



New Final CRA Rule Published by OCC: Historic Gains for LMI People with Disabilities

On May 20, 2020, the Office of the Comptroller of the Currency (OCC) released the final version of revised rules to “modernize implementation of the Community Reinvestment Act (CRA).” CRA was passed by Congress in 1977 to require banks to have a continuing and affirmative obligation to meet the economic, credit and service needs of low- and moderate-income (LMI) people and neighborhoods in which they are located. There are two general categories of activities that qualify for CRA consideration: (1) retail banking activities and (2) community development activities.

More than 7,400 comments were received on a proposed set of changes published last year by OCC jointly with FDIC. The comment period ended in mid-April 2020. Both FDIC and the Federal Reserve declined to sign on to the publication by OCC of final rule changes. The 370-page final rule has significant changes from current CRA regulations that will apply in the future only to OCC-supervised banks, which represent 70 percent of all banking assets. Implementation will be staggered over the next four years for different provisions of the new rules.

The final regulations represent a historic change by providing clear guidance and examples of qualified CRA activities that will address the multiple ways investment, lending and services can support the unmet needs of low- and moderate-income people with disabilities. More than 60 percent of adults with disabilities are LMI and many live in LMI neighborhoods. They are more than three times as likely as those without disabilities to be unbanked and one in five have an unmet need for credit.¹ Even under the old CRA rule, banks could get CRA credit for serving this population. However, because the rules did not explicitly identify people with disabilities as a target population, they were generally overlooked as a target of banking and community development activities.

In issuing the final rule, OCC states their intent is to “strengthen and modernize” the CRA regulatory framework. “The goals of the reform are to make the framework more objective, transparent, consistent in application and reflective of changes in banking.”

What does the final rule change?

The final rule makes changes in four areas:

1. Clarifies with a list and a process to assist banks and communities to understand what bank investment, lending and service activities qualify for positive CRA consideration;

¹ Goodman, N and Morris, M (2019) Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2017 FDIC National Survey of Unbanked and Underbanked Households and Focus Group Research. National Disability Institute. [LINK](#)

2. Amends how banks define assessment areas beyond their physical location in which they are located;
3. Provides additional methods for evaluating CRA performance in a consistent and objective manner, including responsiveness to the LMI needs of people with disabilities; and
4. Requires bank reporting to be more transparent.

This summary will primarily focus on Area 1 – *Qualified CRA Bank Activities*, and Area 3 – *Evaluating CRA Performance*.

CRA was passed by Congress some 40 years ago. However, subsequent regulations, regulation amendments and guidance issued by the financial regulators did not include a list of qualifying activities for banks to use to know what investment, lending and service activities were in fact eligible for CRA credit as part of performance evaluations. **There was also no specific mention of LMI individuals with disabilities as a part of targeted LMI individuals to be the focus of CRA activities.**

Under these new regulation changes, for the first time, LMI individuals with disabilities are specifically identified as an eligible group that represents a subset of the LMI community in a bank’s service areas. **In addition, for the first time, the regulations create a list of clear qualifying CRA activities. And, for the first time, LMI individuals with disabilities are targeted for specific types of qualifying activities.** The illustrative list will “help improve consistent treatment of qualifying activities,” which will no longer be defined at times differently by individual regulators and specific bank examiners.

What does the final rule state about inclusion of LMI individuals with disabilities?

In response to comments led by National Disability Institute (NDI) and the Center for Disability-Inclusive Community Development (CDICD), and echoed by other disability groups and some financial institutions, the OCC states, for the first time in CRA rules, that “activities that benefit or serve LMI individuals with disabilities” will meet several qualifying activities criteria in the final rule.” In addition, the CRA illustrative list includes examples of activities that support people with disabilities. The final rule also indicates that “banks and interested parties can request confirmation that additional activities meet the qualifying activities criteria.”

Specific examples of activities that support people with disabilities are:

- a. An unsecured consumer loan to a moderate-income individual for household assistive technology products and vehicle modifications to improve accessibility (Section 25.04(b)(1)(i)).
- b. Donations to workforce development programs designed to improve employment opportunities for LMI individuals with disabilities (Section 25.04(c)(3)).
- c. Financial capability training by bank employees to individuals with disabilities (Section 25.04(c)(9)).

