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OCC's Final CRA Rule – What it Means for Your Bank

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“CRA” = The Community Reinvestment Act of 1977

- Targeted Low- and Moderate-Income (“LMI”) neighborhoods to combat “Redlining” (Chicago)
- Goal: Encourage federally-insured depository institutions to *help meet the credit needs* of their *entire* community, including LMI neighborhoods
- CRA’s focus is on income...NOT race
- **CRA is NOT about making BAD loans** but ascertaining local credit needs and meeting them in a *safe and sound* manner
- President Jimmy Carter and Senator Bill Proxmire

CRA Milestones

- **1977 – CRA law**
- **1990 – CRA ratings and PEs became public**
- **1995 – CRA major rewrite (Small vs Large vs Special Purpose vs Strategic Plans)**
- **2005 – Intermediate Small Bank (ISB) regs**
- **2020 – CRA reform by OCC (but not FDIC or FED)**

1995 vs. 2020 CRA Reform



In 1995 the OCC was able to work with FDIC, FED and OTS to get a joint reform, although the FED pushed back the most



In 2020 the OCC issued its own Final Rule after its own ANPR and a joint NPR with the FDIC...but the FED refused

1995 vs. 2020 CRA Reform

The 1995 reforms were the result of three different proposals, over 14,000 comments, seven public hearings, and meetings with over 250 stakeholders.

The OCC's reform resulted in 1,500 comments to the August 2018 ANPR and about 2,000 comments to the December 2019 OCC/FDIC joint NPR without any public hearings.

Divergent CRA Reform Objectives

Treasury objective of “modernization” for digital banking and branchless banks

VS.

Needed improvements (“tune-up”) since 1995

VS.

Major Overhaul

OCC/FDIC 2019 Joint NPR vs. OCC 2020 Final Rule

- 1. FDIC had much input but withdrew at last minute**
- 2. Retained exam procedures for ISBs and Wholesale, and Limited Purpose Banks**
- 3. \$500 to \$600 mil. increase in Small Bank threshold**
- 4. Kept ISBs with \$1.3 to \$2.5 bil. threshold increase**
- 5. Kept three new complex large bank tests...**

...continued

OCC/FDIC 2019 Joint NPR vs. OCC 2020 Final Rule

- 6. Removed proposed rating benchmarks**
- 7. Forthcoming NPR on rating benchmarks**
- 8. CRA credit for legally-binding loan commitments**
- 9. More CRA credit for retail loans sold**
- 10. Clarified controversial CRA credit for stadiums**

OCC 2020 Final Rule vs. Current Rule

- 1. OCC banks under final rule vs. FDIC and FED banks under current rule = *unlevel playing field***
- 2. Deposit-based Assessment Areas for first time**
- 3. Increased data gathering and reporting for all**
- 4. Higher asset thresholds for small and ISB banks**
- 5. Strategic Plan option mainly untouched**

OCC 2020 Final Rule vs. 1995 Current Rule

- 6. Most radical changes for “large” banks (>\$2.5 mil.)**
 - a. Much more quantitative**
 - b. Three complex tests replace three simple ones**
 - c. Bank vs Assessment Area tests**
 - d. Presumptive ratings**
 - e. Call report data for quantifying activities**
 - f. Controversial multipliers**
 - g. Grouping of CD loans and investments**
 - h. Minimal focus on retail and CD Services**
 - i. CRA *targeted* investments still important**

Three new Large Bank Tests in OCC Final Rule

Ratings of both Bank and Assessment Areas:

1. **CRA Evaluation Measure = ($\$CRA \text{ Loans} + \$CRA \text{ Invest.}$) / Deposits Adjusted for LMI branches**
2. **CD Minimum ratio = ($\$CDL + \CDI) / Deposits**
3. **Retail Lending Borrower and Geographic Distribution Test for “major retail lending product lines” for Assessment Areas**

Result: “Presumptive rating” adjusted by examiner for Performance Context and Fair Lending issues

The GOOD, BAD and UGLY of the OCC's Final Rule



The OCC's Final Rule

The GOOD:

- 1. The 5% Reinvestment Rule**
- 2. Maintained all six exam procedures**
- 3. List of and focus on “CRA deserts”**
- 4. List of approved CRA credit activities**
- 5. Maintained “Performance Context”**

The OCC's Final Rule

The BAD:

- 1. Reduced Community Development activities from increased asset size thresholds**
- 2. Eliminated weighted Large Bank Loan, Investment, and Service Tests**
- 3. Three new tests for large banks but no thresholds**
- 4. Subjective multipliers penalize MBS**
- 5. Minimum countywide Assessment Areas**

The OCC's Final Rule

The UGLY:

- 1. Complete overhaul of CRA vs. planned “modernization” or tune-up**
- 2. New regulatory burden and costs**
- 3. Community groups’ planned lawsuit**
- 4. Congressional “CRA” challenge**
- 5. No financial motivation for Outstanding rating**

What Will the FDIC and FED Do?

- 1. FDIC may consider OCC's Final Rule but not the FED**
- 2. Both FDIC and FED carefully monitoring community group and congressional challenges**
- 3. FED Chairman Powell claims "still working on it" and "will ultimately move forward but can't say when"**
- 4. FED's approach will hopefully be "data driven" with new PE data base**
- 5. FED and possibly FDIC may wait 5 months until Election**

What About My Bank's Upcoming Exam?

1. Current exam procedures until January 2023 or 2024
2. Examiners will be thinking about OCC's Final Rule
3. Consider a "Shadow Exam" as an OCC Large Bank
4. Avoid "gentrifying" loans and investments
5. Focus on *targeted* CRA investments for maximum impact

Outlook for CRA Reform – More Uncertainty

1. What will the Acting Comptroller do?
2. What will the FDIC and FED do?
3. Results of community group's lawsuit?
4. Results of Congressional CRA challenge?
5. Results of Presidential Election?



Thank You!

