Banking and Finance Law Daily Wrap Up, TOP STORY—FDIC, OCC issue proposed rule to amend CRA requirements, (Dec. 12, 2019)

Banking and Finance Law Daily Wrap Up

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The proposed rule would modernize the agencies' Community Reinvestment Act regulations, which have not substantively changed in nearly 25 years.

Against the urging of community advocacy groups and lawmakers, the Federal Deposit Insurance Corporation voted at its Dec. 12, 2019, open meeting to issue a joint proposed rule that would amend its regulations implementing the Community Reinvestment Act. Together with the Office of the Comptroller of the Currency, the FDIC proposed changes in four key areas: (1) what qualifies for CRA credit; (2) where CRA activity counts; (3) what method should be used to measure CRA activity; and (4) how banks should collect, record, and report data. The proposed rule would apply to federally insured depository institutions supervised by the FDIC and OCC, which conduct approximately 85 percent of all CRA activity. Comments on the proposed rule are due 60 days after publication in the *Federal Register*.

Early indication of changes. In August 2019, the OCC issued an advanced notice of proposed rulemaking intended to gather ideas on how to create "a new framework to transform or modernize" the regulations that implement the CRA. At the time, Comptroller of the Currency Joseph Otting said, "Stakeholders of all kinds have spoken up, calling the current regulatory framework for the CRA outdated, complex, and cumbersome." A staff memorandum issued by the FDIC noted that the OCC had received over 1,500 comments on the ANPR.

In its announcement, the FDIC said the proposed rule is intended to address digital banking changes and to further encourage lending to low- and moderate-income borrowers living in underserved communities, such as rural areas and tribal lands far removed from urban centers where bank branches are concentrated.

What qualifies. The proposed rule is intended to create a more descriptive and expansive criteria for the type of activities that qualify for CRA credit and would require the FDIC and the OCC to publish periodically a list of non-exhaustive, illustrative examples of qualifying activities. The rule would add additional activities that meet the credit needs of banks' communities, such as expanding credit to areas considered distressed or underserved. The proposed rule would also include retail loans provided to a low- to moderate-income individual, a small business, or a small farm, loans in Indian country regardless of the income of the consumer, and small loans to a business or farm located in an LMI census tract. The proposal would also list community development activities that provide funding or services to "an expansive range of projects and entities."

Where it counts. The proposed rule would also potentially expand the number of assessment areas a bank may be required to delineate. Currently, the CRA regulations require that banks delineate assessment areas where the bank has its main office, branches, and deposit-taking facilities, and to include in those assessment areas the surrounding geographies where the bank has originated or purchased a substantial portion of its loans. The proposed rule would add a new requirement that additional assessment areas be delineated where a bank collects a substantial portion of its deposits.

Method of measurement. The proposed rule would also establish new performance standards 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, which would assess two components: (1) the distribution (i.e., number) of its qualifying retail loan originations to LMI individuals, small farms, small businesses, and LMI census tracts in an

assessment area; and (2) the quantified value of the bank's qualifying activities relative to its assessment area- and bank-level retail deposits.

Recordkeeping. The proposed rule would also change the recordkeeping requirements 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. The banks would also be required to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, and assessment areas.

Community advocates concerned. Prior to the meeting, both lawmakers and community advocates expressed misgivings with a proposed CRA rule. A group of over 500 community organizations and advocates urged the FDIC to not join the OCC's proposed rule, which they called "flawed." The organizations noted that the agencies had developed a consensus in their approaches and expressed specific concerns that the OCC's proposal would create a fracture among the agencies, as the Federal Reserve Board seemed unlikely to join in the proposed approach.

Similarly, in a letter to the heads of the Federal Reserve Board, OCC, and the FDIC, Democrats from the House and Senate finance and banking committees wrote that they were "extremely concerned about the direction any proposed rule is likely to take." Led by Rep. Maxine Waters (D-Calif), Sen. Sherrod Brown (D-Ohio), and Rep. Gregory Meeks (D-NY), the lawmakers had requested that the agencies provide a comment period on any CRA proposal of no less than 120 days, to allow for a substantive review of the changes.

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