

Frequently Asked Questions Regarding the Final Rule to Rescind the OCC's June 2020 CRA Rule

These frequently asked questions (FAQ) relate to the Office of the Comptroller of the Currency's (OCC) final rule issued on December 14, 2021 (December 2021 CRA rule)¹ that rescinds and replaces the Community Reinvestment Act (CRA) rule issued on June 5, 2020 (June 2020 CRA rule).² The FAQs provide information about potential CRA questions during the transition from the June 2020 CRA rule to the December 2021 CRA rule that is largely based on the rules adopted jointly by the OCC, the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) in 1995, as revised³ (1995 rules).

Rulemaking Process and Timeline

1. What is the effective date of the December 2021 CRA rule?

The rule's effective date was January 1, 2022.

Bank Type

2. How will bank type be determined under the December 2021 CRA rule?

Bank type will be determined based on the requirements in the December 2021 CRA rule, which are consistent with the requirements in the 1995 rules that use the Federal Financial Institutions Examination Council's annual CRA asset-size threshold adjustments for small and intermediate small institutions.

3. Will my bank type change under the December 2021 CRA rule and when?

A bank's type may change under the December 2021 CRA rule depending on the bank's asset size. For CRA evaluations commencing in 2022, changes, if any, will apply to activities conducted on or after January 1, 2022. The OCC will provide additional guidance based on the 2022 interagency asset size thresholds to help examiners and banks determine if and when a bank's type will change.⁴ See FAQs 23 through 25 for more information on when banks that become large banks will have to comply with the large bank data collection and reporting requirements included in the December 2021 CRA rule.

¹ 86 Fed. Reg. 71328 (Dec. 15, 2021).

² 85 Fed. Reg. 34734 (June 5, 2020).

³ The 1995 rules were amended in 2005 to add intermediate small banks and consideration of activities in distressed and underserved geographies. Refer to 70 Fed. Reg. 44256 (Aug. 2, 2005). Additional conforming changes were made in 2010 and 2015.

⁴ Refer to OCC Bulletin 2021-67, "Community Reinvestment Act: Revision of Small and Intermediate Small Bank and Savings Association Asset Thresholds."

Qualifying Activities

4. Should a bank stop using a system it has built (or is in the process of building) to track and monitor qualifying activities under the June 2020 CRA rule?

The OCC encourages banks to continue to serve their communities by engaging in CRA qualifying activities. Systems for tracking, monitoring, and reporting CRA qualifying activities generally are useful. While some qualifying activities criteria from the OCC's June 2020 CRA rule differed from the 1995 rules, many carry forward into the December 2021 CRA rule, as those criteria were largely based on historical interagency interpretive guidance.

5. Do OCC qualified activity determinations made under the June 2020 CRA rule continue to apply under the December 2021 CRA rule?

An activity that meets the qualifying criteria under the June 2020 CRA rule and is conducted between October 1, 2020, and December 31, 2021, remains a qualifying activity for the bank that undertook the activity, even after rescission of the June 2020 CRA rule. This includes legally binding commitments to lend or invest in activities that qualified at the time of the commitment. For banks or interested parties that received confirmation letters for qualifying activities under the June 2020 CRA rule, those letters may apply to activities conducted after January 1, 2022, if the activity is consistent with the community development (CD) definition and geographic requirements in the December 2021 CRA rule, which is consistent with the 1995 rules, as interpreted in the "Interagency Questions and Answers Regarding Community Reinvestment"⁵ (Interagency CRA Q&As). Therefore, there may be certain activities that qualified under the June 2020 CRA rule that might not qualify under the December 2021 CRA rule. Banks with questions about the applicability of qualifying activities should consult their respective OCC supervisory office.

6. What happens to qualifying activities approved by the OCC under the June 2020 CRA rule?

Activities that met the qualifying criteria in 12 CFR 25.04 of the June 2020 CRA rule will receive CRA consideration if the activity was originated, made, purchased, or conducted or the commitment to engage in the activity was made between October 1, 2020, and December 31, 2021, regardless of the timing of a bank's CRA examination.

