AMERICAN BANKER

Cheat sheet: Hopes and hang-ups on CRA reform

By

Rachel Witkowski

Kate Berry

Published
November 25 2018, 10:00pm EST

WASHINGTON — Bank regulators have not come out with a formal plan for updating the Community Reinvestment Act, but a preliminary list of questions about the reform effort issued by the Office of the Comptroller of the Currency has produced a treasure trove of public feedback to guide their deliberations.

The OCC received more than 1,300 comments on its advance notice of proposed rulemaking asking for responses on how to expand the 1977-era CRA, which grades banks on lending to low- to moderate-income communities in their branch networks. The comment period closed on Nov. 19.

Opinions about the proposed rulemaking notice vary. Many in the industry have

lauded the step taken by the agency, which insists it was merely trying to gather feedback. But some stakeholders say the agency's questions reflected its policy leanings. For example, some critics have suggested the agency appears to support expanding CRA assessment areas, but observers worry that could dilute resources in communities that need the law most.

The comment letters as well as interviews with those following the agencies' effort reflect an intense debate among the various parties focused on CRA, which will only get more intense the further the agencies get in producing a plan.

Among the comment letters, many industry stakeholders backed expanding CRA assessment areas, state authorities warned the regulators not to reduce oversight of discriminatory lending practices and consumer advocacy groups urged the federal agencies to avoid any plan resulting in a loss of loans and investments in low- and moderate-income communities.

Here are key themes that were raised in the comment letters.

Agencies must tread carefully in expanding assessment areas

One of the biggest debates across all parties is how to expand the geographic areas that examiners use to grade banks for CRA scores. The CRA was written before online banking and currently looks at communities where the bank serves, largely based on branch and headquarter locations.

But over time, that assessment strategy has become increasingly outdated and there are communities in need of lending that do not fall in an assessment area because it has no bank branches, called “CRA deserts.”

“I have also seen how the limitations of these regulations can restrict lending and lead to investment deserts that CRA activity often fails to reach by preventing banks from receiving consideration when they want to lend and invest in communities with a need for capital,” Comptroller Joseph Otting wrote in an Aug. 30 op-ed in American Banker.

Most community groups and banks generally support expanding the assessment area but are at odds when it comes to how much credit should be given to areas outside of branch locations. Community groups, state regulators and some banks have cautioned the OCC not to undermine the importance of branch locations by giving banks an incentive to pursue CRA credit elsewhere.

“The definition of assessment area could also be revised. ... However, any revisions to the regulations should not alter the CRA's intentional focus on local communities,” Maria Vullo, superintendent of the New York State Department of

Financial Service, wrote in a comment letter to the Comptroller's Office. And it “should not, directly or indirectly, lead to LMI communities within banks' footprints becoming even more underserved,” she added.

Some banks, as well as Otting, have suggest keeping the reinvestment act focused on branch locations but offering an additional CRA credit multiplier for other areas in need of lending.

“Activities outside of Assessment Areas should be considered as an additive to a bank’s overall CRA rating,” wrote Clara Mullins, vice president and CRA officer at City National Bank of West Virginia. “This concept would address uncertainty associated with whether a bank knows that it has ‘adequately’ met its community’s needs and can begin counting regional activities and could be a solution to helping other areas in need of an economic boost.”

However, community groups have also raised concerns with this strategy over fear that it would simply make it easier for banks to pass CRA exams.

“In general, we’ve been supportive of changing the assessment areas to account for today’s technology and banking system but we have not been in favor of allowing more banks to get more CRA credit,” Jesse Van Tol, chief executive of the National Community Reinvestment Coalition, said in an interview.

A redefinition of assessment areas is of particular interest in states like Utah, which has an abundant amount of financial institutions that are effectively "branchless," operating out of a local headquarters but providing services on a larger technological platform.

There’s broad agreement for regulators to include branchless banking and online loans in various ways. This includes support from the banking regulator for Utah, one of the most popular states for branchless banks and unique charters like industrial loan companies.

“The current approach of defining CRA assessment areas should be updated to

reflect the increasing amount of activity taking place outside of physical branches. In other words, the regulators should consider de-emphasizing physical branches," G. Edward Leary, commissioner of Utah's Department of Financial Institutions, wrote in a comment letter. "In addition, CRA assessment areas should be defined to accommodate the difficulties presented to traditional banks operating primarily in areas in which large 'branchless' banks also operate."

Idea to create a single CRA metric triggers strong reactions

Among the ideas that the OCC floated in its list of questions was creating a simplified single-metric system for grading banks on their CRA peformance.

