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Federal Banking Agencies Issue Interagency Proposal to Update Community Reinvestment Act Rules

By Daniel Meade
Partner | Financial Regulation

On May 5, the Federal Deposit Insurance Corporation ("FDIC"), the Federal Reserve Board ("FRB") and the Office of the Comptroller of the Currency ("OCC") (together, the "Agencies") issued a notice of proposed rulemaking to amend and update the rules implementing the Community Reinvestment Act ("CRA"). The comment period on the proposal will be open until August 5, 2022.

The proposal states that it would make substantive changes in five key areas:

1. Delineation of Assessment Areas: The proposal would retain the current "facility-based assessment areas" (focused on where banks have physical facilities, such as branches), but also adds a "retail lending assessment area" for large banks in areas where the bank originates over 100 home mortgage loans or over 250 small business loans in each of the preceding two years.
2. Overall Framework, and Performance Standards and Metrics: The three bank size categories of the current rules would be retained, but all would have higher thresholds, with small banks being defined as having assets up to $600 million, large banks having assets of more than $2 billion, and intermediate banks in between those two levels. Large banks generally would be evaluated under the four proposed tests: (1) Retail Lending, (2) Community Development Financing, (3) Retail Services and Products, and (4) Community Development Services. Intermediate banks would be evaluated under the proposed retail lending test and the current community development test. Small banks would continue to be evaluated under the current small bank standards, but would have the option of opting into the new proposed tests. The proposed tests would also incorporate a broader use of metrics.
3. Community Development Activities: The proposed rule would continue to include activities that currently receive CRA credit as community development activities, but would also create more criteria for the type of

activities that qualify for CRA community development credit, with possibly fewer geographic restrictions.

4. Data Collection, Maintenance, and Reporting: The proposal would aim to tailor data requirements based on bank size.
5. Performance Conclusions and Ratings: The proposal would assign ratings in the component tests under the familiar current ratings of Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve and Substantial Noncompliance to result in overall final ratings called for in the statute (*i.e.*, no differentiation between high satisfactory and low satisfactory).

The interagency proposal follows action by the OCC to rescind a June 2020 rulemaking where the OCC issued its own updated rule alone, rather than following the tradition of issuing a joint rulemaking. The FDIC and Federal Reserve did not agree with all aspects of the OCC's 2020 issuance. When rescinding the 2020 rule, the OCC stated it was the agency's intention "to facilitate the ongoing interagency work to modernize the CRA regulatory framework and promote consistency for all insured depository institutions." Thursday's action is a reflection of that intent to modernize the CRA on an interagency basis, and "maintain a unified approach." FDIC Acting Chair Martin Gruenberg noted during the FDIC's open meeting that the FRB's Advanced Notice of Proposed Rulemaking in 2020 served as the blueprint for this proposal and helped to bring the agencies back together.