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Community Reinvestment Act (CRA): Are Changes on the Way?

On December 12, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) announced a proposal to revise regulations governing the Community Reinvestment Act (CRA).^[1] The CRA was originally enacted in 1977 with the goal of reducing the effects of redlining.^[2] The FDIC, OCC, and the Board of Governors of the Federal Reserve System are responsible for enforcing the Act, with the Federal Reserve having the important task of scoring its member banks' CRA activities. However, in recent years, CRA regulations have been criticized for their vague guidelines and inconsistent scoring methods. Banks have been particularly concerned because CRA scores are used to evaluate applications for future approval of bank mergers, charters, acquisitions, branch openings, and deposit facilities.

According to the FDIC and OCC, the new proposal will modernize the CRA by granting banks greater flexibility in fulfilling the Act's requirements. The proposal would make changes in four important ways:

- (1) Expanding what qualifies for CRA credit;
- (2) Expanding the geographical area where CRA activity counts;
- (3) Delineating an objective method to measure CRA activity; and
- (4) Establishing guidelines for a bank's data collection, recordkeeping, and reporting of CRA activities.

The proposal seeks to clearly establish and expand the type of activities that qualify for CRA credit. To achieve this goal, the regulating agencies will be required to publish a non-exhaustive list of examples of qualifying activities. The agencies must also establish a process for banks to seek agency confirmation that an activity is a qualifying activity. Furthermore, there will be a general expansion of qualifying activities; while activities currently receiving CRA credit would continue to receive credit in the future, activities

that do not currently qualify for credit may qualify under the new proposal.

The proposed regulations would also expand the pertinent geographical area for CRA activity. Under the current regime, a bank could only fulfill its requirements under the Act by lending to low-income borrowers residing near that bank's physical location. Critics of the current regulations argue that this policy is grossly outdated, especially with the increased popularity of online banking. Under the new proposal, banks would receive CRA credit for activities not only in the geographical area of the bank, but also in the geographical area of its customers. If a bank receives 50 percent or more of its domestic retail deposits from customers outside of its geographic area, the bank may receive CRA credit for activities conducted where at least five percent of its depositors reside. The result could be a substantial expansion in the geographical area of qualifying CRA activities.

The proposal would also establish an objective performance standard in evaluating each bank's compliance with the CRA. The new standard would assess two components of a bank's CRA performance. The first component would be based on the number of qualifying retail loans to lower-income individuals and neighborhoods. The second component concerns the impact of a bank's qualifying activities, measured by the value of a bank's qualifying activities relative to its retail domestic deposits. Both components would then be compared to benchmarks that are established prior to the beginning of a bank's evaluation period. The intended result is a clearer and more predictable scoring method.

Finally, banks evaluated under the new objective standard would be required to collect, maintain, and report data related to their qualifying CRA activities. The banks would also need to report certain non-qualifying activities, retail domestic deposits, and assessment areas. The FDIC and OCC believe that standardizing the data collected by banks would aid in assessing CRA activity across the industry, thus resulting in timelier and more efficient CRA evaluations.

Despite these seemingly positive changes, the proposal has received its fair share of criticism. Critics argue that the proposal

overly expands the types of activities that would qualify for CRA credit. The Federal Reserve, the CRA's primary regulator, has yet to sign off on the new proposal. Without adoption by the Federal Reserve, it is unclear if banks would have to satisfy CRA requirements under both the proposed and current regulations.

The public will have 60 days to comment on the new proposal.^[3] Further updates will be provided as the proposal proceeds through the rulemaking process. For more information, please contact Matthew Hart, Jared Tully, or any other member of Frost Brown Todd's Financial Services Industry Team.

^[1] The full, but unpublished, proposal may be found here: <https://www.occ.gov/news-issuances/federal-register/2019/nr-ia-2019-147-federal-register.pdf>.

^[2] "Redlining" is where banks avoid lending to low-income neighborhoods and individuals.

^[3] The 60-day comment period will begin when the proposal is published in the Federal Register. At the time of this writing, the proposal has yet to be published.

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