

Cabinet News and Views

Informed analysis for the financial services industry



In Depth: A Look at Federal Banking Agencies' Proposal to Update Community Reinvestment Act Rules



By **Daniel Meade**
Partner | Financial Regulation

As we mentioned briefly in our [newsletter](#) last week, the Federal Deposit Insurance Corporation (“FDIC”), the Federal Reserve Board (“FRB”) and the Office of the Comptroller of the Currency (“OCC”) (together, “The Agencies”) issued a [notice of proposed rulemaking](#) to amend and update the rules implementing the Community Reinvestment Act (“CRA”). The comment period on the proposal will be open until August 5, 2022.

The proposal reflects progress among the Agencies in terms of cooperation and coordination. The OCC had previously gone its own way in a [June 2020 rulemaking](#), rather than following the tradition of issuing a joint rulemaking. In 2021, the OCC then [rescinded](#) that rule and reverted back to the 1995 interagency version of the rule. At that time, the OCC stated that it was the agency’s intention “to facilitate the ongoing interagency work to modernize the CRA regulatory framework and promote consistency for all insured depository institutions.” Last week’s action is a reflection of that intent to modernize the CRA on an interagency basis and to “maintain a unified approach.” FDIC Acting Chair Gruenberg noted during the FDIC’s open meeting that the FRB’s [Advanced Notice of Proposed Rulemaking](#) in 2020 served as the blueprint for this proposal and helped to bring the agencies back together.

As pointed out in the Federal Reserve’s [staff memo](#) to the Board of Governors summarizing the proposal, the Agencies hope to achieve the following objectives:

(1) Strengthen the achievement of the purpose of the statute. The CRA should continue to be a strong and effective tool to support a robust and inclusive financial services industry. To achieve this objective, the draft proposal evaluates bank engagement across geographies and activities, and promotes financial inclusion and transparency by providing enhanced data disclosures.

(2) Adapt to changes in the banking industry, including the expanded role of mobile and online banking. There have been significant changes in how banking services are delivered, including through the use of internet and mobile banking and hybrid models that combine physical footprints with online lending. To achieve this objective, the proposal updates assessment areas, while maintaining a focus on branch-based assessment areas and proposes a tailored assessment area approach.

(3) Provide greater clarity and consistency in the application of the regulations. The proposal addresses feedback on the need for more clarity and consistency in the application of CRA regulations. To achieve this objective, the proposal introduces the use of standardized metrics in CRA evaluations for certain banks and clarifies eligible CRA activities focused on LMI communities and non-metropolitan communities.

(4) Tailor performance standards to account for differences in bank sizes, business models, and local conditions. The Agencies seek to tailor the CRA framework to recognize differences in bank sizes and business models. To achieve this objective, the proposal tailors performance standards for small (less than \$600 million in assets), intermediate (\$600 million to \$2 billion in assets), and large banks (more than \$2 billion in assets).

(5) Tailor data collection and reporting requirements and use existing data whenever possible. The proposal aims to strike an appropriate balance between providing greater clarity and consistency in how banks are assessed by establishing the use of standardized metrics and tailoring the associated data collection and reporting requirements.

(6) Promote transparency and public engagement. The proposal recognizes that transparency and public engagement are fundamental aspects of the CRA evaluation process.

(7) Confirm that CRA and fair lending examinations are mutually reinforcing. The Agencies are invested in ensuring that banks meet the credit needs of their communities and do so in a fair and equitable manner, and the Agencies seek to coordinate CRA and fair lending examinations where feasible to do so.

(8) Create a consistent regulatory approach that applies to banks regulated by all three agencies. The proposal reflects a unified proposal to apply to banks regulated by all three agencies, and reflects feedback from stakeholders as provided in meetings, roundtables, and comment letters on prior agency actions.

As discussed in our summary last week, the proposal states that it would make substantive changes in five key areas:

1. Delineation of Assessment Areas: The proposal would retain the current “facility-based assessment areas” (focused on where banks have physical facilities, such as branches), but also adds a “retail lending assessment area” for large banks in locations where the bank originates over 100 home mortgage loans or over 250 small business loans in each of the preceding two years.
2. Overall Framework, and Performance Standards and Metrics: The three bank size categories of the current rules would be retained, but all would have

higher thresholds, with small banks being defined as having assets up to \$600 million, large banks having assets of more than \$2 billion, and intermediate banks in between those two levels. Large banks generally would be evaluated under these four proposed tests: (1) Retail Lending, (2) Community Development Financing, (3) Retail Services and Products, and (4) Community Development Services. Intermediate banks would be evaluated under the proposed retail lending test and the current community development test. Small banks would continue to be evaluated under the current small bank standards, but would have the option of opting into the new proposed tests. The proposed tests would also incorporate broader use of metrics.

3. Community Development Activities: The proposed rule would continue to include activities that currently receive CRA credit as community development activities, but would also create more criteria for the type of activities that qualify for CRA community development credit, with possibly fewer geographic restrictions.
4. Data Collection, Maintenance, and Reporting: The proposal would aim to tailor data requirements based on bank size.
5. Performance Conclusions and Ratings: The proposal would assign ratings in the component tests under the familiar current ratings of Outstanding, High Satisfactory, Low Satisfactory, Needs to Improve and Substantial Noncompliance to result in the overall final ratings called for in the statute (*i.e.*, no differentiation between high satisfactory and low satisfactory).

As previously stated, the CRA regulations in place today were mainly authored in 2015, and both industry advocates and community development advocates agree that the rules need to be updated. Case in point: the use of smartphones for transacting with a bank was clearly not contemplated by the 1995 rules. While the initial reaction to the proposal has not necessarily been universal praise by both the banking industry and community development advocates, it hasn't brought universal criticism either. Community development advocates have commented that they hope the proposal might add more requirements in terms of supporting LMI communities, and they seem to like that there may be some "stricter grading" of CRA evaluations. Likewise, while the banking industry may not be enthused by the "stricter grading," the industry seems to welcome the efforts to provide more standardization and more predictability on what community development activities would receive CRA credit. Reading the comments will certainly be interesting.
