

# AMERICAN BANKER

## Should consumer protection failures play a bigger role in CRA grades?

Brendan Pedersen and Neil Haggerty

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WASHINGTON — The recent Community Reinvestment Act rating downgrade for USAA Federal Savings Bank highlights a potential strategy backed by consumer advocates for reforming the decades-old law.

The CRA mostly encourages banks to serve lower-income communities in their market to combat redlining. By contrast, other laws focus more directly on punishing banks for unfair practices, fair-lending violations or harming a protected class.

But USAA Federal Savings' [CRA evaluation](#) — and other high-profile downgrades in recent years — show how regulators frequently dock a bank's CRA rating if the institution has consumer compliance issues. In USAA's case, the Office of the Comptroller of the Currency cited a combined 600 violations of two laws that protect military service members.

“This is an important warning indication that the agencies, including the OCC, about which there are sometimes questions, tend to take illegal credit practices and fair-lending violations fully into CRA account and likely downgrade as a result,” said Karen Shaw Petrou, managing partner at Federal Financial Analytics, of the San Antonio bank's downgrade.

Although most observers see the CRA and consumer protection laws as complementary, the Federal Reserve Board — one of the agencies tasked with modernizing CRA policy — indicated that it is considering changes to make the connection between community reinvestment and consumer protection more explicit in its scoring framework.

In a [CRA policy outline](#) released in September, the Fed said one of its chief priorities for reform would be to “recognize that CRA and fair lending responsibilities are mutually reinforcing.”

Community reinvestment advocates say a more explicit connection between consumer compliance errors and CRA scores would rightly raise the bar for passing an exam that they say has become too easy.

“Our feeling is that 98% of banks are not doing a satisfactory or better job of serving communities,” said Jesse Van Tol, CEO of the National Community Reinvestment Coalition. “You would expect to see more failing grades.”

In a 2019 CRA evaluation made public earlier this month, the OCC downgraded USAA Federal Savings' CRA score from “Satisfactory” to “Needs to Improve.” Examiners found evidence that the \$100 billion-asset bank had violated the Servicemembers Civil Relief Act 546 times and evidence of 54 additional violations of the Military Lending Act. The bank's compliance issues had previously resulted in an [OCC consent order](#) last year. The OCC separately announced an \$85 million fine against USAA last week.

"We are committed to serving every USAA member with excellence and in accordance with all applicable laws and regulations," the bank said in a statement. "The rating by the OCC does not reflect our ongoing commitment to lend to and invest in local low-and-moderate-income communities. Our mission calls us to help ensure the financial security of all our members. We have higher expectations of ourselves and are focused on restoring our CRA ratings to previous levels."

CRA downgrades for larger institutions with household names are somewhat rare, but they tend to get noticed more than the CRA scores for community banks.

Other high-profile downgrades involved regulators docking a bank for compliance with consumer-focused laws or regulations.

Downgrades for two JPMorgan Chase subsidiaries publicized in 2012 and 2013 cited "illegal credit practices" having to do with the Federal Trade Commission Act's prohibition of "unfair and deceptive acts and practices." A 2016 downgrade for Regions Financial was tied to violations of rules requiring customers' consent to opt in to overdraft protection. Wells Fargo's CRA downgrade disclosed in 2017 cited a host of consumer protection issues that the OCC said showed "evidence of discriminatory and illegal credit practices."

Petrou said that the USAA downgrade may not affect the ongoing CRA reform process, since exam ratings already account for "illegal credit practices." But she added that it serves as a stark reminder to the industry that the agencies consider more than the level of community investments and illustrates the potential of the CRA to punish banks accused of harming a protected class.

The country has seen a "very significant change of heart about systemic racism, which includes all of these issues of credit protection and looking out for underserved communities," Petrou said. "Service members are not synonymous with minorities or low-income people, but they are a special community that is actually disproportionately minority."

Some analysts said the CRA has always stayed distinct from fair-lending and consumer protection laws.

"As examination statutes go, fair-lending protections and the Community Reinvestment Act — they're complementary, but different, statutes," said V. Gerard Comizio, associate director of the Business Law Program at American University.

