Agencies Issue Proposed CRA Changes

Comments on the proposal, including updates to assessment areas, are due on or before Aug. 5.

By Donna Kimura, Affordable Housing Finance, May 6, 2022

Federal bank regulators have issued a [joint proposal to update the Community Reinvestment Act (CRA)](), a key driver of investments in affordable housing.

Enacted in 1977, the CRA calls on banks to help meet the credit needs of the communities where they do business, with a focus on low- and moderate-income communities. Its last major revision was in 1995.

The Federal Reserve, Federal Deposit Insurance Corp., and Office of the Comptroller of the Currency are proposing several key changes, including revising CRA assessment areas to include activities associated with online and mobile banking. This is a change from the current assessment areas, which are tied to bank branches.

They also want to adopt a metrics-based approach to evaluating retail lending and community development financing. The proposal tailors performance standards and data requirements by bank size.

Affordable housing leaders are continuing to digest the [679-page proposal](). Comments are due on or before Aug. 5.

“In general, I think it’s a very positive proposal,” says Benson “Buzz” Roberts, president and CEO of the National Association of Affordable Housing Lenders (NAAHL). “I think they got a lot of things right, but there is room for some important improvements to be made.”

David M. Dworkin, president and CEO of the National Housing Conference, calls the latest proposal “a significant improvement while being open to additional feedback on key issues.”

“This proposed rule moves CRA into the 21st century with a durable approach that will withstand the scrutiny of future swings in political leadership for at least a decade,” he says in a statement.

In addition to broadening and opening up the CRA geography, the positives include improved clarity on mixed-income housing properties, according to Roberts.
The regulatory agencies propose that “affordable housing that is developed in conjunction with federal, state, local, or tribal government programs that have a stated purpose or bona fide intent to promote affordable housing would be considered even if fewer than the majority of the beneficiaries of the housing are low- or moderate-income individuals.”

In these cases, the activity would be considered to have a primary purpose of affordable housing only for the percentage of total housing units in the development that are affordable. For example, if a bank makes a $10 million loan to finance a mixed-income housing development in which 10% of the units will be set aside as affordable housing for low- or moderate-income individuals, the bank may treat $1 million of such loan as a community development loan, explains the agencies.

The agencies propose a different approach for deals involving low-income housing tax credits (LIHTCs). Specifically, a bank would receive consideration for the full amount of the loan or investment for a LIHTC-financed project, regardless of the share of units that are considered affordable.

The proposal does not specify any other application of partial credit for activities, but the agencies seek feedback on whether such consideration is appropriate for this rulemaking in other specific cases.

During the recent CRA reform discussions, NAAHL and others have emphasized the importance of equity investments, including those made through the housing tax credit.

A recommendation that these equity investments receive extra consideration does not appear to be addressed in the latest proposal, so this may be an area of further conversation. “What we don’t want is tax credit investments to lose their prominence in CRA,” Roberts says.

NOAH Properties

In another move, the regulators recognize that naturally occurring affordable housing (NOAH) is important to many low- and moderate-income individuals. However, these properties are not supported by government housing programs, and property owners are not tracking the incomes of renters at these developments.

The regulatory agencies propose a rental affordability standard for NOAH properties under CRA. To qualify, the rent for the majority of the units could not exceed 30% of 60% of the area median income. This would establish a higher bar than what is often used today to determine whether rents are affordable for low- or moderate-income individuals, which is 30% of 80% of the area median income.

“It’s an interesting policy choice to limit it to 60% rather than 80%,” Roberts says. “We’ll have to analyze how workable that is in different markets.”

In addition to the underwriting requirement (rents not exceeding 30% of 60% of the AMI), the proposal requires a NOAH property to meet at least one of the following criteria: (i) the location of the housing is in a low- or moderate-income census tract; (ii) the housing is developed in association with a nonprofit organization with a mission of, or that otherwise directly supports, affordable housing; (iii) the financing is provided in conjunction with a written affordability pledge by the developer of at least 5 years, or the length of the financing, whichever is shorter; or (iv) the bank provides documentation that the majority of the housing units are occupied by low- or moderate-income households.

The agencies seek feedback on whether there are alternative ways to ensure that CRA credit for naturally occurring affordable housing is targeted to properties where rents remain affordable for low- or moderate-income individuals.

The new proposal is also significant because it “recommends strategies for CRA to directly address race for the first time in its 45-year history,” according to Dworkin. “By requiring new reporting on lending by race, we will get a much clearer picture of which banks are leading efforts to improve racial equity and how these efforts are doing in individual communities,” he says. “The proposal achieves this without adding to the regulatory burden under which banks currently report these characteristics under the Home Mortgage Disclosure Act. It also adds incentives to invest in Special Purpose Credit Programs (SPCPs) and alternative underwriting models. SPCPs are an important tool to address racial equity within the limits of the Fair Housing Act and the Equal Credit Opportunity Act. While there is some disappointment that the regulation won’t go further, the fact remains that having a bolder approach reversed by the courts would be a major step backward. This approach is a demonstrable step forward.”