Proposed Changes to the Community Reinvestment Act

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NCRC
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Proposed Changes to CRA

- The OCC and the FDIC have released a Notice of Proposed Rulemaking or NPR, which provides specific rule changes to the CRA
- Following up from ANPR last year, where 2/3 of 1,500 comments submitted wanted a stronger CRA – and also pushed back on OCC idea of combining CRA activity into a single metric

Proposed Changes to CRA

- As former FDIC Chairman Martin Gruenberg described it, this is a "deeply misconceived proposal that would fundamentally undermine and weaken the Community Reinvestment Act"

NPR Issues

Main Focus Areas

- For the most part, the NPR focuses on three topics
  - What Counts (redefining what is CRA eligible, moving away from LMI)
  - Where It Counts (changing assessment areas)
  - How It Counts (new scoring system)
- OCC and FDIC have also said these are the main goals in this process
  - Directing more CRA activity to where it's needed most
  - Increasing transparency
  - Increasing overall CRA activity

NPR Issues

- At best, the impact this proposal will have on those goals is unclear
- In most cases, this proposal would actually have the opposite effect

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NPR Issues

What Counts

- NPR would redefine the definition of community development to include a lot of things not directly targeted to LMI, such as
  - Infrastructure
  - Stadiums
  - Financial literacy (targeted to anyone regardless of income)
  - Agricultural activity

NPR Issues

What Counts

- NPR would change the definition of a small business from $1 million to $2 million
- Changing definition of CRA service hours, and monetizing them
- Redefining affordable housing as “That is likely to partially or primarily benefit low- or moderate-income individuals or families as *demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income”*

NPR Issues

What Counts

- Do these changes accomplish the goal of directing CRA resources to where they are needed most?
- Are we actually increasing CRA activity? Or are we just redefining it?

NPR Issues

Where It Counts

- CRA reform must address the issue of assessment areas, since a lot of bank activity is done in communities where they do not have branches. Particularly with banks that have more of an online presence
- NPR lays out a proposal for doing so, but NCRC believes that it is unworkable and would actually reduce transparency

NPR Issues

Where It Counts

- NPR approach
  - All banks must start collecting the physical addresses of the people that deposit into them
  - Banks that gather 50% or more of their deposits from outside a traditional branch network would be required to create additional assessment areas in communities that account for 5% or more of their deposits, based on physical addresses of depositors

NPR Issues

Where It Counts

- One big problem with this approach, deposit information is not currently collected at the physical address level.
- Proposal hinges on data that is not currently available
- NPR acknowledges this and claims physical addresses of depositors is "readily available but not currently reported in an integrated and accessible manner."
- Change would make it impossible for outside stakeholders to know what new assessment areas are – as this information is not publicly available, and industry would likely cite privacy concerns at making it available

NPR Issues

Where It Counts

- Does this proposal make the CRA more transparent?
- NCRC believes an approach based on lending is preferable, where additional assessment areas would be created if a bank's lending activity accounts for a certain percentage of that area's total lending
- Lending data is already collected by banks, and disbursed to the public

NPR Issues

Where It Counts

- With very little discussion, the NPR also opens up credit for "activities conducted outside of their assessment areas in determining their bank-level ratings"
- CRA already has a procedure for doing this that hinges on banks first establishing they are meeting needs in their assessment areas, this opens that up entirely

NPR Issues

Where It Counts

- Allows banks to support national level intermediaries that can put together the largest deals instead of working with locally-based CDFIs and other nonprofits on smaller deals that are more directly responsive to the needs in their localities.
- The OCC and FDIC may respond by saying that this concern is addressed by their suggested retail lending test and established minimums of community development activity at the AA level, but as we will get into, banks would only need to reach satisfactory CRA performance in half of their assessment areas.

