

The OCC Reconsiders Going it Alone on CRA

By Chris W. Bell

To modernize the agency's regulations under the Community Reinvestment Act (CRA), the Office of the Comptroller of the Currency (OCC) published a final rule (June 2020 rule) in the *Federal Register* on June 5, 2020. Previous to this modernization, the OCC had chosen to partner with the other federal regulators to pursue a shared CRA framework for all covered financial institutions. The June 2020 rule was designed to: (i) expand and make clearer "qualifying activities," (including bank lending and investing); (ii) revise the delineation of "assessment areas"; (iii) provide more "consistent and objective" methods for assessing CRA performance; and (iv) mandate "timely and transparent" reporting. On July 20, 2021, the OCC [announced](#) it will propose to rescind the agency's May 2020 final rule overhauling the CRA, signaling the OCC's intention to collaborate with the Federal Reserve Board (Fed) and the Federal Deposit Insurance Corporation (FDIC) on a separate joint rulemaking.

The announcement follows the completion of a review undertaken by acting Comptroller Michael Hsu. Comptroller Hsu stated that although "the OCC deserves credit for taking action to modernize the CRA," the adoption of the final rule was "a false start" in attempting to overhaul the regulation. According to Comptroller Hsu, the OCC intends to work with the Fed and the FDIC to develop a joint Notice of Proposed Rulemaking and build on an Advance Notice of Proposed Rulemaking issued by the Fed last September. The federal agencies issued an [interagency statement](#) noting that they have "broad authority and responsibility for implementing the CRA" and that "[j]oint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods."

The OCC explained that the additional time it will take to reconsider the June 2020 rule will (i) enable banks to more flexibly deploy their resources for COVID-19 pandemic-related purposes, (ii) allow the OCC to consider additional input from stakeholders, (iii) provide the OCC with more time to assess issues and questions that have been raised with regard to the rule's implications, and (iv) enable the OCC to reevaluate the necessary data and take further regulatory action, as needed.

What's Changing?

While this reconsideration is ongoing, the OCC will not object to the suspension of the development of systems for, or other implementation of, provisions with a compliance date of January 1, 2023, or January 1, 2024, under the 2020 rule. At this time, the OCC also does not plan to finalize the December 4, 2020, proposed rule that requested comment on an approach to determine the CRA evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the June 2020 rule. In addition, the OCC is discontinuing the CRA information collection pursuant to the Paperwork Reduction Act (PRA) notice published in the *Federal Register* in December 2020. While this reconsideration is ongoing, the OCC will not implement or rely on the evaluation criteria in the June 2020 rule pertaining to: quantification of qualifying activities (12 CFR 25.07 and 25.08); assessment areas

(12 CFR 25.09); general performance standards (12 CFR 25.10 through 25.13); data collection (12 CFR 25.21); recordkeeping (12 CFR 25.25); and reporting (12 CFR 25.26).

What's Not Changing?

Please note that the OCC has not merely voided its June 2020 rule. It is important to remember that parts of the June 2020 rule are currently in effect. The OCC will continue to implement the provisions of the June 2020 rule that had a compliance date of October 1, 2020. The OCC interpreted and explained these provisions in OCC Bulletin 2020-99. These implementation efforts include

- issuance of OCC Bulletin 2021-5 providing bank type determinations, lists of distressed and underserved areas, and the median hourly compensation value for community development service activities;
- deployment of the CRA Qualifying Activities Confirmation Request process for banks and other stakeholders to request confirmation whether an activity meets the qualifying criteria under the June 2020 rule; and
- provision of training on provisions of the June 2020 rule with the October 1, 2020, compliance date in a series of webinars for examiners and bankers.

Compliance Alliance members can find a summary of the June 2020 rule at

<https://compliancealliance.com/find-a-tool/tool/occ-cra-modernization-final-rule-summary>.

The right partner can help you navigate the ever-changing regulatory landscape. Bankers Alliance and our teams of companies is here to help with your CRA needs. Compliance Alliance will continue to bring our members up-to-date information and training regarding the CRA modernization efforts and the tools that your financial institution needs to stay in compliance and fulfill your CRA requirements. Review Alliance can audit your systems to make sure that you are gathering, tracking, and reporting the information you need.



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In law school, Chris focused his studies on the different financial aspects of the law, including the Internal Revenue Code and Uniform Commercial Code. Chris has worked in the legal department of a federal savings bank and for the Texas Department of Banking. As one of our hotline advisors, Chris helps C/A members with a wide range of regulatory and compliance questions and he is one of our featured authors.