Battle Lines Harden Over Low-Income Lending Rules

House Democrats challenge Trump administration's overhaul of rules around Community Reinvestment Act

By Andrew Ackerman, The Wall Street Journal, June 26, 2020

House Democrats are mounting their first significant challenge to a Trump administration overhaul of rules that affect the way banks make billions of dollars in loans, investments and donations to customers in low- and moderate-income areas.

Even if successful in the House, any legislative measure faces an uphill battle in the GOP-controlled Senate. But the effort signals Democrats may seek to scrap the administration's overhaul if the party scores significant electoral victories in November.

The Trump administration last month pushed through changes to the way banks operate under the Community Reinvestment Act, the first update to such rules in more than two decades. Enacted in the late 1970s, the CRA was designed to combat "redlining"—banks' practice of avoiding lending in certain areas, often lower-income and minority communities.

The administration's changes have triggered criticism from Democratic lawmakers and community groups who argue the overhaul is flawed. They say it might allow lenders to meet their obligations with a handful of high-dollar loans rather than lots of investments in low-income areas, undercutting their responsiveness to community needs.

Supporters say the administration's bid to modernize CRA requirements will bring much-needed transparency to a system that is widely seen as outdated. The objective is to allow regulators to see more easily if lending matches up with deposits. They say the overhaul includes provisions to ensure banks are meeting the needs of their communities, including tests based on the dollar-volume and number of loans they issue relative to their peers.

Many groups agree that the rules around the CRA need updating, whether they support or oppose the current overhaul. That is true even for some groups that benefit from the existing rules.

"If a movement toward data works in every other thing we do, why wouldn't we want a Community Reinvestment Act that's based on data and transparency," said John Hope Bryant, chairman and chief executive officer of Operation HOPE, Inc. The group operates financial coaching programs in about 150 locations, many of them supported by banks.

Katina Johnson, a hotel chef in downtown Memphis, was one beneficiary of those programs. When she quit to focus full time on her catering business, her rock-bottom credit score of 452 became an issue.

The 30-year-old enrolled in free classes sponsored by Tennessee-based lender First Horizon National Corp. designed to teach fundamental financial concepts and build her credit. That helped her get a business loan last fall.

It isn't clear, though, if such programs catering to lower-income people will fall out of favor under the new rules. That is the fear of critics.

"Under this rule, banks are given nearly free rein to invest in places and products that make them the most money, not where there is greatest community need," said Jesse Van Tol, chief executive of the National Community Reinvestment Coalition. "It undermines the whole history and purpose of CRA."

Mr. Van Tol's group Thursday challenged the overhaul in court. The suit, filed along with the California Reinvestment Coalition, said the Comptroller of the Currency didn't adequately consider public feedback on the revamped rules, violating federal law. The regulator completed the measure just six weeks after its official public comment period expired in April, light speed compared with the typical pace of rule-making in Washington.

The OCC denies its process was rushed. It says the final version of the rules reflects a process that began in 2017 and incorporates changes sought by Mr. Van Tol and other community groups.

Last month's overhaul more precisely defines the types of lending and other investment in low-income communities that banks would be credited for under the law. A bad evaluation can restrict banks from merging or opening new branches.

At present, banks are generally evaluated based on activities in areas around their branches. The new rule accounts for banks that get most of their deposits from outside their branch networks—a nod to the advent of internet banking.

"The status quo needed to change if we hoped to…begin addressing the inequitable accessibility of credit, capital, and opportunity for these communities," Brian Brooks, the acting Comptroller of the Currency, whose agency wrote the revised rules, said in a letter to lawmakers last week.

Mr. Brooks's predecessor, Joseph Otting, had made completing the overhaul a priority. The final version of the overhaul came the day before he announced last month he was stepping down. Mr. Otting sought to accelerate completion of the change amid the coronavirus pandemic, telling lawmakers it would drive more dollars into low- to moderate-income communities.

The overhaul has split regulators charged with overseeing the Community Reinvestment Act. The Federal Deposit Insurance Corp., which signed on to a December proposal, didn't go along with the final changes last month. And a third regulator, the Federal Reserve, has declined to support the plan, citing a lack of clarity over how it would affect lending in poorer neighborhoods.

Critics say the rush is evident in the overhaul's provisions. One complaint is that the December proposal would have inadvertently restricted mortgage lending in low-income areas by effectively penalizing banks for selling or securitizing mortgages rather than holding them on their balance sheets.

To address that concern, the comptroller said it would give more credit to a bank that sells its mortgages into the secondary market—an effort to accommodate different types of lending models.

Yet the OCC's change didn't go far enough, critics charge. That is because a bank would get about as much CRA credit for one mortgage loan held on its books for the loan's expected life of about seven years as it would for making one loan every year for seven years and quickly selling each loan into the secondary market.

"Why would a bank make seven loans if it can get the same credit for making one loan?" said Buzz Roberts, president and CEO of the National Association of Affordable Housing Lenders.