in number of originations)? Additionally, the proposal would only apply the retail lending distribution tests in assessment areas with at least 20 loans from a major product line. Is 20 loans the appropriate threshold, or should a different threshold, such as 50 loans, be used?
17. Under the proposal, a bank evaluated under the general performance standards could not receive a satisfactory or an outstanding presumptive bank-level rating unless it also received that rating in a significant portion of its assessment areas and in those assessment areas where it holds a significant amount of deposit. Should 50 percent be the threshold used to determine “significant portion of a bank’s assessment area” and “significant amount of deposits” for purposes of determining whether a bank has received a rating in a significant portion of its assessment areas? Or should another threshold, such as 80 percent, be used?
18. Under the proposal, banks that had assets of $500 million or less in each of the previous four calendar quarters would be considered small banks and evaluated under the small bank performance standards, unless these banks opted into being evaluated under the general performance standards. Is $500 million the appropriate threshold for these banks? If not, what is the appropriate threshold? Should the threshold be $1 billion instead?
19. Under the proposal, small banks (i.e., banks with $500 million or less in assets in each of the previous four calendar quarters) may choose to exercise an opt into and a one-time opt out of the general performance standards. Should small banks that opt in to the general performance standards be permitted to opt out and be examined under the small bank performance standards for future evaluations and, if so, how frequently should this be permitted?