



**Interpretive Letter #1177
January 2021
12 CFR 25**

OCC Senior Deputy Comptroller and Chief Counsel's Interpretation: Community Reinvestment Act Qualifying (CRA) Activities Conducted by a National Bank's or Savings Association's Subsidiaries and Affiliates, Including Nonbank Parent and Sister Companies of a National Bank or Savings Association Under Certain Circumstances, Can Receive CRA Credit Under the June 2020 CRA Final Rule

January 4, 2021

I. Introduction and Summary Conclusion

This letter addresses whether CRA¹ qualifying activities conducted by a national bank's or savings association's (bank) subsidiaries and affiliates,² including the nonbank parent and sister companies of a bank, can receive CRA credit under the OCC's revised CRA regulation (June 2020 Rule).

As discussed below, we conclude that CRA qualifying activities conducted by consolidated subsidiaries of a bank may generally receive CRA credit under the June 2020 Rule, while such activities conducted by affiliates, including the nonbank parent and sister companies of a bank, would generally not receive CRA credit unless it can be demonstrated that the bank provided financing for or otherwise supported the qualifying activity of such affiliates.³

¹ Public Law 95-128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. § 2901 *et seq.* The CRA was enacted to promote access to credit by encouraging banks to serve their entire communities.

² Under the June 2020 Rule (12 C.F.R. § 25.03), affiliate has the meaning this term is given in Regulation W, 12 C.F.R. § 223.2(a) and (b), as of October 1, 2020, and includes non-member banks.

³ Pursuant to 12 C.F.R. § 25.01(c)(5), in order to provide for an orderly transition and sufficient time for adjustments by banks that currently conduct CRA qualifying activities through bank affiliates that are not financed or otherwise supported by the bank, examiners will continue to consider and provide CRA credit for those affiliate activities that are conducted by the bank before April 1, 2022.

II. Background

The OCC's June 2020 Rule strengthened and modernized the CRA regulatory framework.⁴ The June 2020 Rule ensures that the CRA remains a relevant and powerful tool for encouraging banks to serve their entire communities, including low- and moderate-income neighborhoods, consistent with the banks' safe and sound operations. This goal aligns with the CRA statutory directive to the OCC and the other Federal banking agencies to encourage banks to help meet the credit needs of their local communities.⁵ This directive is premised on the understanding that banks directly benefit from the government support associated with deposit insurance, and, therefore, should have an obligation to reinvest capital and credit in communities where they take deposits. Consistent with this understanding of the CRA statute, the June 2020 Rule limits consideration of CRA qualifying activities to those conducted by a bank.⁶

III. Legal Analysis

A. A bank's CRA qualifying activities generally may include the CRA qualifying activities of a consolidated subsidiary

National banks and Federal savings associations are legally authorized to establish and operate subsidiaries under a variety of different authorities.⁷ In considering whether it is appropriate to include in a bank's CRA qualifying activities the CRA qualifying activities of its consolidated subsidiary, we analyze the nature and character of the relationship between a bank and its consolidated subsidiary.

⁴ Community Reinvestment Act Regulation, 85 Fed. Reg. 34,734 (June 5, 2020) (revising 12 C.F.R. part 25, 12 C.F.R. part 195). The June 2020 Rule was issued on the OCC's website in May 2020 and became effective October 1, 2020.

⁵ The CRA "require[s] [the OCC] to use its authority . . . to encourage . . . institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions." 12 U.S.C. § 2901(b).

⁶ In finalizing the June 2020 Rule, the OCC discussed how the agency's proposal would have continued to include affiliates' activities in assessing a bank's CRA performance and that the agency decided to limit consideration of affiliate activities for CRA credit to those conducted directly by the bank. 85 Fed. Reg. 1,204 (Jan. 9, 2020); 85 Fed. Reg. 34,734, 34,748-49.

⁷ The most commonly-used authorities that govern bank subsidiaries are those for which the OCC has adopted procedures in part 5 of the OCC's rules, as follows: 12 C.F.R. § 5.34 (operating subsidiaries of national banks); 12 C.F.R. § 5.35 (bank service companies); 12 C.F.R. § 5.38 (operating subsidiaries of Federal savings associations); 12 C.F.R. § 5.59 (service corporations of Federal savings associations). There are also additional authorities for creating subsidiaries, including establishment of agricultural credit corporations and state housing corporations, among others. Further discussion of these additional authorities appears in OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMPTROLLER'S LICENSING MANUAL – SUBSIDIARIES AND EQUITY INVESTMENTS, 25-26 (January, 2019), <https://occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/opsubs.pdf>. These are entities created under state or Federal law to engage in market-specific lending, banking, and safekeeping activities of the types typically performed by banks, as well as several types of specialized entities designed to foster housing development, small business investment, and community development activities.

