CRA for the 21st Century

After being appointed to the head of the Unites States Department of the Treasury's Office of the Comptroller of the Currency ("OCC"), one of the first priorities communicated by Comptroller Joseph Otting was that he desired to reform the regulations that implement the Community Reinvestment Act ("CRA").[1] Since 1977, the CRA has encouraged banks to meet the low- and moderate-income ("LMI") credit needs of the communities in which they are chartered. The last major revisions to the CRA regulations were made in 1995, long before the proliferation of the internet and of interstate banking, both of which have significantly transformed banking. The current CRA regulatory requirements are often criticized as being outdated and nebulous.

The OCC, along with the Federal Deposit Insurance Corporation ("FDIC"), have accomplished an important step toward meaningful change in the CRA regulations by issuing a joint notice of proposed rulemaking ("NPR").[2] The agencies have stated that their goals for CRA regulatory modernization are to make the framework more objective, transparent, consistent, and easy to understand. To those ends, the proposed rule clarifies which activities qualify for CRA credit; updates where activities count for CRA credit; creates a more transparent and objective method for measuring CRA performance; and provides for more transparent, consistent, and timely CRA-related data collection, recordkeeping, and reporting.[3]

Qualifying Activities

In order to provide banks with greater certainty and predictability in regard to CRA requirements, the proposed rule establishes clear criteria for the types of activities that will qualify for CRA credit. In addition, the proposal would expand the types of activities that count toward CRA credit. Activities that would count toward credit include those that currently qualify plus additional activities that focus on economically disadvantaged individuals and areas. The proposed rule will also require the OCC and FDIC to periodically publish a list of examples of activities that would qualify for CRA credit and would establish a process for banks to seek advance confirmation from their regulator that an activity is a qualifying activity before the bank invests resources.

Location of Activities

The proposed rule also expands where activities can be conducted to count for CRA credit. In order to preserve the local community focus of CRA, the agencies maintained the requirement that banks delineate "facility-based" assessment areas around their main office, branches, non-branch deposit-taking facilities, and surrounding areas where loans are originated or purchased. However, some banks will also be required to delineate additional and separate "deposit-based" assessment areas where they have significant concentrations of retail domestic deposits. This new type of assessment area is meant to capture facets of modern banking, including internet banks with limited or no physical branches and banks that obtain large portions of their deposits from areas distant from their physical locations. To increase flexibility,

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[1] 12 U.S.C. 1813(c)(2); Implementing regulations: OCC, 12 CFR Parts 25 and 195; FDIC, 12 CFR Part 345.
[2] RIN 1557-AE34 and RIN 3064-AF22.
[3] NPR at 2 (https://www.occ.treas.gov/news-issuances/federal-register/2019/nr-ia-2019-147-federal-register.pdf).

the proposed rule would allow banks to receive CRA credit for qualifying activities conducted outside of their assessment areas at the bank level in addition to receiving CRA credit for qualifying activities conducted in their facility-based and deposit-based assessment areas at the assessment area level and at the bank level.

Objective Measurement for CRA Performance

The proposed rule also introduces an objective method for measuring CRA performance that differentiates banks based on their size, location, and business model. "Small banks", those with assets of $500 million or less in each of the preceding four calendar quarters, would be subject to the same performance standards that are currently applicable to small banks. Other banks and small banks who opt in will be subject to new general performance standards. These standards would assess two components of CRA performance which would be compared to established benchmarks that are known to the bank prior to the CRA evaluation period. The two assessment components include the number of qualifying retail loans to LMI individuals, small farms, small businesses, and LMI geographies as well as the impact of a bank's qualifying activities. Minimum CD lending and investment requirements in each assessment area and at the bank level would also be required. The proposed rule preserves the option for banks whose business models cannot be effectively evaluated under the small bank or general performance standards to develop a strategic plan for addressing, and being evaluated on, its CRA responsibilities.

CRA Data Collection and Reporting

Finally, the proposed rule addresses CRA data collection, recordkeeping, and reporting. The rule would require banks evaluated under the small bank performance standards to collect and maintain retail domestic deposit data, but exempts these banks from reporting. Banks evaluated under the general performance standards would be required to collect, maintain, and report data related to their qualifying activities, some non-qualifying activities, retail domestic deposits, and assessment areas. These banks would also be required to make calculations necessary to determine their CRA ratings based on the performance standards.

The joint NPR by the OCC and FDIC is a big step toward CRA modernization and is viewed as a positive development by bankers and federal banking agencies alike. The OCC and FDIC believe that the modernization of the CRA regulations will increase investment, lending, and services in in LMI, rural, and distressed communities while also easing CRA compliance for banks. The third federal agency that regulates CRA activity, the Board of Governors of the Federal Reserve System, did not join in the joint NPR but has signaled that it, too, is interested in modernizing its regulations that implement CRA.