

## CRA Reform: The OCC Is The First and (So Far) Only Regulator Out of the Gate

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In a laudable step towards further advancing a reform of the Community Reinvestment Act (“CRA”), the OCC yesterday released an [advanced notice of proposed rulemaking](#) (the “ANPR”) “to solicit ideas for building a new framework to transform and modernize” the current CRA regulatory framework to better achieve the statutory purpose of the CRA. Comments on the ANPR will be due 75 days after publication in the Federal Register.

As observed by the OCC in describing the changing banking environment, aspects of the current CRA regulatory framework may be sufficient for certain locally focused and less complex banks, but the current CRA regulatory framework no longer reflects how many banks and consumers engage in the business of banking. This observation echoes concerns voiced by the industry, regulators, legislators, and other stakeholders that the current CRA regulatory framework has not kept pace with the transformative changes that the financial services industry has undergone in the past decades, including the removal of interstate branching restrictions, the expanded role of technology, and shifting business needs and consumer behavior/preferences.

As one would expect, the focus of the ANPR is closely aligned not only with comments that Comptroller Joseph Otting made in his June 2018 testimony before the [House Financial Services](#) and [Senate Banking](#) Committees, but also with the four key areas for CRA reform identified by the US Treasury Department in its April 2018 [memorandum](#) regarding CRA modernization recommendations. Our thoughts and analysis on that memorandum may be found [here](#). The ANPR also builds on the OCC’s prior efforts to modernize and bring common sense to the CRA regulatory framework. These include, as we pointed out in a [prior blog post](#), the OCC’s revisions to its existing CRA examination and ratings policies that now require a “logical nexus” between a discriminatory or illegal credit practice and a bank’s CRA lending before the bank’s CRA rating may be downgraded.

While the ANPR offers few, if any, concrete proposals, it seeks to help address CRA reform by asking questions relating to key areas of the existing CRA regulatory framework, including:

- CRA Performance Evaluations – The ANPR reiterates the quantitative, metrics-driven approach that Comptroller Otting already outlined in his June 2018 Congressional testimony where he promoted “clear and transparent metrics for what banks need to do to achieve a certain CRA rating.” The ANPR presents these metrics as a ratio between the dollar value of CRA-qualifying activities and a banking organization’s size, which could be a more accurate and consistent approach for determining an institution’s CRA rating. The ANPR solicits comments on such a metrics-driven approach, including on appropriate benchmarks and weight to be given to certain categories of CRA-qualifying activities. In a nod to more flexible metrics, which Federal Reserve Governor Brainard expressed support for in an April 2018 [speech](#), the ANPR also seeks comment on an alternative, tailored approach to CRA evaluation that would take into account a bank’s “business model, asset size, delivery channels and branch structure.”
- Definition of Assessment Area – The ANPR seeks comments on a modernized approach to defining a bank’s “community” and the definition of “assessment area” for CRA purposes. In discussions with our clients, the current definition of assessment area (along with timing for completion and issuance of CRA performance evaluations) is often cited as one of the most problematic and outdated features of the current CRA regulatory framework. This is because the current framework, which was developed when banking was based largely on physical branch locations as the primary means of delivering products and services, limits a bank’s assessment area to an area surrounding a bank’s main office, branch offices, or deposit-taking ATMs. The ANPR seeks comment on whether to “allow a bank to include additional areas tied to the bank’s business operations” in its relevant assessment area, in addition to the current brick-and-mortar assessment area definition. This reform would accommodate business models of banks that operate without or beyond the scope of their physical location and would recognize the ways in which banking, including the cost of operating branches, has evolved due to technological advances and shifting consumer and business needs.
- CRA-Qualifying Activities – The ANPR seeks to ensure that CRA consideration is given for a broad range of activities that support community and economic development while retaining a focus on low- and moderate-income populations

and areas. The ANPR does this by soliciting comment on ways to provide more clarity and certainty regarding the community development, small business, lending, and retail service activities for which a bank may receive CRA consideration. The ANPR also solicits comments on the expansion of CRA-qualifying activities, the role of small business credit and the circumstances under which small business loans should receive CRA consideration. In the area of consumer lending, the ANPR asks whether student, auto, credit card or affordably priced small-dollar loans should receive CRA consideration and, if so, what loan features should be taken into account. Other questions focus on the possibility of different weightings for loan purchases vs. loan originations and for loans originated for sale vs. to be held in portfolio.

The ANPR's release itself does not come as a surprise given Comptroller Otting's focus on, and frequent statements regarding, the need to reform the CRA regulatory framework. It is also not surprising, yet still noteworthy, that the OCC is the first and only agency to seek public comment on reforming and modernizing the CRA regulatory framework. While the federal banking agencies usually act jointly to the extent that more than one agency has rulemaking authority, the Federal Reserve and FDIC, the two other agencies charged with implementing the CRA, did not join the release. Those who follow other areas of bank regulation know that this is not the first instance in which the OCC has recently been a first-mover. The OCC's actions regarding an ANPR for CRA reform are consistent with its choice to act alone and solicit public comment on certain aspects of the Volcker Rule in August 2017, with the other relevant agencies following suit nine months later.

Comptroller Otting and the OCC are to be commended for issuing the ANPR as a means of creating momentum for reforming and modernizing the CRA regulatory framework. While both Federal Reserve [Vice Chairman for Supervision Quarles](#) and FDIC [Chairman McWilliams](#) have expressed their support for CRA reform, the fact that the Federal Reserve and FDIC did not join the OCC in issuing the ANPR hints these agencies may not fully agree with the OCC's approach to CRA reform. While progress is desirable, the individual actions of the OCC as one agency raise the risk of a potential lack of coordination, redundancy and inconsistent rulemaking among the federal banking agencies later on. We remain confident that the federal banking agencies will be able to solve any differences and look forward to seeing what a unified approach to reforming and modernizing the CRA regulatory framework will ultimately look like.

*Paralegal Olivia C. Harrison contributed to this post.*