FedFin Client Report

Tuesday, May 26, 2020

CRA Reform: So Far More Strategic Flexibility Than Binding Substance

Client Report: **CRA28**

Executive Summary

In this report, we expand our initial analysis of the CRA rule finalized by the OCC shortly before Comptroller Otting's departure. This report is in lieu of an in-depth analysis in our *Financial Services Management* format because we do not think the rule as finalized will be practically implemented by most national banks due to delayed timelines, many outstanding questions set for future OCC guidance that may or may not come, legal challenge, and overarching political uncertainty. However, the final rule nonetheless has implications for strategic planning, most importantly for national-bank/federal-thrift branch applications, and new charter applicants able now to file CRA plans likely to be more consistent with innovative and/or fintech-focused charters. This may to some degree increase interest in the OCC's special-purpose charter (see FSM Report **FINTECH20**), but broader market considerations and continuing Fed opposition to payment-system access will generally prevail. The Fed will continue to use its own approach to CRA to assess industry M&A and the CRA rule has no direct impact on ILC applications (see FSM Report **ILC14**) because the FDIC did not also issue it. A detailed analysis of the proposal may be found at FSM Report **CRA25**.

Analysis

Much in the rule remains to be clarified in subsequent OCC statements or guidance and many banks would not come under it for several years even if, as small entities, they elected to do so. We thus believe that the qualitative aspects of the final rule and certain key definitions are the best guide to near-term OCC considerations. These include:

- The final rule makes it considerably easier to obtain CRA credit outside assessment areas. Banks with limited physical footprints (e.g., web-focused banks partnering with fintech) will now be judged more broadly to encourage CRA-focused activities, making it easier for loans, investments, and services to accomplish both CRA and strategic objectives. Internet banks protested aspects of the NPR on grounds that it would require undue assessment of community needs outside headquarters locations, and the OCC thus made the final framework more flexible. New retail-oriented banks that do not seek FDIC insurance could thus more quickly gain national charters.

Federal Financial Analytics, Inc.
2101 L Street, NW – Suite 300, Washington, D.C. 20037
Phone (202) 589-0880
E-mail: info@fedfin.com www.fedfin.com

- All OCC-regulated banks will gain CRA credit if they enter under-served markets considered "CRA deserts," defined generously to include areas with innovation and infrastructure problems as well as those with under-served LMI communities. The complexity of the desert description may, however, discourage use of this option.
- CRA-related pressure to reduce mortgage securitization in favor of portfolio lending has been removed. Securitization via FHA and the GSEs will thus continue as dictated by the overall U.S. mortgage market's restructuring in the wake of the pandemic without the added impetus of CRA regulatory considerations.
- Affiliate activities would not count for CRA unless funded by the bank itself. This limits, but does not entirely preclude, consideration of parent-company activities such as those in affiliated mortgage or finance companies. As a result, CRA considerations – a key political influence on M&A – would support consolidation even though the Fed's own CRA standards would not be as forthcoming. OCC-approved branch applications could also proceed more quickly and with less controversy.
- Activities ranging from small-dollar lending to micro-finance now clearly qualify even if not directly conducted in an LMI census tract. Consistent with the revised treatment recognizing mortgages that are securitized, the final rule also provides credit for qualifying retail loans even if these are subsequently sold into the secondary market.

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