Cooperative Credit Union Association, Inc.
CRA Emerging Developments

The U.S. Treasury Department ("Treasury") has recommended that federal banking regulators significantly update how they implement the Community Reinvestment Act ("CRA") to reflect sweeping industry changes and serve communities better. The next move is up to the three federal banking agencies.

The Office of the Comptroller of the Currency ("OCC") has made modernizing CRA a top priority, which it has promised to begin by publishing an advance notice of proposed rulemaking ("ANPR") perhaps in concert with the Federal Reserve Board ("FRB") and the Federal Deposit Insurance Corporation ("FDIC"). CRA policies are normally set jointly by the three banking agencies to promote consistency. After the ANPR is published and public comments are received and reviewed, a proposed rule would be the next step and then, following another round of comments, a final rule. Often states that have CRA requirements follow federal changes in the law. In addition, any federal bank regulatory actions evaluating lending could raise implications or challenges for credit unions, particularly in the public comment process, which may capture the attention of members of Congress.

Under CRA at the federal level, banks have an affirmative and continuing obligation to serve their entire communities, including the low- and moderate-income neighborhoods and people, consistent with safety and soundness. The OCC, FRB and FDIC examine banks' performance, publish ratings, and consider those ratings when banks apply to acquire or merge with other banks or to open new branches.

The last major regulatory overhaul was completed in 1995, at the dawn of interstate banking and long before the emergence of Internet banks and mobile banking services, the growth of nonbank mortgage and small business lenders, and recent challenges, opportunities and practices in affordable housing and community development.

The Treasury report, in the form of a memorandum to the banking agencies, proposes the following considerations:

Assessment Areas

CRA ratings are primarily based on the "assessment areas" ("AA") surrounding a bank's branches. The Treasury report advocates for a framework that not only includes areas where the bank is physically located, but also low to moderate income communities outside of where the bank has its physical footprint, and in areas where the bank accepts deposits and does substantial business. Treasury believes that an approach that would allow banks to address needs that overlap with their entire customer base would improve the effectiveness of the CRA statute.

Examination Clarity and Flexibility

Policy guidance is often unclear or is applied inconsistently. Regulators sometimes treat the same activities differently. For example, the FRB treats letters of credit, such as those to support tax-exempt bond financing, as equivalent to loans, but the OCC devalues them as only like loan commitments. Eligibility for other activities is decided by individual examiners. For example, to obtain credit for financing naturally occurring affordable rental housing, a bank must present a market analysis showing the likelihood that LMI renters will occupy the housing–adding cost and uncertainty. Treasury also points out that CRA treats long-term investments more favorably than long-term community development loans.

Treasury recommends that the range of CRA-eligible activities be expanded, such as infrastructure serving low-to moderate-income people and neighborhoods. As the delivery of consumer services has expanded to digital delivery channels, including Internet banking and mobile technology, CRA's service test remains focused primarily on the presence of branches in LMI neighborhoods. Treasury recommends that the service test better reflect the effects of technological innovation.

Similarly, while CRA requires some important judgments, too many elements are excessively subjective. Concepts like "responsiveness," "innovativeness," and "complexity" have defied clear definition. In addition, a bank's "performance context," its business strategy and capacity as well as each community's needs and opportunities, is important in analyzing CRA performance. Treasury recommends revisiting assessment area definitions to reflect the realities of a changing banking industry. Making better use of lending data, especially for home mortgages and small business and farm lending, could greatly clarify performance benchmarks and simplify evaluation while still respecting that banks have different business strategies and communities present diverse needs and opportunities.

Examination Process

Treasury also focused on seemingly mundane, yet important administrative elements of CRA exams. The time to conduct and publish CRA ratings has become excessively long. Not all AAs receive the same scrutiny in CRA exams. AAs that generate the most deposits in each state get a full-scope review, which includes both such quantitative factors as loan counts, volume and distribution, plus qualitative factors like responsiveness and impact. Most AAs, however, receive only a limited scope review of quantitative elements.

CRA Performance Ratings

Although CRA is not itself a consumer protection law, evidence of discriminatory or other illegal credit practices can result in a CRA rating downgrade. Treasury recommends that CRA downgrades should be based only on matters connected to CRA performance, such as fair lending, and that remediation be considered in downgrade decisions. Treasury also recommends that CRA ratings not be delayed pending consumer compliance investigations, but that a subsequent adverse finding be attached to the CRA performance evaluation as an addendum. An unsatisfactory CRA rating usually blocks a bank's application for a merger, acquisition or a new bank branch. Late last year, OCC decided to provide exceptions based on certain factors, including steps the bank has taken to remediate the problem and whether, say, opening a new branch would improve service to LMI communities. Treasury recommends that FRB and FDIC adopt similar policies.