

## Treasury Offers Roadmap to CRA Reform

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The CRA was put in place over 42 years ago and bears the heavy hand of the woeful history of redlining upon any attempt to change it. But, it is long overdue for a rethink, especially in light of the major changes that have taken place in the banking sector, technology and society since then and the growing sense that it is no longer serving the policy purposes and the communities it was meant to serve.

In 1977, interstate banking was prohibited by law in virtually all states, and the US banking market was made of a series of state, county and city level markets. Technology that did not exist includes: the fax machine, the ATM machine, email, the personal computer, mobile phones and the internet. One of the co-authors is old enough to remember the mad dash on Friday evening to the bank with a paper pay check to wait in a long line of others also depositing paychecks. Failing to make it to the bank on time meant having no cash. The concept of direct deposit of paychecks did not exist. Loans were only available from the local bank with which one had a deposit account.

After months of signaling that it would do so, the Treasury Department has [recommended](#) changes to how the banking agencies ought to evaluate whether banking organizations are meeting their obligations under the Community Reinvestment Act. The Treasury's recommendations focus on four key areas:

1. Updating geographic assessment areas to better align with modern banking trends driven by changes in technology and consumer behavior;
2. Improving clarity and flexibility for CRA performance evaluations, particularly by having more transparent criteria;
3. Improving the timeliness of CRA performance evaluations; and
4. Re-evaluating penalties for nonperformance to better incentivize CRA performance

These recommendations would build on recent OCC revisions.

1. Assessment Areas. One of the drivers for the recommendations is that the current examination process does not account for the shift to more geographically dispersed collection of deposits and the ability to make loans over the internet. The CRA requires that banks are evaluated based on CRA compliance within one or more “assessment areas,” which are largely determined by geographic considerations—originally the physical location of branches and later expanded to ATMs. Because the lifting of the prohibitions on interstate banking combined with the rise of digital technology has meant that both customers and banks have become less constrained by physical geography in the means by which a bank may accept deposits or do substantial business, the Treasury recommends expanding the framework for defining CRA assessment areas to include the communities that banks serve beyond their physical footprints.
2. Examination Clarity. The CRA evaluation process is administered by multiple banking regulators, each of which issues different examination guidance, which is applied by different examiners. Additionally, changes to CRA policies and procedures are often applied retroactively to assessment periods. In response, the Treasury recommends that regulators adopt more consistent and predictable standards for CRA-eligible activities and that the “actual ‘measurement’ of CRA activity, like other regulatory standards such as liquidity, capital and leverage” should be reportable in a clear and transparent manner.
3. Examination Process. The Treasury also pointed out that the use of clearer and quantitative metrics could also address the problem-area of improving the timeliness of CRA performance evaluations. Banks often have dated CRA ratings due to extended and inconsistent periods of time between evaluations—there are instances of banks having received results of CRA examinations years after the exam period ended. To address this problem, the Treasury recommends standardizing examination schedules between regulators and suggests that once more quantitative assessment metrics are established, banks will have more certainty about what are CRA-eligible activities and be better positioned to give regular updates on CRA activities to regulators and the public.

4. Performance. Building on the OCC's revisions to its examination policies in late 2017, the Treasury has recommended that the other regulators responsible for CRA examinations, the FDIC and FRB, also establish policies that are consistent with the OCC in two key areas.
  - First, the Treasury Department recommends that the regulators adopt uniform guidance to consider the OCC's new policy of whether there is a logical nexus between discriminatory or illegal credit practices and a bank's CRA rating, while taking into account remedial measures taken by the bank.
  - Second, the Treasury recommends that the FDIC and FRB follow the OCC's lead with respect to banks with unsatisfactory CRA ratings. Typically, unsatisfactory ratings lead to automatic denials of applications for new branches and enhanced scrutiny on applications for other expansion activities even though the law does not have explicit penalties. While these banks should continue to receive enhanced scrutiny, the Treasury recommends that all three regulators follow the OCC's more recent approach of approving new applications for deposit facilities made by banks with unsatisfactory CRA ratings if the expansion would significantly further the specific goals of the CRA.

Treasury's recommendations only cover changes that can be made by the agencies at a regulatory level and do not contemplate changes to the statute itself, which would require Congressional action, perhaps in an implicit recognition that it would be too difficult a political battle. For example, the Treasury did not recommend expanding the CRA to cover non-banks, like credit unions, mortgage companies or online lenders, while at the same time acknowledging the growth in non-bank loan origination. Nor did the Treasury address the possibility of creating explicit penalties for non-compliance, which could also require legislative change.

The Treasury Department's memo offers a roadmap to furthering the goals of the CRA by modernizing and improving clarity and predictability in the CRA examination process. Now we need to see how the banking regulators will use that map and where they will take the CRA. Even these changes are likely to unleash a stakeholder battle, within the banking sector itself, as well as between the banking sector and community groups. It is to be hoped that Treasury's decision to include many in the banking sector and in community group in the process that led up to the

report might lead to a rare instance of support for modernization of a creaky system to repoint it to achieve its original, and laudable, policy goals.

*Law Clerk Tyler X. Senackerib contributed to this post.*