7. How will the OCC evaluate affiliate activities as of April 1, 2022?

There will be no change in how the OCC evaluates affiliate activities as of April 1, 2022. The December 2021 CRA rule replaced the June 2020 CRA rule's provision on affiliate activities (which would otherwise have taken effect on April 1, 2022) with the affiliate activities provision included in the 1995 rules, which permits banks to elect to include affiliate activities in their CRA evaluations.

⁵ Refer to OCC News Release 2016-82, "Agencies Release Final Revisions to Interagency Questions and Answers Regarding Community Reinvestment."

8. Will the OCC go back to considering only major disaster areas under the December 2021 CRA rule?

Yes. Under the December 2021 CRA rule, the OCC will provide CRA consideration for disaster-related activities conducted on or after January 1, 2022, only in federally declared major disaster areas, consistent with the guidance in the Interagency CRA Q&As. Disaster-related activities that met the qualifying criteria in 12 CFR 25.04 of the June 2020 CRA rule, and were conducted by the bank between October 1, 2020, and December 31, 2021, will receive CRA consideration, regardless of the timing of a bank's CRA examination.

Qualifying Activity Confirmation Request System

9. Will the OCC continue to provide written confirmation that activities do or do not qualify?

The December 2021 CRA rule does not require the OCC to maintain a qualifying activities confirmation process. The OCC will continue, however, to accept requests from banks and other stakeholders to confirm whether (1) an activity is consistent with the June 2020 CRA rule qualifying activity criteria, if the activity was conducted between October 1, 2020 and December 31, 2021; or (2) an activity is consistent with the CD definition in the 1995 rules, as interpreted in the Interagency CRA Q&As, if the activity is conducted on or after January 1, 2022. The OCC will provide additional guidance on www.occ.gov on the scope and mechanics of this CD activity confirmation process.

10. Does the CRA Illustrative List of Qualifying Activities go away?

The OCC will maintain the Illustrative List of Qualifying Activities on its website as a reference for banks to determine whether activities they conducted between October 1, 2020, and December 31, 2021, are eligible for CRA consideration. Activities included on the illustrative list may receive consideration under the December 2021 rule if conducted on or after January 1, 2022, if the activity is consistent with the CD definition and geographic requirements in the December 2021 CRA rule. The CD definition and geographic requirements in the December 2021 CRA Rule are consistent with the 1995 rules, as interpreted in the Interagency CRA Q&As.

11. How should a bank or other stakeholder view the OCC's decisions made on qualifying activity confirmation requests since October 1, 2020?

Written confirmations from the OCC are based on the qualifying activities criteria in effect at the time the decision was made, which means all decisions made regarding activities conducted between October 1, 2020, and December 31, 2021, remain applicable. An activity that meets the qualifying criteria on the date it is conducted remains a qualifying activity for the bank that undertook the activity, even after the rescission of the June 2020 CRA rule. This includes legally binding commitments to lend or invest in activities that qualified at the time of such commitment. For banks or interested parties that received confirmation letters between October 1, 2020, and December 31, 2021, and undertook the qualifying activities or entered into the legally binding commitment during that time, those letters remain applicable.

to the confirmed activity. For banks or interested parties that received confirmation letters between October 1, 2020, and December 31, 2021, but did not undertake the qualifying activity or enter into the legally binding commitment, those letters may apply to activities conducted on or after January 1, 2022, if the activity is consistent with the CD definition and geographic requirements in the December 2021 CRA rule, which is consistent with the 1995 rules, as interpreted in the Interagency CRA Q&As.

Transition Period

12. Is there a transition period in the December 2021 CRA rule? If so, what is it?

The public notice and public file provisions have an April 1, 2022, compliance date. The delayed compliance date for those provisions is intended to ease burden associated with the final rule. The OCC will begin examining banks using all provisions of the December 2021 CRA rule on January 1, 2023.

13. Will the rescission of the June 2020 CRA rule be retroactively applied to its October 1, 2020, effective date?

No. The OCC will not apply the June 2020 CRA rule's rescission retroactively.

14. Will loan size and gross annual revenue (GAR) thresholds return to the 1995 rules' limits? Could these limits change again once a new interagency rule is instituted?

The loan size and GAR threshold requirements in the OCC's December 2021 CRA rule are now consistent with those from the 1995 rules. It is possible that loan size and GAR thresholds could change in new interagency CRA rules.

