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CRA Modernization: Is It Good or Bad?

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Our Approach

- First we'll review where things stand at the moment
 - OCC's final rule
 - FRB's new ANPR
 - Where's the FDIC?
- Then discuss the highlights of the OCC's CRA final rule
- Feel free to ask questions along the way



Where Do We Stand Now?



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OCC Final Rule Issued

- OCC & FDIC issued proposed rule
 - In December 2019
 - To modernize CRA regulations which have been in place since 1995
- In April 2020
 - OCC issued final rule
 - Without FDIC's participation
 - 85 FR 34734
- Compliance mandatory as of
 - Large banks – January 1, 2023
 - Small and intermediate banks – January 1, 2024



What About the Federal Reserve Board?

- Fed issued ANPR September 21, 2020 (186 pages; 99 questions posed)
- 120-day comment period (from Fed Reg publication)
- Webinar given by the St. Louis Fed discussing ANPR
 - Connecting Communities website
 - <https://bsr.stlouisfed.org/connectingCommunities>
 - Search “All Sessions”

Objectives of Fed's ANPR – Amending Reg BB

- More effectively meet the needs of LMI communities and address inequities in credit access in furtherance of CRA statute and its core purpose
- Increase clarity, consistency, and transparency of supervisory expectations and of standards regarding
 - Where activities are assessed
 - Which activities are eligible for CRA purposes and
 - How eligible activities are evaluated and assessed
 - While seeking to minimize the associated data burden and to tailor data collection and reporting requirements

Objectives of Fed's ANPR

- Tailor CRA supervision of banks to reflect
 - Differences in bank sizes and business models
 - Differences in local markets, needs, and opportunities, including with respect to small banks serving rural markets
 - Expectations across business cycles
- Update standards in light of changes to banking over time, particularly the increased use of mobile and internet delivery channels
- Promote community engagement
- Strengthen the special treatment of minority depository institutions (MDIs)
- Recognize that CRA and fair lending responsibilities are mutually reinforcing



Highlights of Fed ANPR

- Fed seeks feedback on facilities-based and deposit-based alternative approaches to delineating assessment areas
- Small bank threshold of \$750MM or \$1B under consideration
- Only would have small banks and large banks
 - No intermediate category
- Evaluation framework
 - Retail Test and Community Development (CD) Test
- Retail test would include two subtests:
 - **Retail Lending** subtest and **Retail Services** subtest
- CD test would also include two subtests:
 - **CD Financing** subtest and **CD Services** subtest



Highlights of Fed ANPR (cont'd)

- Small banks – could choose to be evaluated under
 - Current small and ISB lending test
 - Opt in to Retail Lending subtest
 - Could also elect to have **retail services** or **CD activities** (or both) evaluated
 - Retail lending activities evaluated under the qualitative approach used in the current examination procedures for small banks, rather than the metrics-based approach (but could opt in to the metrics-based approach)
- Large banks – subject to all four subtests

Highlights of Fed ANPR (cont'd)

- Retail Test –
 - Retail lending subtest: metrics-based approach tailored based on bank's **major product lines** and on the credit needs and opportunities within its assessment area (thresholds not set yet)
 - Retail services subtest: Qualitative approach intended to provide greater predictability and transparency for evaluating important aspects of retail banking services, including branches, other delivery systems and deposit products
- Major product line – home mortgage, small business or small farm product lines
 - Qualifies if the dollar value of a bank's retail lending in a product line constitutes 15% or more of its retail lending in a particular assessment area over the evaluation period

Highlights of Fed ANPR

(cont'd)

- CD Test – would apply to all large banks
 - CD financing subtest – metrics-based approach to evaluating CD financing activities that is transparent, predictable, and tailored to the CD needs of the assessment area (thresholds not set yet)
 - CD services subtest – would evaluate CD services in a way that better recognizes the value of qualifying volunteer activities, especially in rural communities
- Fed is looking to clarify and update CD Test qualifying activities
 - Pertaining to affordable housing, community services, economic development, and revitalization and stabilization
 - Update how CD activities outside of a bank's AAs would be considered (such as activities in connection with MDIs, women-owned financial institutions and LICUs)
- Fed is considering publishing a list of qualifying CRA activities and a process for requesting preapproval of an activity
 - Similar to what the OCC did

Where's the FDIC in All of This?

