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Treasury issues recommendations for modernizing the CRA

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The U.S. Department of the Treasury has issued a memorandum in which it makes recommendations to modernize the Community Reinvestment Act (CRA). The memorandum was directed to the primary CRA regulators, consisting of the OCC, the Federal Reserve, and the FDIC.

In preparing the memo, Treasury obtained input from the primary CRA regulators and close to 100 stakeholders representing community and consumer advocates, academics and think tanks, financial institutions, trade associations, and law firms, among others. The organizations and individuals who provided input to Treasury are listed in Appendix B to the memo.

Treasury began its memo with the observation that regulatory and performance expectations under the CRA have not kept pace with the substantial organizational and technological change experienced by the U.S. banking industry since the CRA's enactment in 1977. Treasury believes changes are needed to the CRA's administration for the CRA to achieve its intended purpose in an environment that now includes interstate banking, mortgage securitization, and internet and mobile banking. According to Treasury, its memo focuses on "regulatory and administrative changes that are consistent with the original intent of CRA, including common sense reforms that reduce the complexity and burden on banks, regulators, and community advocates."

Treasury's recommendations include:

- Revisiting the approach for determining assessment areas to include not only areas where a bank is physically located, but also low- and moderate-income (LMI) communities outside of the bank's physical footprint and in areas where the bank accepts deposits and does substantial business. Treasury believes this framework would allow banks to receive credit for CRA activity within their branch and deposit-taking footprint, and also for investments in other LMI communities and identified areas.

- Increasing clarity and flexibility in examination procedures, including:
  - Making changes to CRA eligibility determinations to: expand the types of loans, investments, and services eligible for CRA credit; establish clearer standards for eligibility for CRA credit, with greater consistency and predictability across each of the regulators; and simplify record-keeping procedures designed to make eligibility updates more regular and timely
  - In connection with revisiting CRA's definition of assessment area, considering reforms to the process for establishing a bank's performance context so as to make such determinations less subjective and more consistent
  - Establishing clear criteria for grading CRA loans, investments, and services so as to use less subjective evaluation techniques and make the actual "measurement" of CRA activity, like other regulatory standards, reportable in a clear and transparent manner
  - Establishing a modernized, forward-looking approach to the Service Test used in CRA examinations of large banks to recognize the reduced relevance of physical branches due to the ongoing adoption of alternative delivery channels

- Improving the examination process, including:
  - Standardizing CRA examination schedules
  - Making changes concerning downgrades for violations of consumer protection laws, such as:
  - Adopting uniform guidance that considers whether there is a logical nexus between a bank's CRA rating and evidence of discriminatory or illegal practices in the bank's CRA lending activities while also giving consideration to the bank's remediation efforts
  - Not delaying CRA performance evaluations due to pending consumer protection law investigations or enforcement actions
  - Having the FDIC and Federal Reserve adopt policies and procedures that are generally aligned with changes adopted by the OCC in November 2017 for evaluating various applications by banks with less than satisfactory CRA ratings
  - Clarifying that a community benefit plan is just one tool for demonstrating how a bank will meet community convenience and needs but is not required
  - Allowing banks to store the public file required by the CRA electronically on the bank's website, with access to a physical copy of such information provided upon request
- Taking various other steps, including:
  - Giving community development loans the same annual consideration as community development investments
  - Evaluating the approach used for bank affiliates to ensure that performance evaluations accurately reflect the overall bank's CRA-eligible activity

- Reviewing how certain public welfare investments are treated in a Comprehensive Capital Analysis and Review
- Monitoring the impact of the emergence of nonbanks

Since the CRA is implemented through regulations issued by the OCC, Federal Reserve, and FDIC for the banks they supervise, the ball is now in those agencies' courts to make specific regulatory proposals either individually or collectively.

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