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Will regulators ever find common ground on CRA reform?

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More than two years after efforts began to modernize enforcement of the Community Reinvestment Act, regulators appear as divided as ever on how to proceed.

On one side are the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corp., which jointly issued a proposal last month, while on the other is the Federal Reserve Board, which appears to have significant reservations about the plan. Those objections were first detailed this week by Fed Gov. Lael

Brainard, who delivered an indirect but sharp critique of several elements of the proposal. For now, the two sides appear far apart.

"Clearly, these are very different concepts," said Buzz Roberts, CEO of the National Association of Affordable Housing Lenders. "The Fed's approach is to renovate CRA, and the OCC and FDIC want to demolish the old framework and rebuild it."

One of the most important differences appears to center around the proposed concept of a single ratio to measure compliance. The plan would take several existing separate tests related to retail lending, community development and more, ultimately combining those scores into a single final ratio.

Such an idea appears to lie at the heart of the OCC and FDIC plan and is consistent with Comptroller Joseph Otting's call for a simple measuring stick so institutions can know whether they are complying with the law.

But Brainard suggested that approach was a mistake.

"Dividing evaluations into separate retail and community development tests is important," Brainard said in her speech. "In contrast, an approach that combines all activity together runs the risk of encouraging some institutions to meet expectations primarily through a few large community development loans or investments rather than meeting local needs."

Analysts say that the best chance for the OCC and FDIC to get the Fed on board may come at the expense of the ratio-based CRA evaluation. In her speech, Brainard was ultimately "talking about a need for tailoring, keeping retail lending and community development tests separate, and evaluating larger institutions differently," said Diego Zuluaga, an analyst at the Cato Institute's

Center for Monetary and Financial Alternatives. "Those are all incremental improvements to the existing proposal."

Zuluaga said that despite the appearances of major differences between the two sides, there appears to be room for compromise.

"There's a path to joint resolution," Zuluaga said. "The substantive modifications that Brainard and the Fed may want are the sort that could be incorporated - maybe not in full, but at least in part."

Brainard also seemed to oppose a part of the OCC-FDIC proposal that emphasizes CRA loan dollar value as a measurement versus loan volume and quantitative analysis. She said that too much emphasis on the dollar value in those metrics could distort the relative value of some forms of CRA lending.

"The value of retail services and community development services to a local community do not lend themselves easily to a monetary value metric comparable to the monetary value of loans and investments," she said. Industry representatives said that, too, is a big hurdle for the agencies to reach agreement.

"It's a fundamentally different approach to have the rating based on aggregate dollar volume on a balance sheet versus a more disaggregated set of lending distribution tests with separate tests for community development and service activities," Roberts said. "The Fed is focused on volume - not on balance sheets, not in dollars. It's just fundamentally different and would be hard to reconcile."

But Otting has said that using dollars is the most objective approach to measuring CRA activity.

"The proposal would evaluate CRA performance more objectively by assessing what portion of a bank's retail lending is targeted to LMI individuals and areas as well as measuring the impact of that activity by comparing the value of a bank's CRA qualifying activity with its deposits in each assessment area and at the overall bank level," he said in a press release when the FDIC and OCC unveiled the proposal in December, using an abbreviation for low and moderate income.

Still, some said it's positive that the Fed is now talking publicly about its issues with that proposal.

"A lot of folks were concerned that the Fed was on the sideline, but that's clearly not the case," said Tim Burniston, a regulatory strategist at Wolters Kluwer. "Brainard clearly articulated a very understandable conceptual approach to CRA modernization that needs to be thoughtfully considered by the industry, along with the notice of proposed rulemaking put forward by the FDIC and OCC."

The OCC declined to comment for this article, while an FDIC spokesperson said the agency "appreciates the contributions of the Federal Reserve throughout the extensive discussions that were incorporated heavily in the recently released proposal. We look forward to continuing those conversations as the process continues."

It remains unclear which vision of CRA reform bankers would prefer. Some argue the OCC and FDIC proposal would make it easier for banks to comply with CRA. But it would also involve new costs because of changes to existing lending systems.

"It would be such a fundamental change from the past 25 years," Roberts said. "They'll all need to have these new systems and put them in place. It's a lot of work and a lot of money, and they'll have to figure out whether it's worth the cost and effort."

The Fed's approach, by contrast, may be more similar to how the current framework works. Yet without a more detailed proposal by the Fed, it may be difficult for bankers to embrace it wholeheartedly while the FDIC-OCC proposal looms large and close.

However, there's also a risk in embracing a framework that Democratic lawmakers and community groups say could gut CRA lending. If regulators manage to publish a final CRA rule this year but its controversy persists, it could be thrown out by a new administration come 2021.

"It's a once-in-a-generation opportunity," said David Dworkin, CEO of the National Housing Conference.