Agencies Signal New Joint Effort on CRA

OCC announces it will rescind its 2020 rule.

By Donna Kimura, Affordable Housing Finance, July 28, 2021

The Federal Reserve Board, the Federal Deposit Insurance Corp. (FDIC), and the Office of the Comptroller of the Currency (OCC) announced that they will work together to update the Community Reinvestment Act (CRA).

“The agencies have broad authority and responsibility for implementing the CRA,” said the agencies in a statement. “Joint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including low- and moderate-income neighborhoods.”

The OCC also announced that it will rescind its controversial CRA rule issued last year. This decision follows the completion of a review initiated by Michael Hsu, acting comptroller of the currency, shortly after he took office.

"To ensure fairness in the face of persistent and rising inequality and changes in banking, the CRA must be strengthened and modernized," said Hsu. "The disproportionate impacts of the pandemic on low- and moderate-income communities, the comments provided on the Board's Advanced Notice of Proposed Rulemaking, and our experience with implementation of the 2020 rule have highlighted the criticality of strengthening the CRA jointly with the Board and FDIC. While the OCC deserves credit for taking action to modernize the CRA through adoption of the 2020 rule, upon review I believe it was a false start. This is why we will propose rescinding it and facilitating an orderly transition to a new rule.”

The move was applauded by several community development and banking leaders.The three agencies each have a role in overseeing the CRA but had not been working together on modernizing the law.

New plans to collaborate are likely aided by a change in the administration, with President Joe Biden and Vice President Kamala Harris committed to the CRA.

The move also comes after strong opposition to the OCC proposal, Buzz Roberts, president and CEO of the National Association of Affordable Housing Lenders, told Affordable Housing Finance.

“It was extraordinary to see such a broad range of stakeholders from community activists to big banks all in agreement that the OCC went in the wrong direction,” he said.

For the banks that need to comply with the CRA rules, the proposal would have been costly to implement as well as a nightmare to administer, according to advocates. From the community perspective, advocates said the OCC proposal would have gutted the longstanding CRA.

"Instead of creating more consistency and transparency in CRA exams, the OCC's final rule will decrease retail lending, investing, and bank services in underserved communities," said the National Community Reinvestment Coalition (NCRC) after an initial analysis of the proposal.

The OCC received more than 7,500 comments on the proposal, but that did not slow the agency from moving forward last year.

"Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework," it said about the final rule.

Former Comptroller of the Currency James Otting, who held the post during the Trump administration, stepped down from the office one day after the agency released its final rule on the CRA.

The American Bankers Association (ABA) welcomed the news that the OCC final rule would be revoked.

"We firmly believe that there is a need to update and modernize the CRA rules to reflect today's modern banking system and the needs of communities, but those rules must be consistent across all of the banking agencies," said Rob Nichols, ABA president and CEO, in a statement. "By proposing to rescind the OCC's 2020 rule and announcing a commitment to develop a joint rulemaking involving all of the banking regulators, there is a new opportunity to craft a single set of rules for banks to follow. We look forward to working with the agencies and other stakeholders to achieve our shared goals of increasing investment and economic opportunity in neighborhoods across the nation."

Roberts said he would be surprised to see a new proposal before the end of the year because of the complexity and scope of the job.

"The way they structure community development will be important, particularly the geography," he said. "Now, there are hot spots and cold spots for low-income housing tax credits (LIHTCs). You see it in the pricing of tax credit deals depending on whether it's a hot CRA market or a CRA desert where there aren't a lot of major banks with a local market presence. That can be smoothed out by removing some of the geographic limits on where banks can get credit for community development activities. That's an important issue for LIHTC and community development more broadly."

LIHTC syndicators have to do a “jigsaw puzzle” to make sure they have a bank investor with a need in a particular market so they can match the bank with an investment that qualifies for CRA credit, explained Roberts.

“There may be other deals where it might be harder to find banks that have a CRA appetite in that location,” he said. “If you can make the CRA rules more flexible and open so capital can get to the places that need it, that would be a real plus.”

In addition, there’s the big issue of race.

“CRA has never really addressed race,” Roberts said. “Here we are in 2021, it’s about time. It’s not obvious what the right way to do that is. But, it is the right time to explore it seriously.”