- d. Loan to upgrade equipment in a public library to accommodate LMI disabled individual patrons (Section 25.04(c)).

The list of qualifying activities that meet CRA requirements are an **illustrative list** and not meant to be an **exhaustive list**. The final rule establishes a process for a bank and/or a community group to seek confirmation from OCC that an activity is a qualifying activity. The approval process in the final rule is to be completed within 60 days. The illustrative list will be updated each time an activity is confirmed to be or not to be a qualifying activity.

In addition to the illustrated list of activities that will benefit LMI individuals with disabilities, there is further clarification by OCC of qualifying activities in general for LMI people, which will also benefit LMI people with disabilities. The final rule defines, for further objective definition and interpretation in the future, the term “community support services.” Based on NDI’s comments, along with other groups, the final definition of community support services is amended from the definition in the proposed rules to specifically include “**workforce development and job training programs for LMI individuals**” in addition to “activities such as childcare, education, health services and housing services that partially or primarily serve or assist LMI individuals or families.” Banks will receive CRA credit for financing or supporting these types of “community support” services and programs for LMI individuals.

CRA Illustrative List of Qualifying Activities that could be beneficial to individuals with disabilities includes, but is not limited to:

- a. investment in a local cooperative to develop broadband infrastructure and expand across to LMI residents in the area (Section 25.04(c)(6)(i));
- b. grants to a nonprofit which assists LMI individuals to find and enroll in free or low-cost home broadband internet services for which they are eligible (Section 25.04(c)(3));
- c. grants to a nonprofit that provides financial literacy courses for a foreclosure prevention program (Section 25.04(c)(9));
- d. in-kind donation of computer equipment to a nonprofit that conducts money management courses for LMI individuals (Section 25.04(c)(9));
- e. financial support of a nonprofit that provides digital literacy training in order to increase LMI individuals’ ability to use online banking services (Section 25.04(c)(9));
- f. consumer loan to an LMI individual to fund unexpected medical expenses (Section 25.04(b)(1)(i));
- g. small dollar consumer loan to a low-income individual made under a bank’s affordable small dollar loan program (Section 25.04(b)(1)(i));
- h. loans to a nonprofit to provide affordable housing to LMI individuals where median rents will meet the median rent standard (Section 25.04(c)(1)(i)(A));
- i. loans to a nonprofit to rehabilitate multi-family rental housing for people with disabilities using a guarantee provided under HUD Section 231 to units affordable for LMI individuals (Section 25.05(c)(1)(i)(C));
- j. loans for construction of government-supported, accessible rental housing for LMI disabled persons (Section 25.04(c)(1)(i)(C));

- k. down payment and closing cost assistance grants on home purchase loans for LMI borrowers (Section 25.04(c)(1)(ii));
- l. donation to a nonprofit that provides transportation to medical treatments for LMI individuals (Section 25.04(c)(3));
- m. volunteer service with a nonprofit to provide income tax assistance for LMI individuals (Section 25.04(c)(3)); and
- n. bank employees teach financial education, deliver FDIC’s Money Smart program or offer financial counseling in a workforce development program (Section 25.04(c)).

How will bank performance examinations be focused in the future?

In the future, OCC will provide further guidance to banks and community groups to ensure “consistent application of performance context” as part of the examination process for CRA credit. The examination will include, but not be limited to, the following areas of consideration:

- 1. retail banking services targeted to LMI individuals;
- 2. record of opening and closing branches in LMI neighborhoods defined by census data;
- 3. availability of effectiveness of its alternative systems for delivering retail banking services in LMI census tracts and to LMI individuals; and
- 4. qualitative aspects of branch distribution and community development services.

How will people and groups participate in a bank’s performance context plan development?

Banks have the option to develop a performance context plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. The plan may be multi-year (up to five years) with “annual interim goals” under which the OCC evaluates bank performance. This plan should be developed with public participation.