There are several factors that demonstrate the close relationship between a bank and its consolidated subsidiary. Operationally, a bank's board of directors and management are responsible for establishing and overseeing operations of a consolidated subsidiary. Banks often use a subsidiary to engage in an activity to optimize their operations. In this regard, the activities of the consolidated subsidiary are often the direct result of decisions made by the board and management of the bank.⁸ Financially, the bank's balance sheet supports the activities of the consolidated subsidiary. The bank is the source of the consolidated subsidiary's capital and funding. Moreover, the financial statement of the consolidated subsidiary is combined with the bank's under Generally Accepted Accounting Principles (GAAP), in light of the bank's significant control of the subsidiary, and reflecting that consolidation best depicts the results of their operations and financial position as a single economic entity.⁹ Bank operating subsidiaries generally can be regarded as "instrumentalities of national banks" in part because they are "tightly tied to [the] parent by the specification that [they] may engage only in 'the business of banking' as authorized by the [National Bank Act.]"¹⁰ Legally, the activities of a consolidated subsidiary are generally the same types of activities that a bank may conduct directly and, as such, can be treated as extensions or divisions of the parent bank.¹¹

Taken together, these various factors demonstrate a tight link between a bank and its consolidated subsidiary. Therefore, it is generally appropriate to include a bank's consolidated subsidiary's CRA qualifying activities in the bank's CRA qualifying activities for purposes of the CRA. Moreover, excluding the CRA qualifying activities of a consolidated subsidiary from the bank's CRA qualifying activities for purposes of CRA credit could result in fewer activities beneficial to communities. This outcome would be inconsistent with the purpose of the CRA as set forth above.

⁸ See, e.g., *Wells Fargo Bank N.A. v. Boutris*, 419 F.3d 949, 960 (9th Cir. 2005) ("Allowing national banks to create, control, and delegate banking functions to operating subsidiaries provides some assistance to banks in performing their authorized activities The determination whether to conduct business through operating subsidiaries or, instead, through subdivisions of the bank itself is thus essentially one of internal organization, so long as the operating subsidiary form of organization cannot be used to evade the rules that apply to national banks.").

⁹ Accounting Standards Codification Topic 810 (Consolidation). The treatment of CRA qualifying activities in a variable interest entity consolidated with a bank under GAAP is beyond the scope of this OCC Interpretive Letter.

¹⁰ See, e.g., *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 19 (2007) (analyzing national bank operating subsidiaries).

¹¹ In the case of operating subsidiaries, the legal requirements for authorization and the terms and conditions are generally the same as if the bank were to perform the activity. 12 C.F.R. § 5.34(e)(3). Service corporation subsidiaries of Federal savings associations are authorized to engage in any activities that Federal savings associations may engage in directly, as well as certain other activities in which Federal savings associations may not engage directly. See 12 C.F.R. § 5.59(f)(1)-(11). Certain activities of these service corporations are of a type that could be CRA-related and, in fact, the Home Owner's Loan Act ties the permissible amount of a Federal savings association's investment in service corporations to the amount of the investment used primarily for community, inner-city, and community development purposes. 12 U.S.C. 1464(c)(4)(B). This reflects a congressional recognition and expectation that Federal savings associations will engage in certain aspects of their community-related activities, such as CRA qualifying activities, indirectly through a subsidiary.

B. A bank's CRA qualifying activities generally do not include the activities of a nonbank affiliate other than a consolidated subsidiary

Banks are often part of a broader organization that includes a parent company and one or more nonbank or bank sister companies. In considering whether it is appropriate to include in a bank's CRA qualifying activities the activities of such nonbank affiliates we analyze the nature and character of the relationship between a bank and its nonbank affiliates.

The very factors demonstrating the tight link between a bank and its consolidated subsidiary, which supports considering the activities of both in assessing the bank's CRA performance, suggest that activities conducted by a bank's parent and sister companies should generally not receive CRA credit. The bank does not have the same management and funding relationships with its nonbank affiliates as the bank's consolidated subsidiaries discussed above. Unlike the case with a consolidated subsidiary, a bank cannot direct the activities of its parent or sister companies. We note, however, that banks often engage in CRA qualifying activities by providing financing or other kinds of support to an intermediary that directly carries out the CRA qualifying activities. In such circumstances, the financing or other support by the bank is properly regarded as the direct CRA qualifying activity of the bank. The OCC recognized this when it finalized the June 2020 Rule, noting that the agency "considers qualifying activities to be conducted by a bank if the bank finances or otherwise supports a qualifying activity, even if the transaction involves an intermediary."¹²

Accordingly, we conclude that activities conducted by a bank's parent and sister companies would generally not receive CRA credit unless it can be demonstrated that the bank directly financed or otherwise supported such activities.¹³

IV. Conclusion

In light of the foregoing, we conclude that CRA qualifying activities conducted by consolidated subsidiaries of a bank may generally receive CRA credit under the OCC's June 2020 Rule, while such activities conducted by affiliates, including the nonbank parent and sister companies, of a bank would generally not receive CRA credit unless it can be demonstrated that the bank financed or otherwise supported the qualifying activities. Whether the facts and circumstances demonstrate that activities conducted by a bank's parent and sister companies is directly financed or otherwise supported by the bank and, therefore, should be regarded as the CRA qualifying activities of the bank is determined on a case-by-case basis. Different facts and circumstances or different applicable laws and regulations could result in a different conclusion.

¹² 85 Fed. Reg. 34,734, 34,749.

¹³ Under the June 2020 Rule, a bank will receive CRA credit for CRA qualifying activities that are financed or otherwise supported by a bank, even if conducted through an intermediary. Intermediaries may include affiliates or other third parties, such as community development funds or organizations. For example, a bank may conduct a CRA qualifying activity through an intermediary by providing support in the form of funding, volunteer or technical assistance, or monetary or in-kind donations to an organization that has a purpose, mandate, or function to conduct, provide services, or implement activities consistent with the criteria in 12 C.F.R. § 25.04.

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