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Insights

Community Reinvestment Act Proposed Rulemaking Update

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On December 12, 2019, the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") (together, the "Agencies") issued a joint notice on proposed rulemaking and a request for comment (collectively, the "Proposed Rule") on proposed updates to their regulations.[1]

The Proposed Rule expands those activities that qualify for CRA credit. Under the current CRA regulations, retail banking and community banking activities qualify for CRA credit. The Proposed Rule would expand those activities to include loans and investments in Indian country, along with retail loans to low and moderate income ("LMI") individuals, minority depository institutions ("MDIs"), and community development activity that supports qualified opportunity funds that benefit LMI qualified opportunity zones, and increases to $2 million the size of qualifying loans to small businesses and small farms. To provide banks with greater clarity of which activities meet the requirements, the Agencies intend to publish a non-exhaustive, illustrative list of qualifying examples.

The Proposed Rule also expands the locations where banks can earn CRA credit. Under the current regulatory scheme, banks must conduct qualified CRA activities in their "assessment area," based on the bank's geographic location. The Proposed Rule would allow banks to expand their "assessment areas" to include both the geographic location and areas where a majority of a bank's deposits are collected. Thus, banks will receive credit for qualifying CRA activities in facility-based areas and deposit-based areas.

Finally, the Proposed Rule presents new general performance standards that create a more transparent, objective process to calculate a bank's CRA rating. Under the Proposed Rule, the Agencies will assess the number of qualified retail loans to LMI individuals, small businesses, small farms, and the impact of those qualifying activities related to the bank's deposits. The Agencies will also publish benchmarks required to achieve certain ratings, along with equations used by examiners when calculating a bank's CRA rating. Banks will also be able to receive "pre-approval" from the Agencies for CRA projects submitted in advance. Further, to avoid imposing heavy financial burdens associated with the new compliance requirements, small banks with assets of $500 million or less would be permitted to elect to continue to use the existing CRA compliance standards.

Although the Proposed Rule seeks to simplify the CRA rating-system, the Federal Reserve Bank did not join the FDIC and the OCC in the publication of the proposed rule. Accordingly, banks should expect further changes before any updates to the CRA are complete. Comments to the proposal must be submitted to the Agencies within 60 days of the publication the proposed rules in the Federal Register. Krieg DeVault's

Financial Institutions attorneys are monitoring the rulemaking process, and will provide further information in the coming months as commentary from the various stakeholders in this issue is filed.

1 Passed by Congress in 1977, the CRA requires community banks to invest money in their local communities, including low and moderate income neighborhoods. The rules implementing the CRA have not been modified since 1995.