- 1. Before submitting a plan to OCC for approval, a bank must:
 - a. Solicit public comment on the plan for at least 30 days;
 - b. During the comment period, make copies of the plan available for review by the public. Copies of the plan must be provided upon request for a reasonable fee to cover copying, printing or mailing, if applicable; and
 - c. Submit to OCC a description of any written public comments received including how the plan was revised in light of comments received.
- 2. The plan must be submitted to OCC at least six months prior to the effective date of the plan.
- 3. Plan context must:
 - a. specify measureable goals for helping to meet the credit needs of the bank’s community and each of its assessment areas with particular attention to the needs of LMI individuals and families, and
 - b. address the types and volume of qualifying activities the bank will conduct.

4. The bank must specify measureable goals that constitute **satisfactory performance** and specific measureable goals that constitute **outstanding performance**, subject to review and agreement by OCC.
5. OCC will evaluate a plan's goals by considering the extent and breadth of qualifying activities including:
 - a. community development investments, lending and services; and
 - b. use of innovative, flexible or complex qualifying activities.
6. Among other significant changes to evaluating bank performance are:
 - a. Despite expanding performance evaluation beyond the physical footprint of the bank, banks will still be graded on how they will meet the needs of LMI individuals in their community where branches are located.
 - b. Banks that operate without branches, or draw most of their deposits from outside their branch-based assessment areas, must designate additional deposit-based assessment areas where their CRA performance will be assessed.
 - c. Banks will have their performance evaluated in all of its assessment areas, not just a sample of them.
 - d. Certain types of community development activities will have a multiplier effect for performance evaluation including, but not limited to, activities with low-income credit unions, minority and women's depository institutions, activities in CRA "desert" areas, retail loans in LMI census tracts and other activities that are particularly "responsive, innovative or complex" on a case by case basis.
7. Bank performance ratings will be assigned by OCC for each delineated assessment area and state-level and multistate areas.
8. A bank that receives a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping meet the credit needs of its entire community.
9. Thirty (30) days before the beginning of each quarter, OCC will publish a nationwide list of banks that are scheduled for CRA examination that quarter.
10. After a bank examination, OCC will assign one of four ratings: outstanding, satisfactory, needs to improve or substantial noncompliance. The ratings reflect the a) bank's record of helping meet the credit needs of its entire community, including "low- and moderate-income neighborhoods;" b) "safe and sound operations" including development and application of "flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals;" c) investment performance including "dollar amount of qualified investments, innovativeness or complexity of qualified investments and responsiveness to community development needs;" d) services in terms of availability and effectiveness of retail banking services, and the extent and innovativeness of community development services; and e) other factors including record of opening and closing branches in LMI geographies.

What are next steps for the disability community?

1. Identify banks in your area that are subject to OCC's final rule by visiting

www7.fdic.gov/idas/advSearchLanding.asp. Click on regulatory regional link on the left side of the page and choose OCC as the “chartering agency.”

2. Identify unmet needs that align with any activity on the list of qualifying activities for CRA.
3. Learn more about banks' performance context planning efforts in your community.
4. Meet with community development staff at banks in your community to discuss:
 - a. bank performance context planning efforts underway to meet the new CRA final rule requirements;
 - b. **how needs of LMI individuals with disabilities will be addressed;**
 - c. how you can be engaged in planning a joint investment, lending or service activity of the bank that will be responsive to needs of LMI people with disabilities; and
 - d. invite a bank representative to meet with your organization members to discuss the CRA planning process and how the bank sets priorities.
5. Monitor OCC's website (occ.treas.gov/topics/consumers-and-communities/cra/cra-evaluations-coming-due.html) for their regular quarterly announcement of the upcoming schedule of banks to be examined. Become engaged in your community in the plan development and review process by submitting comments to the bank and OCC. Involve other groups and individuals with disabilities to work together to provide a strong, unified voice for inclusive community development activities with banks where you live.
6. Contact the Center for Inclusive Community Development (mroush@ndi-inc.org) to learn more about training and technical assistance activities.