Ready or Not, CRA modernization Is at the Door

The wide-ranging, much-anticipated proposal floats changes to assessment areas, asset caps, community responsiveness

By Georgia Kromrei, HousingWire, May 5, 2022

Banks could receive many more failing grades from their regulators under a recently proposed overhaul of the Community Reinvestment Act (CRA).

That's partly because, according to a joint notice of proposed rulemaking from bank regulators on Thursday, banks' performance would be judged by where they lend, not just where they have branches. Doing so would result in 32% of examined lenders receiving a "Needs to Improve" score, compared to the 16% earning that mark for their retail performance from 2017 to 2019, bank regulators estimated.

Don't expect the regulators to start denying bank mergers yet, however. The **Office of the Comptroller of the Currency**, the **Federal Deposit Insurance Corporation** and the **Federal Reserve**, which together proposed the changes to the CRA, so far have not suggested that any changes be made to how the law is applied to merger and other applications related to acquisitions and expansions.

Still, the proposed rule could set the stage going forward for expanding the CRA's reach and the increased consideration of community performance during merger reviews — as banking agencies weigh future changes to regulations governing those transactions.

"Honestly we don't know if that is coming or not," said Ricard Pochkanawala, senior policy council at the **Center for Responsible Lending**. "But what we hope to see is that this leads to more transparency of financial institutions serving minority and low- and moderate-income communities, and that it is used and applied in actually, stringently, scrutinizing bank mergers."

The CRA mandates that bank regulators take CRA performance into account when reviewing bank mergers, but the agencies have not denied a merger on those grounds in more than a decade.

While the proposed rule's impact on bank mergers is unclear, it does call for big changes to how CRA examiners evaluate banks and the impact their activities have on communities. It also would increase data disclosures on banks' minority lending practices.

The agencies proposed expanding the granularity of grades assigned to all banks, distinguishing between "low satisfactory" and "high satisfactory," something that the **National Community Reinvestment Coalition** has encouraged.

The proposal also would rejigger the asset categories, adding a new category of "intermediate" banks — defined as $600 to $2 billion in assets — and increasing the asset threshold for small banks to $600 million, up from $346 million. Large banks would be defined as having more than $2 billion in assets, up from the current $1.384 billion cap.

One big change under the proposed rule is that large banks would be assessed based on where they actually make loans, instead of only on the basis of where they have established branches, "a relic of the era before interstate banking," Buzz Roberts, CEO of the **National Association of Affordable Housing Lenders**, said. Banks also would be able to get credit for community development activities, even if that work occurs outside of their branch footprint.

"That's a great simplifier, and it's also great for communities," Roberts said. "It's very strange that banks couldn't get credit for activities beyond their branch footprint."

Regulators also would scrutinize the services large banks offer, including their digital and remote offerings. In addition, if the proposed rule is adopted, examiners would specifically look at how responsive banks' products are to low- and moderate-income communities. Examiners would also further analyze that performance, to detect whether banks are offering different levels of services to low- and moderate-income neighborhoods, compared with more upscale areas.

New assessment categories for CRA exams also would be put in place for large banks. Currently, examiners look at lending, investment and service. The new categories would include two for retail, one focused on lending, and the other on services and products; and two categories focused on community development — one pertaining to financing and the other to services.

The retail services and products test would evaluate the responsiveness of large banks' products and programs to the needs of low- and moderate-income people, small businesses and small farms.

Small-dollar mortgages, for example, could be viewed as a responsive home-mortgage product, the proposed rule states. The bank regulators also are considering whether special-purpose credit programs should be viewed as another example of a responsive product or program. In February, the agencies issued a joint statement in support of the targeted lending programs.

The regulators' proposed rule also would establish specific standards for banks to get credit for activities that respond to community needs. That's in sharp contrast to the current evaluation process, which has "no clear standards," and thus relies heavily on examiner judgment, the bank regulators wrote in their joint proposal. The move would create a list of activities that can receive CRA credit, which would be updated periodically as other activities are approved.

Robert Nichols, CEO of the **American Bankers Association**, said in a statement that he appreciated that banking regulators are trying to provide “greater clarity, consistency and transparency to banks seeking to meet the needs of their customers and communities.”

The proposed rule also would mandate the disclosure of data on the distribution of minority groups and ethnicities across loan applications and originations.

That might eliminate the back-and-forth that sometimes occurs between community groups and banks. Community groups, during merger reviews, point out deficiencies in banks’ minority lending by analyzing Home Mortgage Disclosure Act (HMDA) data. The banks then counter those arguments with their own analysis of HMDA data, which often differs from the community groups’ assessment of the data.

The joint notice of proposed rulemaking is the culmination of a years-long effort to overhaul the CRA, which was enacted in 1977 to combat redlining. The **Office of the Comptroller of the Currency**, or OCC, which supervises the largest banks, issued its own proposed update to the CRA in June 2020, but rescinded that rule in December 2021.

Although the anti-redlining law never included race-specific language, the advanced notice of proposed rulemaking for the CRA, which was proposed in October 2020, did offer a pointed question on race. It asks how the regulation could better address ”ongoing systemic inequity in credit access for minority individuals and communities.”

The agencies launched the notice of proposed rulemaking jointly with an acknowledgement that, “even with the implementation of the CRA and the other complementary laws, the wealth gap and disparities in other financial outcomes remain persistent.”

Even though there is a growing consensus in the housing industry and in the affordable-housing advocacy community that the CRA should address race, the bank regulators were careful to stay within the bounds of the statute.

“The agencies were concerned about doing something that the Supreme Court would reverse, which would erase the value of improving clarity and consistency,” said David Dworkin, CEO of the **National Housing Conference**. “On the other hand, everyone, including banks and regulators, wanted to do something that was a tangible improvement about how we treat race in the CRA. Doing those two things is difficult.”
The agencies will receive public comments on the proposed rule until August 5.