NPR Issues

How It Counts – Presumptive Rating

- Banks calculate their "presumptive" rating at the total bank level using the following formula

$$\frac{\textit{Qualifying Activities Value}}{\textit{Average quarterly } \textbf{\textit{Retail Domestic Deposits}}} + .01\left(\frac{\textit{Branches in Specified Areas}}{\textit{Total Branches}}\right)$$

- Banks would also need to pass a retail lending test in half of their assessment areas, and ensure 2% of deposits to community development activity – both overall and in half of their assessment areas

NPR Issues

How It Counts – Presumptive Rating

- Threshold breakdown of CRA scores based on new "presumptive rating"
  - 11% and up = Outstanding
  - 6 – 10% = Satisfactory
  - 3 – 5 % = Needs to Improve
  - Less than 3% = Substantial noncompliance

NPR Issues

How It Counts – Retail Tests

- At assessment area level, banks would pass if they accomplish either of the following

$$\frac{\#\ of\ Bank\ SLBs\ \ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ businesses\ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ businesses\ in\ AA} \geq 55\ \%$$

OR

$$\frac{\#\ of Bank\ SLBs\ in\ LMI\ census\ tracts\ in\ AA/\#\ of\ Bank\ SLBs\ in\ AA}{\#\ of\ all\ banks'\ SLBs\ in\ LMI\ census\ tracts\ in\ AA/\#\ \ of\ all\ banks'\ SLBs\ in\ AA} \geq 65\ \%$$

- Banks would also need to ensure 2% of deposits to community development activity in half of their assessment areas

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NPR Issues

How It Counts

- Combining CRA activity like this will incentivize banks to pursue large deals, which will disincentive the very thing that the CRA was designed to protect – access to loans for people with LMI and small businesses
- OCC and FDIC considered placing a limit on how much any single transaction could influence the bank rating, but ultimately decided against doing this

NPR Issues

How It Counts

- NPR also suggests adding a multiplier of two to most ways that banks currently pursue CRA community development, which could have an unintended consequence of allowing banks to cut community development in half and get the same credit. A scenario the NPR acknowledges and requests feedback on
- Very concerned with any approach that openly suggests that banks can pass without significant activity in half of their assessment areas
- Performance context appears to be redefined largely to create excuses for banks that do not hit these CRA ratios

NPR Issues

How It Counts

- OCC and FDIC apparently studied how banks would currently compare to the different thresholds, but did not release the results of that study. Without knowing this information, how can the public know whether these thresholds would encourage increased CRA activity? Or would just legitimize current levels?
- FDIC's own analysis of whether these thresholds would incur additional costs, meaning additional activity, admits that "it is difficult to accurately quantify these aspects of the proposed rule with the information currently available"
- How are we to know if we are increasing CRA activity then?

NPR Issues

How It Counts

- Proposal significantly devalues bank branches in LMI areas.
- A bank with 30% of their branches in LMI census tracts, which would be a relatively high percentage of branches in LMI census tracts, would only receive a branch score of .3 percentage points in the CRA evaluative measure, and banks need to get to 6 in order to pass
- This will likely lead to significant branch loss in LMI communities

ESTIMATED LOSS OF LENDING

due to the weakening of CRA in low- and moderate-income tracts across the country over five years

TOTAL LOSS OVER FIVE YEARS

$52 Billion
to
$105 Billion

HOME MORTGAGE LENDING LOSS

$44 Billion
to
$89 Billion

SMALL BUSINESS LENDING LOSS

$8 Billion
to
$16 Billion

Ways to Make the CRA Stronger

- Race – CRA exams are color blind, even though the CRA was passed largely to address race based discrimination
- Community Benefits Agreements – regulators currently ignore community benefits agreements that financial institutions enter into with community groups

What Can You Do?

- Need to generate as many comments as possible that reject the unhelpful proposals in the NPR, and advance an agenda for strengthening the CRA
- NCRC has developed our #TreasureCRA page that has additional detail, resources to help you comment, as well as for encouraging others to do so