

CRA rules should do more to help minorities, advocacy groups say

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Fair housing groups say new, multiagency rules to implement the Community Reinvestment Act do not go far enough to help minorities.

Unveiled in early May, the rules would expand both the reach and scope of evaluations as to whether banks are providing enough financial services to low- and moderate-income communities under the 1977 law. Proposed by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corp. and the Federal Reserve, the guidance contains specific new requirements for both types of communities, instead of the same rules applying to both.

But housing advocacy groups say final rules should directly help people of color who face tough challenges in getting business loans, mortgages, and other banking services, regardless of income level.

There are "significant and glaring disparities," between services provided to minorities and those available to white consumers, according to Josh Silver, senior adviser at the National Community Reinvestment Coalition, or NCRC.

In crafting the rules, "the agencies can identify communities where lending disparities to communities of color are particularly wide," Silver said. The NCRC recently issued an analysis calling for fair lending reviews in Community Reinvestment Act, or CRA, examinations to specifically include details on race.

Congressional hearing imminent

Silver's comments come as the House Financial Services Committee prepares for a July 13 hearing on the new rules that is likely to explore the race issue in-depth.

The witness list includes representatives from the NCRC, the National Coalition for Asian Pacific American Community Development and the Neighborhood Housing Services of Queens CDC Inc. Representatives of the Independent Community Bankers of America, or ICBA, and the Congressional Research Service will also testify.

Efforts to implement the existing CRA have not provided adequate help to people of color over time, advocacy groups told S&P Global Market Intelligence.

"They're trying to look at income as a proxy, and the history of CRA shows that that is not an effective approach, when you look at homeowners' up-rates by race and ethnicity," Debby Goldberg, vice president of housing policy and special projects at the National Fair Housing Alliance, said in an interview.

"Separating out low income from moderate income, I do think that could be useful," Goldberg said. "However, I think that's not true at all for communities of color. Middle- and upper-income [consumers] in those communities may not be able to get services at the same level. This is the opportunity to correct that mistake."

There could potentially be "a parallel process," Goldberg said, under which CRA examiners could look at both income and race.

Bankers watching intently

As pressure increases for direct representation of minorities in the final rules, banks are closely monitoring the process.

The proposal looks at retail banking and community development activities that banks conduct in both their immediate assessment areas and outside of those areas, with a revised series of tests based on the size of the banks.

The rules take a metrics-based approach to assessing bank services, looking at both the size of loans made and the number of loans and areas where they will be provided.

The industry supports the rules' objectives, including the inclusion of online banking, which has proliferated in recent years, banking experts said.

"One of the goals is to address the changing nature of how lending is provided now through technology, the competitive landscape with online companies, mortgage originators that have not been subject to the CRA," said Richard Hills, an attorney who represents banks on CRA issues with law firm Troutman Pepper. "To the extent the final rules can do that, that will be a huge improvement for everybody."

However, with dozens of new reporting requirements and new definitions of assessment areas, the rules are likely to impose "a substantial compliance burden on banks," Hills said. Finalizing the rules "should be done in a careful and in a systemic way."

Assessment area definition crucial

The rules' new definition of CRA assessment areas is a critical issue for banks, according to both Hills and Warren Traiger, senior counsel at Buckley LLP.

While financial institutions generally welcome the idea that they can get CRA credit for providing financial services outside their traditional assessment areas, Traiger said banks are concerned that they could face compliance challenges under a broad definition.

The guidance states that such a CRA area is created wherever a bank has \$100 million in small business loans or 250 small business loans, which Traiger said is a "major change that is going to get some pushback."

"Banks could say, 'We don't have a branch there, we don't really have a presence. If this is a result of doing this outside our traditional assessment area, maybe we won't do it. Maybe it's just not worth it,'" Traiger said. "That would be counterproductive to the CRA. This is the early direction I see the industry taking."

The revised definitions of retail lending assessment areas appear to be intended to capture digital banks and internet banks that do national lending, Hills said.

"The notion is in large part directed towards those banks and will likely have the biggest impact on those banks," Hills said. "These are currently your exclusively digital banks, and they could get more, many more, assessment areas."

While a lot of the compliance burden is likely to fall on banks with assets over \$10 billion, smaller community banks are less concerned because they have a choice as to whether to opt into the rules, according to Mickey Marshall, director of regulatory legal affairs at the ICBA.

"The rules do a pretty good job of tailoring the rules for small banks," Marshall said. "We think that's a really good thing. Building a new compliance system is difficult. These banks may not have a dedicated CRA officer. We think that optionality is good."

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