Reactions to CRA Plan Signal Long Fight Ahead

By Brendan Pedersen, American Banker, December 15, 2019

WASHINGTON — Bank regulators moved the needle this week on efforts to reform the Community Reinvestment Act, but their sweeping proposal could set in motion a bruising battle to come.

Clear fault lines had already appeared before the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp. released their 240-page notice of proposed rulemaking, with the Federal Reserve refusing to sign on to the document and Democratic lawmakers criticizing the plan even before it was unveiled.

Reactions to the proposal ranged from moderate applause by banks to condemnation by community reinvestment and consumer advocates, who argued the proposal would end up hurting those the CRA was intended to benefit.

The proposal would "significantly undercut the kind of smaller, more targeted investments that communities need the most," David Dworkin, CEO of the National Housing Conference, said in an interview.

Critics of the plan seemed most concerned about three elements: the proposal to measure a bank's CRA compliance partly by the dollar value of its investments; a fear that community development's impact on the overall score will be diluted; and the impact of bigger CRA assessment areas on banks' most proximate neighborhoods.

The proposal would transform the approach to calculating a bank's CRA activity by including both a measure based on the number of CRA-related loans and one based on the dollar amount of those loans.

But some observers say the latter rewards banks for focusing its CRA efforts on higher-priced projects, which they say goes against the spirit of the law.

"It creates a perverse incentive for investments to target the highest, largest-dollar volume, which could ultimately add to gentrification and displacement in many of these communities," Dworkin said.

In a statement following the agencies' release of the proposal, National Community Reinvestment Coalition CEO Jesse Van Tol was blunter in his assessment of the so-called single-metric approach for assessing CRA compliance.

"Along with the banking industry, we and our members across the nation share the desire to modernize CRA," Van Tol said in a statement. "However, the Trump administration seems determined to radically overhaul and water down the compliance system by introducing a numerical measure of performance that has been widely criticized, by bankers as well as community advocates, as overly simplistic."

Later, the community reinvestment coalition was joined by several other community-oriented organizations, including the NAACP, the National Association of Real Estate Brokers, the National Coalition for Asian Pacific American Community Development and the National Fair Housing Alliance. They said in a joint statement that the agencies' CRA proposal "utterly fails to achieve what were supposed to be the primary objectives of rule changes: greater clarity for lenders and better results for low- and moderate-income communities and people of color."

In contrast, banking industry representatives cautiously praised the proposal, though some indicated they may need more time to digest the plan before taking a fuller position.

"We're encouraged that it would clarify what qualifies for CRA credit by requiring regulators to develop, publish and periodically update an illustrative list of pre-approved CRA activities that is available to the public," Rob Nichols, president and CEO of the American Bankers Association, said in a press release. "We also appreciate efforts to develop performance standards that will provide greater transparency and consistency as banks plan and execute CRA initiatives."

Richard Hunt, CEO of the Consumer Bankers Association, thanked regulators for taking on the "herculean effort" of CRA but said there were more details to fully understand.

"CBA is interested in learning more about and commenting on the record keeping and reporting requirements, how the list of approved activities will be maintained and how the qualitative and quantitative assessments will work during examinations," Hunt said.

Yet certain provisions gave some consultants and trade group officials pause.

Timothy Burniston, a regulatory strategist at Wolters Kluwer Compliance Solutions, echoed the concerns of Democratic lawmakers who raised concern that the proposal's 60-day comment period may be too short for such a complicated reform package.

"For banks, it's going to be a matter of finding the time to see how — exactly and precisely and quantitatively — this is going to affect their performance, based on what they've been doing over the past several years," Burniston said. "When you have what I'd consider a significant level of complexity and change, 60 days is a rather short comment period."

He noted that if the proposal is published in the Federal Register before the Christmas and New Year's holidays, the comment period would include a stretch when many take vacation time, posing another challenge to meeting the deadline.

"Given the gravity of what the agencies are proposing, it would be helpful to be able to give fully informed comment," he said. "It's going to place a lot of pressure on the industry."

Meanwhile, lenders that focus on affordable housing projects are sounding alarms about how the proposal treats community development.

“Community development is worth about 25% of a bank’s CRA score under the current framework,” said Buzz Roberts, CEO of the National Association of Affordable Housing Lenders.

Under the new framework, Roberts said, “community development would be just one small portion of the aggregate dollar activity. There’s no consideration for the importance of the activity or the substance of the activity, or how it relates to community needs.”

But others countered that some of the early criticism failed to recognize some of the nuance in the proposal.

Much has been made of the new proposal's formula for evaluating CRA performance, which would aggregate several tests tied to different components into a single score.

“The single, dollar value-based metrics favor large, easy-to-accomplish investments and loans over more complex and innovative activities that may take longer to develop but have a higher impact on the community,” said FDIC board member Martin Gruenberg, who voted against the plan at the agency's meeting Thursday.

But officials, including from within Gruenberg’s agency, disputed the notion of a “single metric” or “single ratio,” saying those terms were misleading. Officials said that for each assessment area a bank has, it will be responsible for passing five separate tests, ranging from the distribution of loans to the aggregate dollar amount.

Karen Solomon, senior counsel at Covington LLP and formerly chief counsel of the OCC, said that “it looks to me on first read like there are multiple elements of the determination of the CRA rating. Some of it appears to be at the assessment level, some of it at the bank level, but it doesn't look one-dimensional to me."

But Roberts said that the overall effect of a ratio-focused approach could dilute some of the more subjective areas of CRA scoring and increase the importance of dollar value. “Whether you call it ‘single ratio’ or not, it is an aggregation of the dollar volume primarily on the balance sheet,” he said.