15. Will the OCC rescind OCC Bulletin 2020-99?

The OCC will rescind or update OCC Bulletin 2020-99 to provide guidance for implementation of the December 2021 CRA rule.

Examination Administration

16. What performance standards and examination procedures will the OCC use to conduct a CRA examination for a bank that changed bank types under the June 2020 CRA rule but will return to its previous bank type under the December 2021 CRA rule?

The December 2021 CRA rule generally reinstates the performance standards under the 1995 rules. As of January 1, 2023, for activities conducted on or after January 1, 2022, all banks will be examined based on the December 2021 CRA rule's performance tests and standards corresponding to their specific bank type as described in FAQ 2.

For CRA examinations that evaluate bank activities conducted between October 1, 2020, and December 31, 2021, examiners will apply the performance standards from the 1995 rules and

will use the 1995 rules' examination procedures based on the bank type under the rule that was in effect at the time the activities were conducted.

The OCC will provide additional guidance to help examiners and banks determine the applicable performance standards in effect for each applicable calendar year and the timing of any bank type changes.

17. If my bank changed to a different bank type on January 1, 2022, will its evaluation period change?

The evaluation periods for examinations conducted in calendar years 2023 and forward may be adjusted to avoid CRA evaluation periods with multiple applicable sets of performance standards. The OCC will provide additional guidance to help examiners and banks determine the applicable evaluation periods based on the timing of bank type changes.

18. Will the OCC reinstate a four-year examination cycle for complex CRA banks?

The OCC will provide additional guidance in 2022 on how to apply examination cycles based on the December 2021 CRA rule.

19. Will the CRA webinar materials related to the June 2020 CRA rule be removed from BankNet?

The OCC will maintain the CRA webinar materials related to the June 2020 CRA rule on BankNet for examiners and bankers to understand how to treat activities conducted while the June 2020 CRA rule was in effect. After the OCC has concluded all CRA examinations that evaluate the period when the June 2020 CRA rule was in effect, the OCC will determine how those materials will be treated and whether removal would be appropriate.

Assessment Area

20. How will activities outside of an assessment area be considered going forward?

The December 2021 CRA rule rescinded the June 2020 CRA rule's provisions on activities outside an assessment area and reinstated the 1995 rules' provisions on these activities. All activities conducted on or after January 1, 2022, will be considered in the manner described in the Interagency CRA Q&As.

Activity Location and Allocation

21. Will the allocation process described in OCC Bulletin 2020-99 for activities serving multiple locations continue to apply under the December 2021 CRA rule?

No. The OCC will apply the guidance for the 1995 rules in the Interagency Q&As and the

appendix to the “Large Bank CRA Examination Procedures”⁶ to activities conducted on or after January 1, 2022.

Targeted Geographic Areas

22. What should banks expect regarding consideration of activities in targeted areas under the June 2020 CRA rule, such as Indian country or tribal and other native lands?

Under the December 2021 CRA rule, activities conducted on or after January 1, 2022, that meet the 1995 rules’ CD definition will receive consideration if the activities serve low- or moderate-income areas, distressed or underserved nonmetropolitan middle income areas, or disaster areas, and if they meet the geographic requirements of the 1995 rules. The terms *low- or moderate-income areas*, *distressed or underserved nonmetropolitan middle-income areas*, and *disaster areas* are defined under the 1995 rules and explained in the Interagency CRA Q&As.

Data Reporting

23. When will banks that became large banks for the first time on January 1, 2022, under the December 2021 CRA rule have to start reporting large bank CRA data?

For a bank that was classified as an intermediate small bank (ISB) under the 1995 rules and an intermediate bank under the June 2020 CRA rule, but will become a large bank under the December 2021 CRA rule (referred to as *a newly classified large bank*), the OCC will require these banks to begin collecting loan data until one year after the bank type changed. Therefore, under the December 2021 CRA rule, the OCC will require newly classified large banks to begin collecting data on January 1, 2023, and report required and optional data the following year.

24. Will banks that were large banks under the 1995 rules, became intermediate banks under the June 2020 CRA rule, and transitioned back to large banks on January 1, 2022, under the December 2021 CRA rule, have a transition period before being required to reinstate large bank CRA data reporting?

