KPMG

Regulatory Alert

Financial Services Regulatory Insight Center

April 2018

Treasury recommends modernization of the Community Reinvestment Act

Highlights

— Recommended changes to the supervisory and regulatory framework of the CRA address the evolution of the banking industry, including new mobile and online technologies and related customer behaviors.

— Key areas for change include: assessment areas, examinations processes, and performance incentives.

— Directed toward the federal banking agencies; an ANPR is expected to be released in the near term.

Summary

The U.S. Department of the Treasury has released a memorandum outlining its recommendations to modernize the supervisory and regulatory framework of the Community Reinvestment Act (CRA). Notably, the recommendations are directed toward the federal banking agencies (Federal Reserve Board, Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC)), limiting the need for legislative action.

The CRA was enacted in 1977 to prevent redlining and to encourage federally insured banking institutions to meet the credit needs of the communities and individuals in the local areas where they were chartered and operated. Since then, the financial services industry has undergone significant changes, including the evolution of online banking, mobile banking, "branchless banks," and nonbank providers of financial products and services. Treasury's recommendations encourage the federal banking agencies to recognize and account for the broader reach these advancements make available to banks as they deliver services to their "communities."

In general, Treasury recommends:

— **Redefining assessment areas**, to include the areas where the bank is physically located as well as low- and moderate-income (LMI) communities outside of the bank's physical location and areas where the bank accepts deposits and does substantial business. Such an approach is intended to account for the current range of alternative channels available to banks for accepting deposits and providing services.

— **Increasing the clarity and flexibility of examinations**, to increase the transparency and effectiveness of ratings determinations. Such changes include:

- Measuring CRA activity against a "well-defined, consistent unit of measurement, such as total assets, capital, or another similar standard."
- Greater consistency across the three regulators with regard to interpretation and application of the CRA regulations.
- Expansion of the types of loans, investments, and services eligible for CRA credit to include, among others, innovative and technology-enabled approaches.

— **Improving the examinations process**, to result in standardized examination schedules across the three regulators as well as more timely completion of examinations and publication of performance ratings.

- **Incentivizing performance**, through the adoption of uniform guidance in cases of less than Satisfactory ratings. The Federal Reserve and the FDIC are encouraged to follow the lead of the OCC with regard to:
  - Violations of consumer protection laws - OCC guidance clarifies that CRA ratings will not be downgraded for consumer protection violations unless there is a logical nexus between a CRA rating and evidence of discriminatory or illegal credit practices in the bank's CRA lending activity; remediation efforts undertaken are to be considered.
  - Applications for deposit facilities – OCC guidance clarifies that the agency could approve an application for a deposit facility after considering four criteria: i) severity of the rating; ii) resulting impact on the ability of the bank to meet the credit needs of the community it serves; iii) the potential benefits to the communities served; and iv) whether approving the application would further fair access to banking services.
- **Considering exploration of additional CRA-related issues**, including:
  - Evaluating the approach to affiliates to ensure that all CRA-eligible activity across a bank and its affiliates is reflected
  - Monitoring the emergence of nonbanks and their impact on CRA effectiveness and the extent to which nonbanks are meeting the needs of LMI communities.

In developing its recommendations, Treasury considered, in part, a report prepared by the General Accountability Office that recommended changes to CRA, including revisions to the lending and service tests, expansion of the CRA to all bank affiliates and nonbanks, expansion of assessment areas, and clarifying guidance about the examination process. The report also identified "continuing unmet needs of many LMI consumers in obtaining basic banking services and small-dollar credit."

OCC Comptroller Joseph Otting has publicly stated that modernization of CRA is a priority for his agency. News reports indicate Comptroller Otting recently said the agency is "looking to create a uniform grading system for banks of all sizes that will take a bank's community reinvestment lending activity and 'divide it by one item on the balance sheet, whether that's deposits, Tier 1 capital or total assets.'" He also stated that he wanted to expand CRA credits to a broader range of products, including small business and student loans. (American Banker, April 10, 2018)

The federal banking agencies are expected to issue an advanced notice of proposed rulemaking (ANPR) seeking input on potential changes to CRA regulations.

Closing Thoughts

The combination of an expanded definition of "assessment area" and a broader range of CRA-eligible products and services will permit banks an opportunity to reassess their distribution channels (including traditional branch and deposit-taking facilities) and require them to reassess their processes for CRA data compilation, documentation, and reporting.

Amy Matsuo
Principal and National Lead
Regulatory Insights
T: 919-664-7302
E: amatsuo@kpmg.com

Contributing authors:
Amy Matsuo, Principal and National Lead, Regulatory Insights

Karen Staines, Director, Financial Services Regulatory Insight Center

Phil MacFarlane, Associate Director, Financial Services Regulatory Insight Center

kpmg.com/socialmedia