

Banking Law News

Fed Ready to Unveil Its Own Anti-Redlining Reforms for Banks

By Evan Weinberger

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- Fed revamp of Community Reinvestment rules to kick off Sept. 21
 - Attempts at joint rule with OCC, FDIC failed earlier this year
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The Federal Reserve is set to release its own ideas for revamping anti-redlining rules for banks after another banking regulator's approach came under attack for lacking focus on low-income neighborhood lending.

The Fed on Sept. 21 plans to unveil its rulemaking plans for the Community Reinvestment Act, a 1977 law that requires assessments of bank lending to low-income communities. It comes just five months after the Office of the Comptroller completed new rules that were as panned by community groups for emphasizing a bank's overall performance over branch lending to specific areas.

The Fed is likely to dive far deeper into the metrics and provide its thinking on a host of other potential changes to the CRA, including how to deal with technological changes that have altered the types of lending activities that qualify for CRA credit, said Jesse Van Tol, the CEO of the National Community Reinvestment Coalition.

"It will be a comprehensive proposal," Van Tol, a member of the Fed's Community Advisory Council, told Bloomberg Law.

Opposing Metrics

The Fed and the Federal Deposit Insurance Corp., the third banking regulator charged with overseeing CRA compliance, didn't sign on to the OCC's final rules in May despite releasing a joint proposal earlier in 2020.

The CRA requires the regulators to review banks' CRA performance, with a poor grade potentially limiting bank mergers and branch growth. Each regulator with CRA oversight has responsibilities for different banks.

The Fed and FDIC oversee state-chartered banks that are members of the Federal Reserve system. The OCC has the largest CRA portfolio, monitoring compliance at all nationally chartered banks.

The OCC's new rules, which don't fully take effect until 2024, include an overall score for a bank's community lending activities rather than relying solely on branch-by-branch reviews as the FDIC and Fed do.

The OCC's planned use of what is in effect a single metric, and a focus on the total number of dollars lent out by a bank, drew complaints from community groups and some in the industry.

"Basically, it's all about the dollar volume of the activity, and in many cases, not even new activity," said Buzz Roberts, the National Association of Affordable Housing Lender's chief executive.

Loan Output

The Fed's plans for a CRA revamp could include firm metrics for banks' retail lending output and a focus on the number of loans a bank issues, Fed Governor Lael Brainard said in a January speech.

Many investments and loans in neighborhoods included in CRA assessment areas tend to be small, so evaluating the loan amount is a better measure, she said.

Brainard, an Obama-era appointee who is leading the central bank's efforts to review the CRA, has had the support of Fed Chair Jerome Powell.

The Fed's advance notice of proposed rulemaking will be more a list of questions and outlines for public feedback rather than a hard and fast proposal, Roberts said. The plan also is likely to go far beyond the metrics and into permitted lending and investment activities and other areas, he said.

The OCC was criticized for rushing its rulemaking process and ignoring concerns about its metrics and other portions of its final CRA rule.

The Fed is expected to have a months-long comment period on its initial outline, and community groups expect to have more of an opportunity to make their case to Fed officials, said Jaime Weisberg, a senior campaign analyst at the Association for Neighborhood and Housing Development.

Pandemic Impact

Congress created the CRA to combat redlining, the practice by which banks either didn't lend to particular neighborhoods or charged more for mortgages and other loans, affecting largely Black and Latino borrowers.

Under Powell, the Fed has put extra focus on addressing economic inequality.

The disparate economic and health effects of the coronavirus pandemic falling on poorer Black and Latino communities also may affect the Fed's thinking on CRA changes, Van Tol said.

Because the OCC moved alone on its CRA revamp, banks are set to operate under different standards once the national bank regulator's new rules fully come into effect.

"The banking industry is certainly hoping that whatever the Fed comes out with at least complements what the OCC has already done," said Erin Bryan, of counsel at Dorsey & Whitney LLP.

But with an election and potential change in administration looming, the Fed may be setting up a process to replace the OCC's revamp with something altogether different, Roberts said.

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