- FDIC declined to join the OCC in issuing the final rule
- FDIC Chair Jelena McWilliams issued statement May 20, 2020:

“While the FDIC strongly supports the efforts to make the CRA rules clearer, more transparent, and less subjective, **the agency is not prepared to finalize the CRA proposal at this time.** The FDIC recognizes the herculean effort community banks are making to support America's small businesses and families during this challenging time and encourages financial institutions to work constructively with borrowers affected by COVID-19.”
- McWilliams later stated that possible changes to the FDIC's CRA regulation are better suited for **“peacetime, when things are calm, the economy's doing well”**
- The FDIC may well do nothing regarding its CRA regulation until the nation is well past the coronavirus pandemic or it might wait until the Fed issues its proposed rule

Highlights of OCC CRA Final Rule



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OCC Final Rule – Compliance Dates

- Final rule was effective October 1, 2020
- Compliance dates are as follows:

COMPLIANCE DATES				
Bank type	Qualifying activities quantification, qualifying activities value, general performance standards, and presumptive ratings	Assessment area, data collection, and recordkeeping requirements, as applicable	Reporting requirements	All other requirements
Large banks (that is, any bank other than small, intermediate, wholesale, or limited-purpose or strategic plan banks)	January 1, 2023	January 1, 2023	January 1, 2023	October 1, 2020
Wholesale and limited-purpose banks	Not applicable	January 1, 2023	January 1, 2023	October 1, 2020
Small and intermediate banks	Not applicable	January 1, 2024	Not applicable	October 1, 2020

What Happens Until Applicable Compliance Date

- Final rule applies to all national banks and all savings associations
- Until the compliance date, these institutions must continue to comply with the existing CRA regs
 - 12 CFR Part 25 – national banks
 - 12 CFR Part 195 – savings associations
- OCC has the discretion to allow a bank to comply with the final rule sooner than the mandatory compliance date



Three Categories of Banks

- Final rule maintains three size categories of banks:
 - Small banks
 - Intermediate banks
 - Large banks



Small Bank Definition

- Small bank
 - Assets of \$600 million or less
 - In four of the previous five calendar quarters



Intermediate Bank Definition

- Intermediate banks (new term replaces current term “intermediate small banks”)
 - Assets that exceed small bank asset size threshold (\$600 million initially); and
 - Assets of \$2.5 billion or less
 - In four of the previous five calendar quarters
- Thresholds subject to adjustment annually by the OCC for each 12-month period ending in November

“Large Banks”

- Final rule doesn't use the term “large bank”
- Instead it refers to –
 - *“Banks other than small banks, intermediate banks, wholesale banks, limited-purpose banks and strategic plan banks”*
 - *“Banks subject to the general performance standards of [new] Section 25.13”*

Large Banks

- In this discussion we use the term “large bank” to refer to a bank that is not a –
 - Small bank
 - Intermediate bank
 - Wholesale bank
 - Limited-purpose bank
 - Strategic plan bank

Loan-Size Threshold Increased

- Loan-size threshold for
 - Small loan to a business
 - Small loan to a farm
- Increased to \$1.6MM – up from
 - Current \$1 million threshold for small business loans
 - Current \$500,000 threshold for small farm loans

Small Loan to a Business

- Based on same call report codes used in current regulation –
- Item 1.e. – Loan secured by nonfarm nonresidential property
- Item 4 – C&I loans



Small Loan to a Farm

- Based on same call report codes used in current regulation
 - Item 1.b. – Loan secured by farmland
 - Item 3 – Loan to finance agricultural production & other loans to farmers