Banks that were large banks under the 1995 rules, became intermediate banks under the June 2020 CRA rule, and transitioned back to large banks as a result of the December 2021 CRA rule (referred to as *redesignated large banks*) are not eligible for a grace period for compliance with the large bank data requirements, except as provided under the December 2021 CRA rule. The final rule requires redesignated large banks to report calendar year 2022 data by March 1, 2023. As the December 2021 CRA rule contains no specific date during 2022 by which redesignated large banks must actually start the applicable data collection and record keeping, a redesignated large bank will not be out of compliance with the December 2021 CRA rule if its data collection and recordkeeping systems are not fully in place in 2022, so long as the bank reports the 2022 data by March 1, 2023.

⁶ Refer to OCC Bulletin 2014-16, “Community Reinvestment Act: Interagency Community Reinvestment Act Examination Procedures for Large Institutions.”

In addition, the OCC intends to work with these redesignated large banks over the next year to ensure that they are on track to report calendar year 2022 data by March 1, 2023, and to provide them with additional flexibility, where appropriate, in terms of missing information or other limited error tolerances for calendar year 2022 data. It is the OCC's expectation, however, that redesignated large banks' data collection, record keeping, and reporting systems and processes will be fully functional on January 1, 2023, including with respect to data integrity.

Public Notices and Public Files

25. Will banks need to change their public notices, the contents of their public files, and the manner of providing public notices back to the 1995 rules requirements. If so, when?

The December 2021 CRA rule requirements for the content of public notices, the content and location of bank public files, and the manner of providing public notice are consistent with the 1995 rules requirements. As a result, banks need to include additional information in their public file and make the file available at their main offices, and for interstate banks, at one branch in each state. Banks must make more limited information available at each branch.

Banks must also follow the December 2021 CRA rule requirements for providing public notice. Because the December 2021 CRA rule imposes additional public file content and availability requirements, and different notice requirements than were required by the June 2020 CRA rule and related guidance, banks have until April 1, 2022, to comply with these requirements.

Strategic Plans

26. Will banks need to revise in-process strategic plans with target geographic market assessment areas?

Unlike the June 2020 CRA rule, the December 2021 CRA rule makes no provision for the type of target geographic market assessment areas that were permitted in the previous strategic plan provisions (under the June 2020 CRA rule). A bank that has an in-process strategic plan with a proposed effective date on or after January 1, 2022, and that includes proposed target market assessment areas would need to revise its plan to be consistent with the 1995 rules' provisions that were reinstated by the December 2021 CRA rule.

27. Will strategic plans submitted after the rescission of the June 2020 CRA rule still be able to delineate assessment areas that reflect their target geographic markets?

As noted in the response to question 26, the December 2021 CRA rule makes no provision for target geographic market assessment areas. Strategic plans submitted for OCC approval on or after January 1, 2022, must comply with the December 2021 CRA rule and, therefore, target market assessment areas will not be permitted.

28. Some criteria for evaluating a strategic plan under the 1995 rules were not applicable under the June 2020 CRA rule, specifically, retail loan distributions, responsiveness of qualified investments, and the availability and effectiveness of retail services. Have the content requirements for a proposed strategic plan changed with the rescission of the June 2020 CRA rule?

Yes. Strategic plan contents submitted for OCC approval on or after January 1, 2022, need to meet the requirements of the December 2021 CRA rule, which reinstated 1995 rules.

29. Will banks be required to revert to the 1995 rules requirements for public participation in a strategic plan, which include informally seeking suggestions from the public while developing the plan, making no-cost copies of the plan available to the public at all bank offices, and seeking public participation in order to amend a plan?

Yes. New strategic plans submitted to OCC for approval on or after January 1, 2022, need to comply with the public participation requirements of the reinstated 1995 rules.

30. Will strategic plan requests be decided under the timeframes in the 1995 rules—specifically, will a bank be allowed to submit its plan to the OCC three months in advance of the proposed plan's effective date (rather than six months under the June 2020 CRA rule), and will the OCC be required to review the plan and make a decision within 60 days (rather than 90 days under the June 2020 CRA rule)?

Yes. The OCC will revert to the processing time frames required in the December 2021 CRA rule, which reinstated those of the 1995 interagency CRA rule.