For example, Otting is open to that metric being based on CRA activity relative to total assets, insured deposits or capital.

A single CRA ratio would address complaints from consumer groups and bankers alike that CRA exams and results are inconsistent and unclear. But many banks disagree over what threshold to use for the metric and have raised concerns about how to apply that metric to the various business models at each bank.

“Different banks may prefer to have different tests, depending on their business models or markets. There is precedent for this approach,” wrote Steven Zeisel, executive vice president and general counsel at the Consumer Bankers Association.

“In addition to the strategic plan, there are different evaluations for different size banks (Small Bank, Intermediate Small Bank, and Large Bank) and for different banking models (Wholesale and Limited Purpose banks),” he added. “We believe these should be retained.”

Other regulators, including Vullo of the New York State Department of Financial Services and former Federal Deposit Insurance Corp. Chairman Martin Gruenberg, have also raised concerns with the single metric approach.

“A reliance on a single ratio of CRA performance could allow banks to pick and choose which communities to serve and which products and services to offer in those communities,” Gruenberg, who is still an FDIC board member, said in a speech in New York on Oct. 29. “Such an approach could also undermine the incentive that banks currently have to develop constructive partnerships with community organizations.”

State AGs are skeptical of the federal CRA reform effort

A coalition of 14 state attorneys general submitted a harshly critical letter in response to the advance notice of proposed rulemaking, saying the OCC has signaled a reform effort that could reduce oversight of discriminatory lending practices and eliminate penalties for all but the most egregious violators.

“There is broad agreement among financial institutions, advocates, and elected officials that the CRA should be modernized to reflect new consumer banking habits and changes in technology,” said the attorneys general, including Xavier Becerra of California, Barbara Uunderwood of New York and Lisa Madigan of Illinois.

“However, many of the OCC proposals would weaken, rather than modernize, CRA enforcement. They will undermine the core purposes of the CRA—namely, ending redlining and requiring banks to be responsive to the needs of [low and moderate income] individuals and communities.”

The AGs also expressed concern that a CRA reform plan could fail to recognize the importance of so-called “community benefits agreements” with community groups that demonstrate how a bank will meet local credit needs after a merger or acquisition.

“Community benefit agreements include specific lending and investment goals in designated [low- and moderate-income] communities or commitments to not close certain branch locations, and are highly useful means of injecting local public input into the CRA process,” the letter stated. “Unfortunately, in a recent guidance document, the OCC failed to recognize the importance of these agreements, allowing banks with failing CRA ratings to merge, acquire, or grow their business without any requirement or incentive to enter into community benefits agreements or otherwise respond to local community concerns.”

The states also want the OCC to rescind recently issued guidance that will weaken enforcement of credit discrimination.

The OCC recently adopted a “general policy” that only allows for downgrades of one CRA rating level for violations of credit discrimination and consumer protection laws unless illegal practices are found to be particularly egregious.

“A bank with substantial, non-technical violations that are not 'egregious' could be, for example, only downgraded from 'Outstanding' to 'Satisfactory,' " the state attorneys general said in their joint comment letter. “Such a minor downgrade will not impact regulators’ review of their mergers and acquisitions—the only real 'stick' for CRA compliance.”

In addition, the states want federal regulators to be able to retroactively downgrade a bank’s last CRA rating.

Regulators are being urged to speak with one voice on CRA reforms

Concerns from other regulators could make it difficult for the OCC to finalize changes to the CRA as two key players — the Federal Reserve and the FDIC — have yet to formally weigh in or join the rulemaking process. Otting has indicated in the past that the other regulators will eventually join in but he wanted to get the ball rolling on reforming the community reinvestment law.

“Nobody is happy about” Otting's “lone-wolf approach,” Kenneth Thomas,

president of Community Development Fund Advisors, said in an interview.

Many of the letters from banks, state authorities and other policymakers raised concerns about the potential for inconsistencies between the regulators over CRA reform if they do not speak with one voice.

