Biden's Bank Regulators Overhaul Low-Income Lending Rules

By Evan Weinberger, Bloomberg Law, May 5, 2022

- Federal regulators aim for greater transparency in anti-redlining reviews
- Joint proposal emphasizes metrics, small-dollar loans

Top U.S. banking regulators unveiled an update to anti-redlining rules after scrapping Trump-era rules that were criticized for giving priority to large-scale projects over targeted investments to low-income areas.

Community Reinvestment Act rules announced Thursday by the Federal Reserve, the Federal Deposit Insurance Corp., and the Office of the Comptroller of the Currency emphasize smaller-value loans and investments that would have a "high impact" on poor neighborhoods.

The joint proposal also includes standardized metrics for banks and a clear list of lending and investment activities that would get banks credit under the CRA, a change from the existing rules that are more subjective.

The 1977 law empowers regulators to measure the amount of banks' lending and investment in low- to moderate-income communities. The regulators also can stop mergers and other expansion plans if banks receive low grades.

The existing rules, last updated in 1995, rate banks on lending to communities surrounding existing branches. The new plan would give banks credit for mortgages, small business loans, and other loans issued to low-income areas through online lending.

The proposal seeks to "expand access to credit, investment, and banking services" to communities where traditional banking services are lacking, Fed Vice Chairman Lael Brainard, who has spearheaded the rulemaking effort, said in a statement.

Banks, in turn, would receive CRA credit "across geographies" and for broader categories of loans, she said.

Under the proposal, smaller banks with $600 million or less in total assets would be allowed to operate under the existing CRA rules or opt into the new regime.

Larger banks with $10 billion or more in total assets face enhanced reporting requirements, including detailed data on customer deposits and auto loans in low-income areas. Larger banks would also have to report online lending for mortgages, credit cards and other retail lending.

Fed Governor Michelle W. Bowman voted for the proposal but voiced concern about the reporting burden that banks would face.

“Fundamentally, we do not know if the costs imposed under the proposal will be greater than the benefits,” she said in a statement.

Easy Grades?

Banking industry groups said they were encouraged by the objective measures the Fed, FDIC, and OCC are trying to establish.

“We’re pleased to see the proposal focus on providing banks with the clarity, consistency, and transparency necessary to continue delivering on CRA’s important mission for years to come,” Consumer Bankers Association President and CEO Richard Hunt said in a statement.

Banks are currently given four grades for CRA compliance — outstanding, satisfactory, needs to improve or substantial noncompliance. Critics of the existing CRA evaluation process say that it’s too easy for banks to get passing grades.

“Grade inflation disadvantages high-performing institutions, which are lumped in with those with much lower performance but nonetheless pass,” Consumer Financial Protection Bureau Director Rohit Chopra, an FDIC board member, said.

The proposal would make CRA evaluations more rigorous with new performance metrics. It would also get rid of the “satisfactory” rating and replace it with grades of “high satisfactory” or “low satisfactory.”

“It’s a floor, not a ceiling,” said Jesse Van Tol, the president and CEO of the National Community Reinvestment Coalition.

Fed’s Vision

The OCC under the Trump administration updated its CRA rules without the Fed and the FDIC. Those rules—which never took effect—allowed banks to get credit for the total volume of money pumped into communities rather than looking at the specific types of lending they undertook.

Community groups said the OCC’s changes made it too easy for banks to get CRA credit for big infrastructure projects, while potentially skipping over some areas. The rules also ran into opposition from banks over the compliance metrics, as well as the OCC’s go-it-alone approach.

“The one thing that everyone has agreed on is that we needed a joint proposal, and until now we didn’t have one,” said Caroline Eisner, counsel with Alston & Bird LLP.

The Biden administration scrapped the OCC rules in early 2021 and the three regulators resumed work on joint regulations.

A draft plan that the Fed released on its own in September 2020 served as the outline for Thursday's joint proposal.

The new plan meets the law's vision of "full inclusion" for underserved communities, acting Comptroller of the Currency Michael Hsu, who also sits on the FDIC's board, said in a statement.

The agencies "are strongly committed to using every authority and tool at our disposal to ensure that banks uphold their obligations," he said.

The proposed changes would be manageable if they ultimately do take effect, said Buzz Roberts, the president and CEO of the National Association of Affordable Housing Lenders.

"It builds on the existing structure rather than going through a wholesale kind of change," he said.

The Fed, the FDIC, and the OCC will accept comments on the proposed rules until Aug. 5.

(Updates with comment from CFPB director in 15th paragraph and additional detail throughout)