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HUD

HUD's Disparate Impact Rule

By Nancy Castiglione, CRCM

The Department of Housing and Urban Development (HUD) has issued its updated disparate impact rule as an amendment to its Fair Housing Regulation 24 CFR 100 (Discriminatory Conduct Under the Fair Housing Act). The updated rule amends the HUD disparate impact standard under the Fair Housing Act (FHA) primarily in response to the 2015 Supreme Court decision in Texas Department of Housing and Community Affairs v Inclusive Communities Project, Inc.

The amended rule is effective October 26, 2020. HUD does not move quickly. After the 2015 Supreme Court ruling, the journey for the rule change began in 2017 with an initial general public request for comments in which the issue was first raised for public consideration. Proposed rulemakings were subsequently published by HUD in 2018 and 2019 for changes to the HUD rule.

There has been considerable opposition to the changes that were proposed (and finalized) to the rule, mostly by community and civil rights organizations, who contended that the disparate impact standard has been weakened. HUD maintains that the changes have been made to clarify the standards and better align the rule standards with the 2015 Supreme Court ruling, which postdates the previous version of the HUD rule, which was last revised in 2013.

Basic Disparate Impact or Effects Test

The highly simplistic basic legal theory behind a case of disparate impact discrimination (discriminatory effect) is one in which:

1. A neutral policy or practice has a disproportionately negative impact on a protected class of persons
2. The policy or practice is defended as being justified by "business necessity"
3. Even if the policy or practice is justified by business necessity, if the nondiscriminatory business interests could be served by an alternative policy or practice that has a less discriminatory effect, the policy or practice would be deemed in violation of the Fair Housing Act

(continued on back page)

ActionSteps

- ✓ **Review any policies, procedures, and training materials that cover Fair Housing Act and fair lending to determine if any changes are warranted to coverage of background or historical information about types of discrimination, particularly disparate impact.**
- ✓ **Review the new HUD disparate impact rule with inside counsel and/or external counsel to ensure that they are aware of the changes.**

(continued from front page)

Changes to the HUD Disparate Impact Rule

HUD is making substantial changes to the disparate impact rule, which includes adding more detailed requirements for burden of proof to support a claim of disparate impact and to defend against one.

In a very general, non-lawyer-like description, the new HUD rule contains the following burdens of proof that must be established to support an allegation of discriminatory effect:

1. The policy or practice is arbitrary, artificial and unnecessary to achieve a valid interest or legitimate objective;

2. The policy or practice has a disproportionately adverse effect on members of a protected group;

3. There is a robust causal link (direct link) between the policy or practice and the adverse effect on members of the protected group;

4. The alleged disparity caused by the policy or practice is significant; and

5. There is a direct relation between the alleged injury and the conduct alleged.

All five elements of burden of proof are required.

Most of the terms used in the list are not defined in the rule. Key terms such as "arbitrary," "artificial," "valid interest," "significant," and "disproportionately" are not defined other than to state the obvious, which is that an interest that is intentionally discriminatory is not a valid interest. HUD believes that it is unnecessary and unwise to define terms and would prefer to leave specific meaning to individual circumstances to determine (and in some cases, individual courts).

The defendant has defenses available to an allegation of discriminatory effect. The defendant can argue that the policy or practice is not arbitrary, artificial and unnecessary because it advances a valid interest or interests of the defendant. Again, "valid interest" is ambiguous and does not have a specific meaning outside of any specific set of facts in a specific set of circumstances. Alternatively, the defendant could defend a disparate impact allegation by showing that a policy or practice was reasonably necessary to comply with a third party requirement such as a Federal, state or local law, a binding court or administrative order, or a binding or controlling regulatory or government order or opinion.

Finally, if a defendant successfully makes the case that its policy or practice is not arbitrary, artificial and unnecessary because it advances a valid interest, the next step is for the plaintiff to prove by a preponderance of the evidence that either: 1) the defendant's interest(s) is not valid; or 2) there is a less discriminatory policy or practice that would serve the identified interest(s) in an equally effective manner without imposing materially greater costs on or burdens for the defendant. This burden is substantially higher than the previous 2013 rule, which only required the plaintiff to show that the challenged policy or practice could be served by another policy or practice that has a less discriminatory effect, without addressing costs or burdens on the defendant. However, costs or burdens must be materially greater to be of concern, whatever "materially" means.

The details of the disparate impact rule become important in the event of a legal challenge to a policy or practice that could have a discriminatory effect on members of a protected class under the FHA. The bottom line is that it requires a higher standard of proof to bring an allegation of disparate impact discrimination under the FHA and the defenses appear to be more generous. Legal challenges will certainly be forthcoming to further define the impact of this rule.

