Center for Responsible Lending

OCC's Community Reinvestment Act Rule Harms Low- and Moderate-Income Communities and Communities of Color

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On May 20, 2020, the Office of the Comptroller of the Currency (OCC) acted alone in issuing a structurally flawed final rule on the Community Reinvestment Act (CRA) that weakens the CRA and will harm low- and moderate-income (LMI) communities and communities of color. Rather than postpone rulemaking to focus on the devastating economic crisis caused by the COVID-19 health pandemic, the OCC issued the rule a mere six weeks after the closing of the comment period on its proposed rule despite broad requests for delay from community groups, civil rights and consumer organizations, and industry. The OCC received over 7,400 comments on the rule and acknowledged that most of the comments disagreed with the proposal's approach, but decided to side with the minority of comments in support of the proposed rule. Unfortunately, the OCC's rule will harm the communities most adversely affected by the current crisis, including many families that were hardest hit by the Great Recession and have yet to recover.

The OCC should scrap the final rule and work with the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve Board to achieve an interagency rule that strengthens the CRA and adheres to its statutory mission.

- The OCC, FDIC, and Federal Reserve Board are each responsible for CRA compliance among the banks they regulate. The lack of interagency consensus around CRA compliance and enforcement complicates both the job of serving LMI communities and the already complex system of CRA oversight.

The new evaluation measure is overly simplistic, fails to ensure that local banking needs are met, and sanctions bank redlining.

- The rule overvalues the dollar amount of CRA activities in comparison to the quality of such activities and allows banks to earn more credit for easier and larger investments in communities from which they can get the highest return. Indeed, the rule permits banks to ignore 20% of their assessment areas and still pass, resulting in unchecked neighborhood disinvestment and redlining.
- The rule requires the agencies to publish periodically a non-exhaustive, illustrative list of examples of qualifying activities for CRA credit. The included activities are vast, resulting in CRA credit for activities and investments the bank would have made anyway for profit; this is likely to incentivize lackluster projects that are not targeted to LMI communities. In addition, because of the per se qualification of activities, no data will be collected to understand how well the various activities, and the proposed rule overall, impact LMI households and communities of color.
- The final rule does defer establishing thresholds for grading banks' CRA performance and delineating banks' deposit-based assessment areas until the OCC assesses improved data required by the final rule. However, the structural failings of the approach are unchanged.

The rule disincentives investment in LMI neighborhoods and communities of color.

- The rule incentivizes activities and investments that do not "primarily" benefit LMI communities, such as large-scale infrastructure projects. Estimating such projects' impact on LMI neighborhoods is difficult and thus will likely divest funds away from smaller scale, yet impactful community development activities. Rather, the rule should incentivize responsiveness to local needs.
- The weight of the retail lending test has been reduced to a pass-fail analysis that counts less in each assessment area and for the whole exam. This reduced weight will likely mean lower levels of retail lending in LMI communities.
- The rule disregards the importance of retail services. Furthermore, the number of retail branches in LMI communities counts less under the new metric, which will likely lead to the closing of branches in these communities and reduced lending and investments in communities that are already credit starved.

Banks will have less public and supervisory accountability.

- Despite emphasizing the importance of public comments on a local community's needs, it is unclear how such comments will be considered, particularly in light of what will likely be a less transparent exam. And instead of evaluations every two to three years, banks receiving a rating of Outstanding will be evaluated every five years.