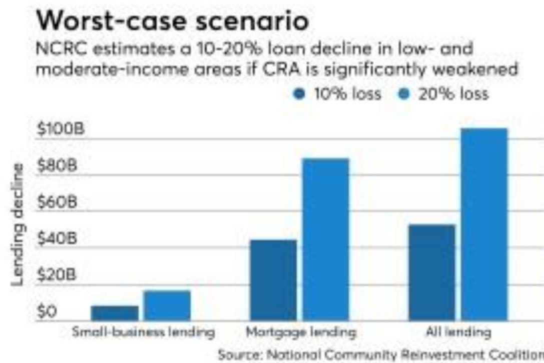
“While we acknowledge the OCC indicated the ANPR does not close the door to future interagency rulemaking, we oppose further CRA rulemaking that does not include both the Federal Reserve and the FDIC since both agencies have responsibilities different from the OCC, making consensus even more important,” 11 Democrats on the House Financial Services Committee said in a letter to the OCC. “Fragmentation and inconsistency in financial services regulation remains a glaring problem, and the OCC’s unilateral action only perpetuates this problem.”

Thomas noted that the regulators “have said that they will look at it but the fact is they did not weigh in” and “their silence was deafening."

Both FDIC Chairman Jelena McWilliams and Fed Vice Chair of Supervision Randal Quarles said in a recent Senate Banking Committee hearing that they were waiting to see the comments sent in response to the advance notice of proposed rulemaking first before developing a policy approach.

“The OCC put out an ANPR. We are going to work jointly on the basis of that information to put out an NPR,” Quarles said at the October hearing. “I don’t want to front-run that process of committing now.”

Could CRA reform actually lead to less community reinvestment?



Consumer advocates and community groups are concerned that the reform plan could overly broaden the set of activities that result in banks receiving CRA credit.

A comment letter signed by 36 groups, including Americans for Financial Reform, the California Reinvestment Coalition and the Center for Responsible Lending, heaped criticism on the idea to establish “one ratio” that would measure a bank’s total CRA activities as a percentage of its total assets.

They also said banks should not be allowed to cherry-pick customers in some areas but not others while reaping the benefits of a bank charter and federal deposit insurance.

“A primary goal of CRA was to stop neighborhood level lending discrimination that was not targeted at individual borrowers, but that denied credit to whole communities,” they said in the letter. “The purpose of the CRA was to increase access to credit for communities historically marginalized by the financial services sector and encourage banks to meet the credit needs of [low-and moderate-income] communities. Counting other types of investments for CRA credit would undermine the Congressional intent behind passing CRA.”

Several letters from consumer groups cited research by the National Community Reinvestment Coalition that found relaxing CRA requirements could lead to a 10-20% reduction in lending in low- and moderate-income communities and a loss of up to $105 billion in loans over a five-year period.

“CRA regulations must be updated to address how redlining is happening today (i.e. access to affordable conventional mortgages, branch closures in low-moderate income neighborhoods and openings in middle-upper income neighborhoods, homeowners insurance redlining), as well as to ameliorate the ongoing impacts of past redlining (i.e. Home Owners’ Loan Corporation maps, mortgage redlining and discrimination),” wrote Ruhi Maker and Barbara van Kerkhove, of the Greater Rochester Community Reinvestment Coalition.

Some criticized Otting's role in CRA reform discussions because of his involvement as banking executive in the CRA plan resulting from the merger of OneWest Bank and CIT Group.

Matthew Lee, executive director of Fair Finance Watch/Inner City Press, said Otting should recuse himself from the process.

“We commented along with others on the CIT-OneWest proceeding, as we're concerned both by OneWest’s record under now-Comptroller Otting and by what emerged as the gaming of the system with pre-fabricated comments Otting openly solicited,” Lee wrote in a comment letter.

Pressure is growing to expand CRA to credit unions, other nonbanks

Part of the debate on expanding the assessment areas also involves how advancements in technology, such as online loans and branchless banking, could be a part of CRA requirements.

But the debate gets more intense over whether CRA should be expanded to require compliance for nonbanks, fintechs and credit unions. Traditional banks, including the American Bankers Association, are largely in favor of having other lenders abide by the reinvestment act in order to create a level playing field.

“In addition to considering the presence of other banks in the area, regulators should take into account the proliferation of other financial services providers, such as credit unions and other nonbank financial firms,” Krista Shonk, vice president, Center for Regulatory Compliance at the ABA, wrote in a letter to OCC. “The requirements to meet the financial services needs of all income demographics, including LMI individuals, should apply to all federally insured depository institutions.”

The National Association of Federally-Insured Credit Unions immediately fired back, issuing a statement saying bank lobbyists “mislead policy discourse” on the CRA rulemaking process.

“Credit unions exist to serve the people in their communities, including millions of low- and middle-income households in need of affordable loans and safe and sound financial products,” Dan Berger, the credit union group's president and CEO, said in the statement. “For credit unions, every loan made and every dollar earned is reinvested into their local community and serves their membership, whoever they may be.”