ComplianceNotes

Real Estate Appraisals Under COVID

The Office of the Comptroller of the Currency, Federal Reserve Board, and the Federal Deposit Insurance Corporation finalized their interim rule that was originally issued on April 17, 2020, which allows regulated banks to delay obtaining appraisals or evaluations for certain real estate-secured loans for up to 120 days after loan closing. The final rule (as with the interim rule) allows institutions to defer for up to 120 days after loan closing obtaining an appraisal or evaluation for a commercial or residential loan secured by real estate, other than for a transaction for acquisition, development and construction of real estate. The purpose of the rule is to alleviate the burden on institutions and their customers during the COVID-19 pandemic due to difficulties in obtaining timely appraisals and evaluations for loan closings. Instead of requiring an appraisal/evaluation be obtained prior to loan consummation, the exemption allows institutions to close a loan and then obtain the appraisal/evaluation within 120 days. The final rule is the same as the interim rule with one modification, which the addition of a definition of "transactions for acquisition, development and construction of real estate." The rule is effective until December 31, 2020 and applies to loans closed on or before that date.

CIP Exemption for Loans to Purchase Property and Casualty Insurance

The four federal banking agencies (OCC, FRB, FDIC and NCUA) along with the Financial Crimes Enforcement Network (FinCEN) have announced an order that grants an exemption for loans extended by regulated institutions and their subsidiaries for the purchase of property and casualty insurance from the requirements of the Customer

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Action Training

Customer Identification Program (CIP) Training

CIP training should be a part of a bank's regular training program. Not only is it a regulatory expectation, but it is necessary because it is a function that is highly susceptible to errors and confusion unless it is regularly reinforced and highlighted through training.

The CIP is an important component of an institution's Bank Secrecy Act/Anti-Money Laundering compliance program. The CIP must be incorporated into the institution's BSA/AML program. The interagency BSA/AML examination manual describes the regulators' expectations for BSA/AML training and expects that CIP is adequately incorporated into that training. Training should:

- Be provided to applicable personnel
- Cover regulatory requirements, supervisory guidance, as well as the bank's internal policies and procedures
- Be tailored to the person's specific responsibilities
- Be conducted periodically
- Incorporate current regulatory developments and changes to internal policies and procedures

Because CIP is highly individualized to each institution, it needs an individualized approach to training. Standardized packaged training programs from third parties do not work well for CIP training, because they only provide general information about the regulatory provisions and do not cover the bank policies and procedures that are unique to each institution.

That said, what should a CIP training program look like? The training should be based on your institution's CIP policies and procedures and work from there. Starting with your CIP...

1. Identify your audience

- Who are your trainees?
- Don't forget to include senior management and the members of the board of directors. However, the training provided to them will be a high-level overview of the CIP and its purpose.
- Consider any third-party agents or service providers that collect or verify customer identification information in your training audience. Should they be included in your training or have you determined that they have received adequate training on your CIP requirements?

2. Training scope: Training scope will vary based on:

- New employees vs Existing employees (refresher training)
- Employees whose job function requires hands on application of CIP vs Employees with ancillary responsibilities associated with CIP

3. Determine delivery method

- How to deliver the training?
- Written materials, in-person training, videoconferencing, internet-based, train-the-trainer are some options

4. Training content: Your CIP forms the basis of the training

Training should cover:

- Who is a "customer" for purposes of your CIP
  How are existing customers handled? How are joint accounts treated? Are there different procedures for different types of customers (business vs consumer)? What types of activities are not covered by the CIP (i.e., when a noncustomer cashes a check)?
- What identification information is required to be collected at the time of opening an account
  Acceptable and unacceptable forms of identification and what steps should be taken if someone does not have acceptable identification or refuses to provide.
- The ID verification process that is required by your institution
  Including what steps would be required if the identity of the individual or entity cannot be verified.
- The Customer Notice
  An explanation of the purpose of the Notice, which explains why we "CIP" and where the requirement for obtaining and verifying customer ID information comes from. Background information about the history and purpose of the CIP will help employees answer questions from customers about the Notice.
- OFAC screening process and what to do and who to contact if there is a potential match to a name on the SDN List
- Importance of "Know Your Customer"
  Training should stress the importance of customer due diligence and enhanced due diligence processes that enable the institution (through the efforts of its employees) to know its customers and be able to identify suspicious activity, not only for regulatory monitoring purposes, but also for the safety and security of customers' account activity from fraud.
- Forms and platform documentation
  The forms and documents used in account opening and verification processes should be used in the training so that employees have the hands-on experience with how processes are applied.
- New developments and recent changes
  The current COVID-19 pandemic climate has affected everything, including how your institution opens new accounts. Recent regulatory advisories have also highlighted COVID-related scams that employees should be watching for as they open accounts and communicate with customers.
  If your institution offers financing for purchases of property or casualty insurance, a new exemption from the CIP rule applies as of October 5, 2020 (see Compliance Notes).