New Terminology

- Final rule uses new terminology
 - CRA-eligible business
 - CRA-eligible farm
- Types of businesses & farms that banks can receive CRA credit for financing
- Gross annual revenues for small businesses & small farms increased
 - \$1.6MM revenue threshold
(up from current \$1MM threshold)
 - Subject to adjustment every 5 years

Large Banks – Qualifying Activities

- Does away with separate Lending and CD tests for large banks
- Instead requires a large bank to quantify dollar value of all of its **qualifying activities** – \$\$\$\$\$\$
- OCC published a list of CRA qualifying activities with its CRA final rule (attached to OCC News Release 2020-63)
- Adopted process for banks to confirm with OCC that an activity is a qualifying activity

Qualifying Activities

- A “qualifying activity” is an activity that helps to meet the credit needs of a bank’s entire community, including LMI individuals and LMI communities
- Qualifying activities include retail loans, CD loans, CD investments and CD services
- Retail loans include
 - Home mortgage loans
 - Small loans to a business
 - Small loan to a farm
 - Consumer loans – reported on line item 6 of Part 1 of call report – but not including overdraft lines
 - Includes revolving consumer credit (not including credit cards)
 - Purchase-money auto loans
 - Other consumer loans (other than real estate or stock-secured loans)

Large Banks – Examples of Qualifying Activities

- Consumer loans
- Home mortgage loans
- Small loans to businesses
- Small loans to farms
- CD investments
- Commitments to lend (legally binding)
- Affordable housing
- CD activities that promote economic development
- CD services

CRA Deserts

- A CRA desert is an area that OCC has confirmed to be a CRA desert
 - Because area has significant unmet CD or retail lending needs, and
- Where
 - Few banks have branches or non-branch deposit-taking facilities, or
 - There is less retail or CD lending than would be expected based on the area's demographic or other factors, or
 - Area lacks CD organizations or infrastructure
- Banks will first have to ask the OCC to designate an area as a CRA desert

Home Mortgage Loans

- Definition not based on HMDA/Regulation C definition
- Instead based on call report codes



Home Mortgage Loans

- Home mortgage loan is a loan that is reported in call report in:
 - Item 1.a.(1)
 - 1-4 family residential construction loans
 - Item 1.c.
 - Loans secured by 1-4 family residential properties (both closed-end & open-end loans)
 - Item 1.d.
 - Loans secured by multifamily (5 or more) residential properties

Assessment Areas

- Two types of assessment areas
- **Facility-based** assessment areas
 - As is currently defined
- **Deposit-based** assessment areas
 - Brand new

Facility-based Assessment Areas

- Draw same assessment areas around bank's physical deposit-taking locations
- Including
 - Full-service branches
 - Non-branch deposit-taking facilities that are not ATMs
- Plus surrounding locations where bank originates or purchases substantial portion of its qualifying retail loans

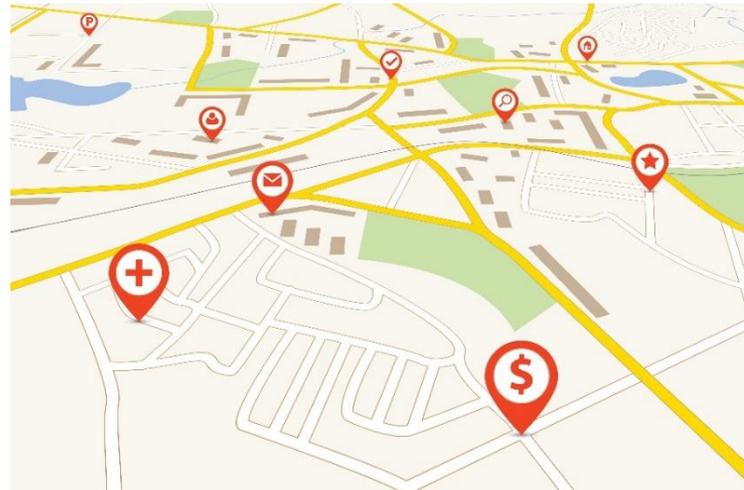


Facility-based Assessment Areas

- Banks are only required to include non-branch deposit-taking facilities that are not ATMs
- Alternatively a bank has the option to include its deposit-taking ATMs
 - And even to create an AA solely based on deposit-taking ATMs (where there are no branches)

