

2019 could be the year CRA deadlock ends

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WASHINGTON — The past year brought hope that regulators are finally focused on about modernizing the decades-old Community Reinvestment Act. But translating that momentum into an actual reform plan in 2019 will not be easy.

The Office of the Comptroller of the Currency moved the ball forward in August [with the release](#) of an advance notice of proposed rulemaking, but the document only presented the industry with questions for comment. The lack of a formal proposal as well as participation of other bank regulators in releasing the notice reflected the still-differing opinions on how to move forward.

Policymakers have long struggled to update the law, which grades banks based on loans made to the communities they serve. Sticking points range from how to define a community amid rapid change in delivery models, to creating a single uniform CRA metric for banks to follow.



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Comptroller of the Currency Joseph Otting has repeatedly said he is confident the other regulators, namely the Federal Reserve and the Federal Deposit Insurance Corp., will join a more formal rulemaking process on CRA in 2019. But observers representing different corners of the CRA debate remain uncertain about whether regulators can reach a breakthrough in their discussions.

A wild card will be the influence of Congress, where Democrats will control the House and the Financial Services Committee, and therefore be able to have a louder voice on CRA reform efforts.

"The OCC is clearly committed to action, but it is unclear how focused either the Federal Reserve or the FDIC will be to the effort, especially as it is likely to draw a considerable amount of criticism from the House Financial Services Committee," said Isaac Boltansky, an analyst with Compass Point Research & Trading.

Meanwhile, Sen. Elizabeth Warren, D-Mass., made waves in September by releasing a [CRA legislative reform plan](#), touting ideas that would go beyond the purview of the regulators, such as applying CRA requirements to a broader array of institutions — including credit unions — and making penalties tougher for any violations.

Officials from both the Fed and FDIC have [cautiously indicated](#) that they are willing to consider an interagency CRA reform plan, and many observers believe they will eventually join the rulemaking process. Yet they ultimately declined to join the ANPR effort, and they have hesitated to express policy views as the OCC reviews comments. The OCC gathered roughly 1,500 public comments when the ANPR closed in November.

The OCC has been somewhat cautious too, but many stakeholders say the agency signaled the types of reforms it supports with the questions it presented to the public. For example, the agency is seen as open to a clearer and uniform grading system that might include expanding the assessment areas and types of loans that can earn a bank CRA credit.

Some believe the OCC will need to give up certain controversial reform ideas to win consensus.

“The OCC has been charging hard with a very specific set of ideas,” said Jesse Van Tol, chief executive of the National Community Reinvestment Coalition. “If the comptroller wants to get the other regulators on board, the easiest path is a consensus-driven approach” and to “leave some of the other issues to tackle later.”

One of the biggest areas discussed by bankers and consumer groups is an idea floated by Otting to create a so-called single-metric system for grading banks on CRA performance. That metric can be based on CRA activity relative to total assets, insured deposits or capital, for example.

The single-metric idea was in response to criticism that the existing grading system is not clear or consistent. But even bankers are in disagreement about which metric to use partly because various communities will have different lending needs.

“Everyone wants certainty and clarity” with the CRA, said Steven Zeisel, executive vice president and general counsel at the Consumer Bankers Association. “The bigger problem is we want to have something that will improve CRA in a way everyone agrees on, but there aren’t too many specifics on how to make that happen.”

When asked about the single-metric approach [during a November interview](#) after the ANPR comments were filed, Otting responded:

“It isn't that we have a one way to do this,” he said. “But I think if we're all in agreement what the goal should be with CRA, which is to serve the communities

to which financial institutions are operating in . . . then the question is, how do we bring solutions and ways to measure success together?”

If regulators are able to reach a deal in 2019 on a CRA proposal, it could also bring clarity on what steps they support to provide banks with CRA credit for different types of loan products, and to expand the assessment areas to communities that fall outside of a bank's physical branch network. In general, there is stronger agreement on those two areas than the single metric, but consumer groups and Democrats have cautioned regulators not to expand assessment areas to simply make it easier for banks to pass their CRA exams.

“These reforms, by no stretch of the imagination, are strengthening [CRA] or making it more efficient,” said Scott Astrada, director of federal advocacy at the Center for Responsible Lending.

Astrada said it is noteworthy that the Fed and FDIC did not participate in the release of the ANPR, suggesting that the ideas being discussed do not have universal support.

The CRA “traditionally has always been a coordinated move” with the other regulators, so “it’s really indicative that they’re not jumping on board and it shows just how radical these reforms really are,” he said.

Otting said he remains certain the Fed and FDIC will join in the process next year.

“Everybody recognizes this is something that that collectively we need to fix,” said Otting, referring to the other regulators. “And I think everybody is prepared to roll up our sleeves and sit down and talk.”

Still, Otting added that reforming CRA “is going to be a very big lift” in 2019.

“We would like to get that done by late 2019, get a notice of proposed rulemaking out that we could feel comfortable with and that we get support,” he said. “I don’t think it’s as complicated as some people want to make it, to be honest with you. And I think with the right people giving the right input, we can come up with solutions to be able to achieve that.”