Banking and Finance Law Daily Wrap Up, TOP STORY—OCC updates Community Reinvestment Act regulations, (May 20, 2020)

Banking and Finance Law Daily Wrap Up

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The OCC has made changes to the Community Reinvestment Act regulations; the FDIC did not join in adopting final rule despite agencies' joint proposed rule.

The Office of the Comptroller of the Currency has issued a final rule that would amend its regulations implementing the Community Reinvestment Act (CRA). The final rule will increase bank CRA-related lending, investment, and services in low- and moderate-income communities where there is significant need for credit, more responsible lending, and greater access to banking services. The final rule: clarifies and expands the bank lending, investment, and services that qualify for positive CRA consideration; updates how banks delineate the assessment areas in which they are evaluated; provides additional methods for evaluating CRA performance in a consistent and objective manner; and requires reporting that is timely and transparent. The OCC also issued a list identifying activities that would meet the criteria in the rule. The CRA Illustrative list is a non-exhaustive, illustrative list of examples of activities that would qualify under 12 CFR 25.04. The rule is effective on Oct. 1, 2020. Until the compliance dates, banks must continue to comply with parts 25 and 195 that are in effect on Sept. 30, 2020.

Comptroller of the Currency Joseph M. Otting called the final rule "an important step forward to strengthen and modernize the regulatory framework implementing the CRA." Otting issued a statement that the final rule "achieves our original goals of strengthening the CRA regulatory framework by clarifying what qualifies for CRA consideration, updating how banks define their assessment areas, evaluating bank CRA performance more objectively, and making the entire process more transparent and timelier. The final rule's framework will increase support to small business, small and family-owned farms, Indian Country, and distressed areas, and it accommodates banks of all sizes and business models."

Proposed Rule and comments. The OCC issued the joint proposed rule with the FDIC on Dec. 1, 2019, which proposed changes in four key areas: what qualifies for CRA credit; where CRA activity counts; what method should be used to measure CRA activity; and how banks should collect, record, and report data. According to Otting, there were more than 7,500 comments submitted on the proposal. He stated that the OCC "incorporated many of those suggestions in the final rule and appreciate the thoughtful input from all the stakeholders who sought to make the final rule as strong as it could be." According to the OCC, "although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework." However, in response to comments, the final rule "takes a more incremental approach to reform that appropriately accounts for the differences among the categories of institutions that are subject to the CRA." The OCC states that it made several changes to the proposal in response to the comments, including:

- clarifying the importance of the quantity and quality of activities as well as their value;
- increasing credit for mortgage origination to promote availability of affordable housing in low- and moderate-income areas;
- clarifying credit for athletic facilities to ensure they benefit and support low- and moderate-income communities; and
- deferring establishment of thresholds for grading banks' CRA performance and delineating banks' deposit-based assessment areas until the OCC assesses improved data required by the final rule.

More objective system. The rule moves the CRA regulations from a system that is primarily subjective to one that is primarily objective and that increases clarity for all banks. This is intended to make CRA ratings more reliable, reproducible, and comparable. According to the OCC, CRA activities will be treated in a consistent manner from bank to bank. The intention of the new CRA framework is increased transparency, objectivity, and consistency in application, which will help the OCC achieve the objective of the CRA—to encourage banks to meet the credit needs of their entire communities, including low- and middle income individuals and areas.

To provide a more objective and consistent means of evaluating these activities, the final rule establishes an evaluation method that assesses a bank's retail lending and CD activities by considering: the distribution of retail lending activities relative to LMI populations and LMI census tracts in a bank's assessment areas; and the impact of all CRA activity, measured in dollars. Quantifying these activities will help provide a more complete picture of the impact of a bank's CRA activity.

The changes are intended to create a more descriptive and expansive criteria for the type of activities that qualify for CRA credit and would require the agency to publish periodically a list of non-exhaustive, illustrative examples of qualifying activities.

The rule also expands the number of assessment areas a bank may be required to delineate. New performance standards have been established to evaluate small banks—banks with assets of $500 million or less in each of the previous four calendar quarters. Small banks could select to be evaluated under the current small bank performance standards or opt in to the new performance standards. Recordkeeping requirements will also change for banks evaluated under the small bank performance standards, to collect and maintain, but not to report, data related to their retail domestic deposits so that the agencies could validate their deposit-based assessment area delineations.

FDIC did not join. FDIC Chairman Jelena McWilliams issued a statement on the joint rulemaking, calling the December proposal "a culmination of a multi-year effort by the prudential banking regulators to modernize CRA regulations for the first time in a quarter of a century." According to McWilliams, there are many provisions in the final rule that will greatly benefit low- and moderate-income communities, and provide greater clarity to banks on CRA expectations." However, she noted, that "While the FDIC strongly supports the efforts to make the CRA rules clearer, more transparent, and less subjective," the agency won't be finalizing the CRA proposal at this time.

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