WHAT'S AT STAKE: The Community Reinvestment Act (CRA)

10 Bad Ideas & Bank-Centric Proposals for CRA Regulatory Reform

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1. An OCC-only approach to CRA reform

On August 28, 2018, the OCC released an advance notice of proposed rulemaking (ANPR) that asks 31 questions on how to reform CRA regulations. The public comment period closes November 19th. NCRC research has found that a significant weakening of CRA could reduce lending in lower-income communities up to $105 billion dollars in the next five years[1]. At the outset, any CRA reforms must be a joint rulemaking that includes the other bank regulators - the FDIC and the Federal Reserve- otherwise OCC-only reforms will promote inconsistency is CRA crediting, examination, and remedial standards. Even as the OCC acknowledges the need for consistent standards in response to CRA stakeholders, the OCC has created inconsistent standards. Over the last year, the OCC weakened CRA standards for OCC-regulated banks – limiting downgrades in a bank's CRA rating when the bank engages in discrimination or other illegal credit practices[2]; creating exceptions for banks with failing CRA ratings that are seeking to merge or expand their operations[3]; and, lengthening some CRA exam cycles[4]. A joint effort must focus first on strengthening standards for community reinvestment and not just streamlining and clarifying CRA for banks.

2. Taking the LMI out of CRA

The OCC's ANPR has asked whether CRA credit "…[should] be limited to loans to LMI borrowers and loans in LMI or other identified areas…"5 The American Bankers Association (ABA) has called CRA credit for initiatives "targeted to" low- and moderate-income (LMI) individuals or [that] have benefits of revitalizing or stabilizing disaster areas or underserved or distressed middle-income areas as an "overly restrictive approach"6. The architects of CRA sought to combat redlining (the practice of banks refusing to consider mortgage applications from minorities based on the neighborhood they lived in rather than their personal credit and financial situation) and to defeat capital export (banks using the deposits made by persons from low-income neighborhoods to lend to persons in more affluent neighborhoods). While tax credits and other federal programs might encourage investments in infrastructure – roads, bridges and hospitals- and projects that benefit a community more broadly, CRA has historically and should remain targeted on access to credit and financial services for LMI borrowers and communities traditionally underserved by the nation's financial system.

3. Allowing banks to disregard local credit needs

The OCC's ANPR suggests a redefinition of "community" under CRA so that banks can get CRA credit "in the aggregate, at the bank level, in addition to activities in its traditional assessment areas or local geographies." The law explicitly requires that banks demonstrate that they "…serve the convenience and needs of the communities in which they are chartered to do business;"7. The OCC suggests grading banks and dispensing CRA credit for far-off activities, however worthy they may be on their face, without first requiring that the bank meet the needs of the local communities where it takes deposits and without any examination of whether those far-off loans and investments serve the convenience and needs of the communities where they are being made. Recognizing that banks now do significant business online and outside the communities where they have physical bank branches, NCRC has long supported additional assessment areas in those areas where banks do a significant amount of that community's lending, but has emphatically opposed simply giving a bank CRA credit without any analysis of whether the bank is responding to the credit needs of those local communities.

4. A "one-ratio" everything counts approach to CRA bank exams – a recipe for more CRA grade inflation

The OCC's "transformational approach to the CRA regulatory framework"[8] could reduce most or all of a bank's CRA evaluation to a simple mathematical formula and is a recipe for more and not less CRA grade inflation. Already 98% of banks pass their CRA exams[9] – a pass rate that suggests higher levels of lending, investment and financial services in low- and moderate-income (LMI) and underserved communities than actually exists. Reliance on a "one-ratio" approach or a single metric could diminish the local analysis bank examiners undertake, including the geographic distribution of bank lending across various neighborhoods, borrower profiles and whether the bank has first met the mortgage, small business, affordable housing and other credit needs of their local community before receiving CRA credit for what could be more profitable activities elsewhere and outside the bank's assessment area. It might also replace the current exams three separate test and needed separate analyses of bank lending, investments and services (e.g. bank branching).