Deposit-based Assessment Areas

- Final rule expands where CRA activities count
- To include non-overlapping “deposit-based assessment areas”
- But only for certain banks



Deposit-based Assessment Areas

- If bank receives 50% or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas
- It must delineate separate, non-overlapping deposit-based assessment areas
 - Where it receives 5% or more of its total retail domestic deposits
- Must map retail domestic deposits



Small and Intermediate Bank Performance Standards

- Lending Test remains the same as under the current regulation



Small and Intermediate Bank Performance Standards

- Loan-to-deposit ratio
- Percentage of loans in bank's AA (aka in-and-out ratio)
- Bank's record of lending to
 - Borrowers of different income levels
 - Businesses & farms of different revenue sizes
- Geographic distribution of loans
- Bank's record of taking action in response to written complaints about its CRA performance



Intermediate Bank Performance Standards

- Intermediate banks also evaluated under Community Development Test
 - In addition to Lending Test
 - Similar to current CD test that applies to ISBs
- Evaluate
 - Number & amount of CD loans
 - Number & amount of CD investments
 - Extent to which bank provides CD services
 - Bank's responsiveness through these activities to community's CD lending, investment and service needs

Small & Intermediate Bank Data Collection

- Required to collect data on bank's retail domestic deposits
- Value of each account and physical address of each depositor
- As of close of business on the last day of each calendar quarter during the evaluation period until the completion of the bank's next CRA exam
- Reporting not required though



Large Bank Performance Standards

- Two different measurements
- CRA evaluation measure
- Retail lending distribution tests



CRA Evaluation Measure

- Proposal would have imposed:
 - Empirical benchmarks for each rating category
 - Thresholds needed to meet the retail lending distribution tests
 - A 2% minimum requirement for CD activities as a percentage of bank's retail domestic deposits
- OCC admitted that the existing data was limited and the agency needed to engage in further analysis
- So no specific benchmarks, thresholds or CD minimum were included in final rule
- OCC will issue these in a future final rule

CRA Evaluation Measure

- In its simplest terms, the Evaluation Measure is a function of
 - The dollar value of a bank's qualifying activities (loans, investments, services, branch distribution, etc.) (the numerator)
 - Divided by the bank's retail domestic deposits (the denominator)
- Evaluation measure applied at the bank level and AA level

Retail Lending Distribution Tests

- Looks at geographic distribution of bank's major retail lending product lines and borrower distribution test
- Applies only to a large bank's "major retail lending product lines"

What's a Retail Lending Product Line?

- Home mortgage product line
- Small loan to business product line
- Small loan to farm product line
- Automobile loan product line
- Other consumer revolving credit plan product line
- Other consumer (closed-end) loan product line

What's a Major Retail Lending Product Line?

- Any retail lending product line that for two years prior to beginning of the evaluation period:
 - Constitutes at least 15% of bank's dollar volume of total retail loan originations, and
 - Was 1st or 2nd largest retail lending product line by dollar volume
 - Product line must have 20 or more originations in the assessment area during each year of evaluation period
- At bank's option may include other major retail lending product lines beyond 1st and 2nd if the product line meets 15% of bank's dollar volume threshold

What's Next?

- National banks & savings associations
 - Start gearing up for the inevitable
- State member banks
 - Review ANPR and comment
- State nonmember banks
 - Hold tight – more to come – eventually

Thank you for your time and attention!

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