"Technically, the CRA targets low-to-moderate-income communities and combats redlining by targeting those communities by income," Comizio said. "Do those communities typically have substantial minority populations? Yes. That's when the fair-lending considerations come into play."

Others said that conflating CRA obligations with other kinds of consumer protection requirements would be a mistake.

"The CRA is an affirmative regulation that requires institutions to lend where they have offices and where they collect deposits," said Diego Zuluaga, associate director of financial regulation studies at Cato Institute. In the case of USAA's downgrade, "it just happens to have another regulation where it says, if you commit consumer protection violations, that shall be taken into account into your CRA rating."

Under the current framework, CRA examiners take a narrow view when to consider compliance matters. “Generally, the OCC considers lowering the composite or component performance test rating of a bank only if the evidence of discriminatory or illegal credit practices directly relates to the institution’s CRA lending activities,” the OCC wrote in a bulletin in 2018.

But the Fed's advance notice of proposed rulemaking suggested the central bank would support a deeper connection between a bank's consumer compliance record and its CRA score.

"All consumer compliance violations would be considered during a CRA examination, although some might not lead to a CRA rating downgrade," the Fed's outline said.

In a modernized framework, regulators "could determine the effect of evidence of discrimination and other illegal credit practices on a bank’s assigned CRA rating based on the root cause or causes of any violations of law, the severity of any consumer harm resulting from violations, the duration of time over which the violations occurred, and the pervasiveness of the violations."

The Fed added that it is considering amending its regulation implementing CRA "to include violations of the Military Lending Act, the Servicemembers Civil Relief Act, as well as the prohibition against unfair, deceptive, or abusive acts or practices."

"The Board views violations of these laws as inconsistent with helping to meet community credit needs," the agency said in its ANPR. "It is important to note that this does not represent a substantive change to current examination procedures, since the included list of applicable laws, rules, and regulations is illustrative, and not exhaustive, and violations of these laws and regulations are currently considered in finalizing a bank’s CRA rating. Nonetheless, the Board believes adding these laws to the list would provide greater clarity."

The ANPR included a question for comment about whether the Fed's rule should specify that the MLA, SCRA and UDAAP "are considered when reviewing discriminatory or other illegal credit practices to determine CRA ratings."

That question added: "Are there other laws or practices that the Board should take into account in assessing evidence of discriminatory or other illegal credit practices?"

CRA reform continues to be somewhat of a moving target. The OCC finalized a rule in May without the backing of the Fed and the Federal Deposit Insurance Corp., and it is unclear if the three agencies will agree to a joint framework.

But consumer groups see the Fed's stance as an opening.

“This question of, to what extent does fair-lending factor into CRA, is an open question,” said Van Tol. “There’s a lot in the Fed’s [notice] about the intersection of fair-lending violations and CRA and bringing race into CRA from a fair-lending perspective."

Others said while it is appropriate for agencies to use the CRA exam to highlight glaring consumer compliance problems, the regulators shouldn't necessarily raise the bar for all institutions going through the CRA process.

“When we adopted the current CRA framework in the late nineties, many banks struggled to implement it; we did have more ‘needs to improve’ scores initially. Then, they figured it out and figured out how to do it better,” said Karen Tucker, a CRA consultant and former bank examiner

with the OCC. “Some argue that the bar has been lowered and once that is done, it’s hard to bring it back up. But on the whole, most banks are doing well, and they deserve to pass.”

The OCC has said its reform of the CRA does not make major changes to the rules surrounding when and how discriminatory and illegal credit practices should factor into a CRA review.

“The OCC rule finalized in May does not change the agency’s authority or obligation to fight discrimination and other illegal credit practices, nor does it change the role of evidence of discrimination or other illegal credit practices in assigning CRA ratings,” said OCC spokesperson Bryan Hubbard.

But even if the regulators' new framework doesn't usher in a new way of balancing CRA scoring with consumer protections, banks may still face a tougher standard for their compliance performance through the CRA process, Petrou said.

"I think you are just seeing in general from the OCC ... the determination to do what the agencies in all prior administrations were reluctant to use, which is CRA downgrades as an additional tool to sanction illegal credit practices," Petrou said. "I think any institution should expect to see this coming on a go-forward basis."