5. Scrapping examiners' local & more *qualitative* analysis of bank lending and investments

The OCC's ANPR suggests adopting a more rigid **"quantitative"** approach to CRA. Today's CRA exams are designed to focus more on "**the quality**" of a bank's investments. Under the lending test, for example, examiners review how many loans and investments are made in their local community where they have branches and where they take deposits. Examiners not only determine if a sufficient number of loans are made, but they also determine the distribution of loans among low-, moderate-, middle- and upper-income geographies, and identify groups of geographies, by income categories, where there is little or no loan penetration[10]. Examiners determine the distribution of loans by borrower income and by business revenues and also identify categories of borrowers by income or business revenues that have little or no loan penetration. Examiners review complaints relating to the bank's CRA performance and evaluate the bank's record of taking action, if warranted, in response to written complaints. Under the OCC's "transformational approach", important qualitative criteria that measure responsiveness to local needs and the extent of innovation could be reduced or eliminated. Importantly, today banks and bank examiners see bank data supporting the CRA rating – data the public does not see. The OCC's "transformational approach" could diminish or streamline this current localized and qualitative analysis in favor of numeric and quantitative clarity for banks and without making any more information about the loans and projects driving the numerical formula available to the public. One key problem in today's CRA exams is that, unlike the home mortgage data, the public has far less data on and access to the community development projects and small business loans at the neighborhood level on which the examiner's CRA rating is based. The OCC suggestions could sacrifice CRA's current analysis of the quality of a bank's response to the local credit needs

Sign up and learn how to file your own comment letter to the OCC at: www.ncrc.org/treasurecra without making it any more possible for the public to review the bank data and determine if the loans and investments banks are making warrant a particular CRA rating.

6. Exempting more banks from CRA exams 1 – the community development test & affordable housing

The OCC's ANPR gives credence to the view of some bank stakeholders that "…the asset thresholds for the performance tests and standards have not kept pace with bank asset sizes…"[11]. During the last CRA reforms, bank asset-size thresholds were raised and each year since they have been adjusted upward based on changes to the Consumer Price Index. These thresholds determine how banks are examined under CRA and whether they are examined under one, two or all three CRA tests – a lending test, a community development/investment test and a service test. The nation's banks are pushing hard to raise asset-size thresholds further so more banks will have easier CRA exams to pass[12]. In the midst of affordable housing and other credit challenges across the country, more of the nation's banks want to be exempted from CRA examinations of whether they help finance community development projects in their local communities. A review of 2016 CRA exams found that intermediate small banks, for example, provide as much private community development financing each year as the federal government's community development block grant program – a program targeted for elimination in the federal budget almost every year[13].

7. Exempting more banks from CRA exams 2 – the CRA service test & bank branches

With significant segments of the nation unbanked or underbanked[14], the OCC's ANPR asks whether branching in LMI areas should be reviewed as banks seek more exemptions from the CRA service test, which reviews bank branching patterns and basic banking services in LMI areas[15]. As another bank regulator noted recently, for many LMI and rural communities bank branches remain critical for the provision of bank loans, investments, and services.[16] While it should be strengthened, the CRA Service test remains an incentive for the nation's largest banks to open/close bank branches in LMI communities equitably and provide other basic banking services. Banking deserts in rural and minority communities have increased since the financial crisis.[17]

8. Letting banks with poor CRA records get bigger and bigger without community accountability

OCC Comptroller Joseph Otting has admitted that part of his CRA reform plan is to make it harder for community groups to "hold [bankers] hostage" when bank merger and expansion deals are up for regulatory approval[18]. In the past, banks with failing CRA ratings have been discouraged from merging with other banks or expanding their operations until their record of serving their local community improves. In November, the OCC created exceptions to that practice[19]. CRA and other banking law have ensured that bank regulators consider a banks CRA rating and receive public input about a banks local lending and investing record when banks seek to grow larger – merge/acquire or expand their operations. Since 2016, banks have negotiated $86 billion in community benefit agreements (CBAs) with local stakeholders because of CRA and its community input provisions during mergers/acquisitions –resulting in banks providing more mortgages, small business and community development loans and investments in LMI communities around the country.

