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Regulatory Alert

Regulatory Insights for Financial Services

May 2022

Inclusion: Community Reinvestment Act Proposal

The federal banking agencies (FRB, OCC, FDIC) have been working to update and modernize the CRA regulations for several years, both independently and collectively, making many aspects of this proposed rule expected. The proposal recognizes the changes in the banking industry, such as the expanded role of mobile and online banking, while also reflecting the Administration's ESG-related priorities regarding equity and inclusion and climate-related risks (including disaster preparedness and climate resiliency.) Expansion of the rule to nonbanks would require Congressional action and is not addressed in the rule. It is interesting that even as the regulators suggest the proposal would provide banks greater clarity and consistency for compliance, expand the areas and activities that could be considered for CRA credit, and incentivize certain types of investments/activities, they also note that the proposal "raises the bar" for institutions to achieve an "outstanding" rating.

The Federal Reserve Board (FRB), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) have issued a joint Notice of Proposed Rulemaking to "strengthen and modernize" the regulations implementing the Community Reinvestment Act of 1977 (CRA). The agencies aim to achieve this by introducing greater clarity, consistency, and transparency in CRA evaluations, including standardized metrics and delineated eligible activities.

Key provisions in the proposal would:

— Retain the small, intermediate, large, and wholesale bank categories with higher asset size thresholds (small: less than $600 million; intermediate: equal to or greater than $600 million but less than $2 billion; large: equal to or greater than $2 billion).

— Retain "facility-based assessment areas" (FBAAs), delineated based on where the bank has physical locations (main offices, branches) or deposit-taking remote service facilities as well as the surrounding geographies where the bank has originated or purchased a substantial portion of its loans.

— Add a new requirement for large banks to also delineate "retail lending assessment areas" (RLAAs) in Metropolitan Statistical Areas (MSAs) or nonmetropolitan areas outside of the bank's FBAAs where the bank has originated over 100 home mortgages or 250 small business loans in each of the preceding two years.

— Add a new requirement for large banks with total assets in excess of $10 billion to be evaluated based on the availability and responsiveness of their digital delivery systems (e.g., online and mobile banking) and other delivery systems (e.g., telephone banking, bank-by-mail, bank-at-work programs.)

— Clarify eligibility criteria for community development activities, incorporating information contained in the Interagency Questions and Answers.

— Expand the categories of qualifying community development activities, emphasizing activities that are responsive to community needs, including mission-driven entities that support minority, women, and low-income consumers; activities undertaken in Native Land Areas; and activities that assist individuals and communities to prepare for, adapt to, and withstand

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natural disasters, weather-related disasters, or climate-related risks. Credit would be available for eligible community development activities conducted regardless of location (i.e., outside of the bank's traditional assessment areas.)

— Provide for a publicly available illustrative and non-exhaustive list of examples of qualifying activities along with a formal mechanism for banks to receive supervisory feedback on the eligibility of proposed activities in advance of undertaking the activity.
— Introduce four new performance tests the application of which would be tailored for performance standards and data requirements by bank size. All tests would apply to large banks though additional requirements would apply to banks with assets in excess of $10 billion. Small banks would be evaluated under the current CRA performance standards but could opt to be evaluated under aspects of the proposed framework.
— Adopt a metrics-based approach to evaluations of retail lending and community development financing.
— Emphasize smaller-value loans and investments that can have high impact and be more responsive to the needs of LMI communities.
— Largely rely on existing data except for large banks with assets in excess of $10 billion, which would be required to collect and report new information on deposit accounts, automobile loans, usage of mobile and online banking services, and community development loans and services. Existing large bank data requirements for small business and small farm lending would be replaced with CFPB section 1071 data once it is available.

Other considerations

The proposal would also:

— Update criteria used to determine whether a CRA rating should be downgraded for evidence of discrimination or other illegal practices to include root cause of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations. The effectiveness of the bank's compliance management system to self-identify risks and to take the necessary actions to reduce the risk of non-compliance and consumer harm would also be considered.
— Disclose in the CRA performance evaluation of a large bank the distribution of race and ethnicity of the bank's home mortgage loan originations and applications in each of the bank's FBAAs and RLAAs based on HMDA data. The agencies state this disclosure would have no direct impact on the conclusions or ratings of the bank.
— Not apply to nonbank financial institutions. CFPB Director Chopra notes that "This effort to update and modernize the Community Reinvestment Act's framework is also a reminder that policymakers need to consider whether nonbank mortgage lenders should also be required to better meet the needs of communities they serve."

The agencies will accept comment through August 5, 2022.

Please refer to:

— Joint NPR: Amendments to Regulations Implementing the Community Reinvestment Act
— Community Reinvestment Act Proposal Fact Sheet
— KPMG Regulatory Alert: Climate Equity – Assessing impacts in responsible and sustainable finance

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