

Locke Lord QuickStudy: The OCC Proposes to Rescind Its Community Reinvestment Act “2020 Final Rule” in Favor of a Cooperative Interagency Overhaul

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On July 20, 2021, the Board of Governors of the Federal Reserve System (the “FRB”), the Federal Deposit Insurance Corporation (the “FDIC”), and Office of the Comptroller of the Currency (“OCC”, and collectively with the FRB and OCC, the “Agencies”) released an interagency statement regarding a joint effort to revise the Community Reinvestment Act (“CRA”). On the same day, the OCC released a statement proposing to rescind its May 2020 Rule (“2020 Final Rule”) implemented under the Trump Administration. In the statement, the Agencies agreed to work together to reconstruct the CRA by building on an advanced notice of proposed rulemaking released by the FRB in September 2020 (the “Fed APNR”)^[1]

CRA Background

Enacted in 1977, the CRA was created to address historical redlining by requiring banks to serve and invest in low and moderate-income (“LMI”) communities. Low CRA ratings can impact a bank’s ability to acquire other banks, expand its geographic reach, or commence other business opportunities. Prior to the 2020 Final Rule, the last time the CRA was updated was during the Clinton Administration. The CRA grants broad authority and responsibility to the Agencies to implement the CRA, which provides the Agencies with authority to address persistent structural inequity in the financial system for LMI and minority focused communities.

The 2020 Final Rule, enacted by the OCC under the Trump Administration’s Comptroller Joseph Otting without support from either the FDIC or the FRB, was immediately met with opposition by consumer advocates. During the public comment period, the proposed rule garnered 7,500 comments before it was finalized. Then, on June 25, 2020, three consumer advocacy groups brought suit against the OCC in effort to stop its adoption stating that, among other things, the OCC was “unlawfully gutting” the CRA and usurping the rulemaking process.

New Leadership Proposes New CRA Rule

With the change in administration, and new leadership from the OCC’s Acting Comptroller Michael Hsu, the OCC reviewed the 2020 Final Rule, and proposed to rescind the 2020 Final Rule in favor of cooperation with the FDIC and FRB to revise the CRA building on the guideposts proposed in the Fed’s APNR. In the announcement, the Acting Comptroller restated the OCC’s commitment to modernizing and strengthening the CRA to ensure fairness in banking. The Agencies to date have not released any new details regarding their joint proposal.

The FRB's APNR Guideposts

The FRB APNR set forth the following goals for public comment to assist with CRA modernization, and to account for changing bank technological advancement, to:

- Strengthen the CRA to address its core purpose to meet the needs of LMI communities and address inequities in financial services and credit access;
- Address changes in the banking industry;
- Promote financial inclusion by adding special provisions for activities in Indian Country and underserved areas, and for investments in Minority Depository Institutions and Community Development Financial Institutions;
- Bring greater clarity, consistency, and transparency to performance evaluations that are tailored to local conditions;
- Tailor performance tests and assessments to account for differences in bank sizes and business models;
- Clarify and expand eligible CRA activities focused on LMI communities;
- Minimize data burden and tailor data collection and reporting requirements;
- Recognize the special circumstances of small banks in rural areas; and
- Create a consistent regulatory approach.

Conclusion

Acting Director Hsu was quoted in the July 20, 2021 release as stating “To ensure fairness in the face of persistent and rising inequality and changes in banking, the CRA must be strengthened and modernized.” . . . “The disproportionate impacts of the pandemic on low and moderate income communities, the comments provided on the Board’s Advanced Notice of Proposed Rulemaking, and our experience with implementation of the 2020 rule have highlighted the criticality of strengthening the CRA jointly with the Board and FDIC. While the OCC deserves credit for taking action to modernize the CRA through adoption of the 2020 rule, upon review I believe it was a false start. This is why we will propose rescinding it and facilitating an orderly transition to a new rule. I look forward to working with the other agencies to develop a joint Notice of Proposed Rulemaking and building on the ANPR proposed by the Board in September 2020.”

The development of a new approach to the challenges that technology have presented to both banks and agencies in complying with and enforcing CRA are great and will doubtlessly require a fresh look by the three Agencies. As we have in the past, we will continue to monitor these issues and will provide future client updates. This QuickStudy is for guidance only and is not intended to be a substitute for specific legal advice.

[1]<https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200921a.htm>

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