9. Muting the community's voice in how banks are serving local communities

OCC's plan and the industry's ideas go beyond just making it harder for communities to have impact during bank merger/acquisition deals, reducing CRA to a simple but more rigid mathematical formula is not "…consistent with the fundamental underpinning of the CRA regulations- that the differences in institutions and the communities in which they do business preclude rigid rules."[20] Today's CRA evaluations of a lender's local record include procedures for examiners to review community comments about a bank and to interview local grassroots community groups, community-based development or financial intermediaries and government leaders to gather information about a community, its economic base and community development initiatives. Local community contacts help the examiner develop a community profile; determine opportunities for participation by banks in helping to meet local credit needs; help examiners understand the performance of banks in helping to meet local credit needs; provide a context on the community to assist in the evaluation of an institution's CRA performance. CRA is unique in that it puts decision-making about the community's needs and priorities in the hands of local stakeholders: financial institutions that lend and invest, community organizations that deliver services and develop real estate, and state and local governments that direct incentives and subsidies.

10. Expanding CRA Qualifying Activities – another recipe for more CRA grade inflation

As part of the OCC's "transformational approach" which suggests that CRA qualifying activities could be expanded to a range of activities that may or may not be targeted to LMI borrowers and underserved communities, the OCC's asks a series of CRA diluting questions: if "…projects, programs, or organizations with a mission, purpose, or intent of community or economic development…" should be "presumed" to receive CRA credit.[21] While today only those activities targeted to LMI individuals and communities received CRA credit, the OCC asks whether community development activities that "…benefit specified underserved populations or areas…." should be the only ones that receive credit.[22] While today, CRA credit is largely focused on smaller loans and/or smaller or more underserved businesses, the OCC asks whether CRA credit should be extended to "all loans to businesses that meet the Small Business Administration standards for small businesses". The OCC's questions imply a dilution of CRA in ways that will stray from its history, its purpose and weaken and not strengthen access to credit and better financial services for LMI and minority borrowers and underserved communities.

1 NCRC Forecast: Weakening the Community Reinvestment Act would reduce lending by hundreds of billions of dollars (2018)

2 OCC PPM 5000-43

3 OCC PPM 6300-2

4 OCC Bulletin 2018-17

5 OCC's ANPR, Question 21.

6 CRA Modernization, ABA (December 2017).

7 12 U.S.C. 2901(a)(1)

8 OCC's ANPR, P. 14

9 NCRC CRA Grade Inflation Infographic

10 Intermediate Small Institution CRA Examination Procedures and A Banker's Quick Reference Guide to CRA and Large Institution CRA Examination Procedures

11 OCC's ANPR, p. 10

12 ICBA letter to regulators dated May 14, 2015

13 Intermediate Small Banks: The Forgotten but Significant Resource for Affordable Housing and Community Development, NCRC (2017).

14 The 2015 National Survey of Unbanked and Underbanked Households, FDIC

15 See note 12 and OCC's ANPR, Question 27.

16 Remarks of Lael Brainard (May 18, 2018) referencing the Community Advisory Council and Board of Governors and FDIC's Jelena McWilliams in the Wall Street Journal

17 Bank Branch Closures from 2008-2016: Unequal Impact in America's Heartland (2017)

18 Mnuchin's Fight With Activists Inspired Push to Revamp Low-Income Lending Rules, Wall Street Journal, 9/25/2018.

19 OCC PPM 6300-2

20 Community Contact Procedures in the CRA Examination Procedures, Comptrollers Handbook.

21 OCC's ANPR, Question 15.

22 OCC's ANPR, Question 17.

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