

[Banking and Finance Law Daily Wrap Up, COMMUNITY DEVELOPMENT —CRA modernization hopes soured by lack of support for OCC rule from FDIC, Fed, \(May 21, 2020\)](#)

Banking and Finance Law Daily Wrap Up

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By Jacob Bielanski

The OCC's rule has not gained support from pertinent CRA enforcers. Meanwhile, some industry groups give only muted public support for the rule change, and many Democratic leaders oppose the rule.

With its leader slated to step down soon, the U.S. Treasury's Office of the Comptroller of the Currency's finalization of a rule updating the Community Reinvestment Act (CRA) was met with both partisan political responses, as well as mixed reactions by financial industry groups due, in part, to the OCC's failure to win sign-on from other federal regulators. In addition to the OCC, aspects of the CRA are also administered by the Federal Deposit Insurance Corporation and the Federal Reserve Board.

Originally enacted in 1977, the CRA is intended to encourage banks and other regulated financial firms to provide services to underserved communities in which those firms operate. The OCC's rule, a 372-page document published May 19, amends how the office enforces the CRA. Changes to the rules include: a transition from a subjective to objective CRA exam process; expansion of CRA-eligible activities and definitions; and changes to how banks are required to collect and report data (see [Banking and Finance Law Daily](#), May 20, 2020).

Lack of regulatory coordination. "The OCC should have been able to agree and work with the other two agencies that oversee enforcement of the same law," National Community Reinvestment Coalition (NCRC) CEO Jesse Van Tol [said](#) in a statement following the rule's publication. "It couldn't. It failed. That's an administrative fiasco."

Praise for 'modernization.' Any praise offered for the new rule was largely centered on the OCC goal to "modernize" the rules under the 43-year-old law. In statements following the rule's publication, the American Bankers Association (ABA) [called](#) such modernization "long overdue," while the Independent Community Bankers of America (ICBA) [said](#) it appreciated the "regulatory efforts led by Comptroller of Currency Joseph Otting." Similarly, in Congress, both [Patrick McHenry](#) (R-NC) and Blaine Leutkemeyer (R-Mo) used "modernization" in separate statements praising the OCC's rule.

Concerns over unilateral approach. In connection with the OCC's amendments to the CRA, several parties expressed concerns, at the very least, over the OCC's unilateral approach. For example, a May 20th statement by FDIC Chair Jelena McWilliams [said](#) the agency would not sign on to the changes "at this time," with comments suggesting that community banks might have difficulty adopting new CRA standards while undergoing a "herculean effort" to support communities during the COVID-19 (coronavirus) pandemic.

The ICBA referenced Williams' remarks as it noted concerns that the rule's "new and excessive" data collection requirements could limit its members' ability to serve local communities.

Despite the OCC's intentions, the ABA said the new rule did not meet its goals for clarity and consistency in banking regulation, specifically citing the lack of support from the FDIC and Federal Reserve.

In a statement, the Conference of State Bank Supervisors similarly [worried](#) that the lack of support would result in "vastly different standards for state and national banks," and that such reform "should not be undertaken unilaterally."

In addition to the OCC's unilateral approach, the NCRC criticized the "record-breaking" six-weeks between the close of the comment period and the publication of the final rule, pointing to Comptroller Otting's anticipated departure this week as a possible motivation. "[Otting] just made a regulatory mess and he isn't sticking around to fix it," Van Tol said.

Democratic lawmakers, including House Financial Services Committee Chair, Rep. Maxine Waters (D-CA) and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, Sen. Sherrod Brown (D-OH), also noted Otting's expected departure in their statements.

Partisan divide. While the rule's modernization efforts drew somewhat bipartisan support, lawmakers appeared divided over how the OCC's actions would affect coronavirus response efforts.

Democrats, such as Sen. Brown, [felt](#) the Comptroller had "rammed through" the rule. Statements from democrat lawmakers saw the timing, with regard to coronavirus response, as poor. Waters [said](#) the rule would bring harm to communities "at a time when they are under severe distress due to the pandemic."

Republicans, meanwhile, felt the rule's purported benefits made it timely. Rep. Luetkemeyer [said](#) the rule "comes at a very welcome time," arguing the modernization was a "perfect reminder" for banks to reinvest locally as part of the economic re-emergence from the pandemic. McHenry said the rule would play an "important role" helping communities hit hardest by coronavirus, before listing eight examples of CRA-qualifying activities.

Rep. Gregory Meeks (D-NY), Chairman of the House Subcommittee on Consumer Protection and Financial Institutions, offered a more moderated response, [saying](#) that while the final rule included some of the changes he and other stakeholders requested, it remained "problematic in several key areas."

Companies: American Bankers Association; Conference of State Bank Supervisors; Independent Community Bankers of America; National Community Reinvestment Coalition

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