OCC Releases Final CRA Rule

Community development leaders say the changes will harm housing and other activities.

By Donna Kimura, Affordable Housing Finance, May 20, 2020

A final version of a rule updating the Community Reinvestment Act (CRA) is drawing strong criticism from affordable housing and community development leaders.

The concern is the rule published by the Office of the Comptroller of the Currency (OCC) could diminish low-income housing tax credit (LIHTC) investment and other key activities by banks. The rule goes into effect Oct. 1, with a phase-in period for the new requirements.

"I think it's probably going to be a disaster for communities and [create] much greater costs, uncertainty, and reputational risk for banks," says Buzz Roberts, president and CEO of the National Association of Affordable Housing Lenders.

The big concern is how banks will be evaluated on meeting their CRA obligations. The CRA was created in 1977 to end redlining and ensure banks are meeting the financial and credit needs of the low- and moderate-income communities in which they operate. "The issue is measurement. What gets measured, gets done," Roberts says. "If you are measuring the wrong things, the wrong things will get done."

According to Roberts and others, the new rule stresses the dollar volume of loans, not the number of loans. It's also based on a bank's balance sheet rather than loans that it's making.

One fear is the changes could reduce LIHTC investment by banks, which have been the main investors in the housing tax credit, because there will be easier ways to meet their CRA obligations.

It also appears that more work needs to be done to create key targets.

OCC officials say they are "deferring establishment of thresholds for grading banks' CRA performance and delineating banks' deposit-based assessment areas until the OCC assesses improved data required by the final rule."

Industry leaders will be closely watching.

"We remain concerned about key provisions of the final rule including the substance and complexity of the performance measurement benchmarks, which will present significant data collection challenges for banks," says Rob Nichols, president and CEO of the American Bankers Association. "The OCC's decision to collect additional information and perform further analysis prior to setting the performance measurement benchmarks is a positive step at addressing those concerns, but our members still have many questions.”

Affordable housing and community investment advocates also say that it’s notable that OCC officials were alone in releasing the rule. They were not joined by their counterparts at the Federal Deposit Insurance Corp. (FDIC) and the Federal Reserve, which also regulate some banks.

"Today, outgoing Comptroller of the Currency Joseph Otting pushed through dangerous revisions to the Community Reinvestment Act that threaten to undermine the bedrock of community investment activity in the United States,” says Fran Seegull, executive director of the U.S. Impact Investing Alliance.

"Tellingly, he was not joined in this effort by any of the OCC’s fellow regulators at the FDIC or the Federal Reserve. In its own words, the FDIC ‘recognizes the herculean effort community banks are making to support America's small businesses and families during this challenging time and encourages financial institutions to work constructively with borrowers affected by COVID-19.’ We agree that an economic crisis is not the time to undermine community finance institutions or to saddle banks and investors with complicated new investment regulations.”

Because the FDIC and the Federal Reserve did not sign on to the OCC rule, there will be different systems—one for national banks that are supervised by the OCC and another for state-chartered banks that are overseen by the FDIC or the Fed. “We’re going to have a fragmented system,” Roberts says.

Others also criticize the timing of the rule’s release, just six weeks after the comment period closed and during the COVID-19 pandemic. “Banks, regulators, and community groups must be singularly focused on responding to this unprecedented crisis and not on bureaucratic and regulatory diversions that will sidetrack essential resources from the task at hand,” says David Dworkin, president and CEO of the National Housing Conference.

His organization and others will continue to review the final rule in the days ahead. “While some constructive changes have been made to the proposed rule, the fundamental basis of our objections remain intact as the final rule demonstrably guts the purpose and intent of the CRA,” says Dworkin. “In many ways, the rule reduces the clarity and consistency that served as the impetus to modernize CRA in the first place.”

Here is the final rule

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Here is a list of the CRA qualifying activities.