



NCRC Analysis of the CRA and Fair Lending Section of the Obama Administration's Draft of the Consumer Financial Protection Agency Act of 2009

On June 30, 2009, the US Department of Treasury submitted to Congress a draft of the Consumer Financial Protection Agency Act (CFPA) of 2009. The act provides a considerable amount of additional data disclosure in an effort to motivate banks and financial institutions to increase their lending and services to minorities and low- and moderate-income borrowers and communities.

The following are the data disclosure enhancements proposed by Treasury's draft legislation:

Collection of Deposit Account Data

Banks and credit unions would be required to maintain and disseminate data on their branches, ATMs, and other depository facilities, as well as maintain and disseminate the census tract locations of their depository facilities. (Note: Deposit accounts include checking, savings, credit union share accounts and other types of account as defined by CFPA.) The number and dollar amount of deposit accounts for the residential and commercial customers for each deposit facility would also be collected. The place of residence/business of bank/credit union customers would be provided on a census tract basis, making it possible to analyze the income level and race/ethnicity percentage of the census tracts of these customers. CFPA would use these data as part of their CRA exams.

Small Business Loan Data Collection

Financial institutions would be required to collect Home Mortgage Disclosure Act (HMDA)-like data on small businesses to determine whether a business is minority- and/or women-owned. In addition to collecting race and gender data, the financial institution would be required to collect the type and purpose of the loan for which the business is applying, the type of action taken with respect to the application, the gross annual revenue of the small business, the census tract location of the business, and any other information CFPA deems appropriate.

Financial institutions that would be required to collect and report these data include any partnership, company, corporation, and cooperative organization. This requirement extends beyond banks that have a current obligation to report small business loan data under CRA. CFPA does, however, reserve the right to exempt any class of financial institutions from this reporting requirement.

Enhancements to Home Mortgage Disclosure Act (HMDA) Data

In addition to the demographic characteristics they already collect in HMDA data, financial institutions would be required to collect the age of the borrower. NCRC and others have found that elderly borrowers experience lending disparities; this additional data element will allow for a more systematic investigation of these disparities. Several loan terms and conditions would also be collected, including total points and fees, the difference between the annual percentage rate and a benchmark rate for all loans, prepayment penalties, the value of the real property pledged as collateral, whether the loan is a hybrid loan with a lower teaser rate, whether the loan is a negative amortization loan, whether the application was received by a broker or other retail channel, and the credit score of the borrower.

NCRC Recommendations for Expanding and Modernizing CRA

The Obama Administration's legislative draft for the CFPB is particularly strong regarding disclosure data requirements discussed above. Yet, the other major elements of CRA modernization including strengthening CRA as applied to banks and expanding CRA to non-bank financial institutions is absent from the proposal.

The following is a description of the critical elements of CRA modernization that are not in the Administration's plan. The Community Reinvestment Modernization Act of 2009 (H.R. 1479) contains critical elements for expanding and modernizing CRA.

Strengthen CRA as Applied to Banks

CRA should be updated so that the great majority of loans that banks make are scrutinized by CRA exams. Currently CRA examines banks in geographical areas where they have branches but not in other areas where they lend through brokers. Consequently, CRA exams of many large banks only scrutinize a minority of the banks' loans. In addition, a bank has the option of including its affiliated mortgage company on its exam. NCRC has found that mortgage company affiliates not included on bank exams engaged in redlining, such as refusing to lend to row homes. Existing loopholes (primarily examining loans made through branches and optional inclusion of mortgage companies) lead to inconsistent enforcement that fails to detect and eliminate abusive practices.

Expand CRA to Non-bank Financial Institutions

CRA should be expanded to cover non-bank financial institutions. Independent mortgage companies, investment banks, and other non-bank institutions engaged in high volumes of risky lending that ended up in foreclosure and led to the financial collapse. Had CRA been applied broadly throughout the financial services industry, the foreclosure crisis could have been averted, as CRA mandates responsible lending and investing.

Provide Veto Power for the CFPA in the Merger Application Process

Because the Administration's proposal shifts CRA responsibility to CFPA but indicates that the prudential regulators (Federal Reserve Board, FDIC, and the National Bank Supervisor) must decide the outcome of merger applications, the prudential regulators would be required to consider the CRA exams conducted by CFPA in their decisions on merger applications. As such, NCRC recommends that prudential regulatory agencies must be required to obtain the consent of CFPA before deciding the outcome of a merger application. Currently, these agencies have the authority to approve, deny, or require specific improvements to CRA and fair lending performance as part of a merger approval. The merger application process must also retain the same procedures for notifying the public when merger applications have been filed, which allows the public to obtain copies of the merger applications and provide comments to the regulatory agencies. NCRC recommends that CFPA issue a written opinion regarding the CRA and fair lending performance of banks as part of the merger application process, and that CFPA and the prudential regulatory agencies hold public hearings and meetings with banks and those who have offered written comments on the merger application.

Mandate Additional Enforcement Mechanisms beyond Merger Applications

NCRC believes that CRA needs additional enforcement mechanisms beyond the merger application process. One enforcement mechanism involves requiring banks to submit improvement plans subject to public comment and federal agency approval if a bank has a low CRA rating in any geographical areas on their CRA exams. H.R. 1479 would expand the number of geographical areas receiving ratings to include metropolitan areas and rural areas (currently ratings are assigned on a state-wide level and for multi-state metropolitan areas that cross state borders). By increasing the number of geographical areas that are graded and requiring improvement plans for any area receiving a low rating, H.R. 1479 would increase bank attention to and therefore bolster bank CRA performance in medium-sized cities and rural areas, as well as their larger markets.

In extending CRA to insurance companies and mortgage companies, H.R. 1479 prevents loans from being sold to Fannie Mae and Freddie Mac if the insurance company and mortgage company involved with the loans failed its CRA exam and then did not submit a satisfactory improvement plan. This requirement should also be extended to banks.

NCRC recommends that Congress consider establishing a private right of action to enforce CRA. Community organizations and individuals would have a right to bring actions to a court of law if they could prove that CFPA and prudential regulatory agencies failed to adequately examine a bank under CRA, or adequately consider consumer protection and CRA factors in a merger application (Note: This is not a current provision of H.R. 1479).

Additional Data Elements

H.R. 1479 requires the creation of a loan performance database that tracks delinquencies, foreclosures, and loan modifications (the Administration's proposal does not have this requirement). In addition, NCRC recommends that the Administration and Congress consider augmenting the CRA data on community development to include the census tract location of community development loan data and require a similar disclosure for community investment data. The purpose of community development lending and investment (such as affordable housing or small business development) should also be disclosed. NCRC also recommends that the enhancements that the Administration proposed regarding race, gender, and other data elements also be extended to small farm loan disclosure (Note: The recommendations about community development and small farm data are not in H.R. 1479).