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OCC Bulletin Allows CRA Downgrades for Evidence of Discriminatory Credit Practices

Written by **Ronald K. Vaske** & **Jacob N. Westlund** 8/20/18

A new bulletin issued by the Office of the Comptroller of the Currency (OCC), **Bulletin 2018-23**, makes slight, but significant, changes to OCC policy regarding when evidence of illegal or discriminatory credit practices could result in a downgrade to a national bank's Community Reinvestment Act (CRA) examination rating. The bulletin clarifies that, contrary to another OCC bulletin issued in late 2017, there are still circumstances that could justify a downgrade of two CRA rating levels.

On October 12, 2017, the OCC, under Acting Comptroller Keith Noreika, issued revised **Policies and Procedures Manual (PPM) 5000-43** to clarify the relationship between evidence of illegal credit practices and an institution's CRA rating. PPM 5000-43 provided two principles to guide the OCC's CRA rating determination. First, the OCC would require a logical nexus between the evidence of illegal or discriminatory credit practices and the CRA rating. The OCC said that it would consider lowering a rating where the evidence of illegal activities "directly relates" to an institution's CRA lending activities (as opposed to other activities). The second principle committed the OCC to giving an institution full consideration for all remedial actions taken.

Bulletin 2018-23, issued by Comptroller Joseph Otting, changes the OCC's approach to the first principle provided by PPM 5000-43. With respect to the activities that can impact a bank's CRA rating, the OCC clarified that "[g]enerally, the OCC considers lowering the composite or component performance test rating of a bank *only* if the evidence of discriminatory or illegal credit practices directly relates to the institution's CRA lending activities" (emphasis added). The addition of the word "only" may strengthen the OCC's commitment to limit rating impacts to situations where illegal activities directly relate to CRA lending. However, the use of "generally" could still provide examiners with flexibility.

Most significantly, Bulletin 2018-23 reverses the OCC's prior statement that such an impact would only result in one rating-level downgrade. The OCC deleted a footnote from PPM 5000-43 that clearly stated that the OCC's policy *is not to* downgrade ratings by more than one level and added a new sentence to the primary text. The new sentence says "the OCC's general policy is to downgrade the rating by only one rating level unless such illegal practices are found to be particularly egregious." It remains to be seen how the OCC will define "particularly egregious" practices.

These changes come in the wake of several other CRA developments this year. In April 2018, the Treasury Department released an extensive list of recommendations to modernize the CRA. As we commented at the time, implementation of those recommendations would require rulemakings by the banking agencies, including the OCC, the Federal Reserve, and the Federal Deposit Insurance Corporation.

The OCC also issued OCC Bulletin 2018-17 in June 2018. Most notably, this bulletin changed the timing of CRA examinations. In a letter to Comptroller Otting dated July 24, 2018, several U.S. Senators criticized these changes and claimed that the OCC had effectively undermined the CRA's effectiveness by lengthening the examination schedule for some large banks and delaying the impact of a CFPB fair lending investigation until a subsequent CRA examination takes place (instead of delaying the conclusion of a CRA examination while a fair lending investigation is pending).

These developments and the OCC's policy changes indicate that 2018 will continue to be an impactful year for the CRA as it relates to national banks.

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