Don't forget to document the training. Keep a record of who attended the training and when it was held. Retain copies of the training materials used.

CRA

Fed Joins the CRA Bandwagon with Proposal

By Nancy Castiglione, CRCM

The Federal Reserve Board (FRB) has issued an Advance Notice of Proposed Rulemaking to amend Regulation BB, its Community Reinvestment Act regulation. Comments are due by February 16, 2021. The FRB is joining with the other banking regulatory agencies in a project to modernize the CRA regulations. However, each regulator is taking its own path to modernization. For the FRB, CRA modernization means:

- Updating the CRA regulation to reflect changes in banking since CRA was passed and regulations were last updated in 2005
- Making the regulation more adaptable to banks of different sizes and types
- Making the regulation more user friendly, which means increasing clarity, consistency ad transparency
- Improving the regulation's effectiveness in helping to meet community credit needs and promote community involvement

Assessment Area Delineation

Because the FRB is issuing an ANPR rather than a proposed regulation, there are few details and many questions. In some cases, multiple options are proposed. One area that the FRB is focusing its modernization efforts is the assessment area delineation. The FRB recognizes that some banks rely less heavily on a brick and mortar branch network and that electronic forms of banking expand a bank's community.

The FRB is considering changes to the facility-based assessment area form of delineation by tailoring the requirements to bank size. Large banks would be required to define their facility-based assessment area(s) to consist of a minimum of whole counties, whereas small banks would be permitted to use smaller subdivisions, such as municipalities or census tracts to define their assessment area(s). The FRB is also considering requiring banks of all sizes to include their Loan Production Offices in their assessment area delineation along with their branches and deposit-taking ATMs.

The FRB also wants to create alternative assessment area delineation approaches for certain large banks such an Internet banks and banks that engage in a considerable portion of their business beyond their branch-based assessment areas. These alternative delineation approaches would be either lending-based or deposit-based. An Internet bank could be allowed to designate a nationwide assessment area rather than an assessment area based on its main office physical location.

Bank Size

The performance standards would be based on a two-tier bank size stratification rather than the current three tiers. There would be two bank sizes: 1) small banks; and 2) large banks. The FRB is considering defining small banks as banks with assets below $750 million or below $1 billion, and large banks as those with assets above either of those asset levels. Either option increases the asset cutoff for small banks from the current level of $326 million. However, since the intermediate bank size would be eliminated, the large bank tier could include a larger number of institutions at either the $750 million or $1 billion asset level.

Performance Standards by Bank Size

The FRB is proposing a revised set of performance standards organized under a Retail Test and a Community Development Test, with two subtests under each, as follows:

Retail Test

- Retail Lending Subtest
- Retail Services Subtest

Community Development Test

- Community Development Financing Subtest
- Community Development Services Subtest

Banks would be evaluated under each subtest for each assessment area. Small banks would only be subject to the Retail Lending Subtest if they opt-in to the new metrics approach to performance evaluation. If they don't opt-in, they will continue to be evaluated based on the current performance standards, which is a qualitative approach and does not rely on metrics. The advantage of the new Retail Lending Subtest (according to the FRB) is that it eliminates or reduces the examiner discretion and inconsistency that many banks have asked for in CRA exams. Small banks can also choose to be evaluated under any of the other subtests as well.

The Retail Lending Subtest would provide for a basic retail lending screening based on a geographic distribution metric and a borrower distribution metric that would determine if the bank meets a basic "satisfactory" level of performance. Certain benchmarks would have to be met by the bank, such as minimum percentage of mortgage, consumer and small business loans in LMI census tracts to percentage of such loans in those census tracts by all lenders in the assessment area.

Large banks would be subject to all four subtests in all assessment areas. In addition to the Retail Lending Subtest, large banks would be subject to:

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Compliance **Calendar**

November

- The Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, FRB, National Credit Union Administration, and Farm Credit Administration are issuing for comment a proposal to revise, reorganize and update the Interagency Questions and Answers Regarding Flood Insurance. The revised Q&A incorporates guidance relating to the regulatory changes resulting from the 2012 Biggert-Waters Act and the 2014 Homeowner Flood Insurance Affordability Act. The proposal would also add new Q&As on topics such as renewal notices, required amount of insurance and detached structures. Comments are now due by November 3, 2020.

- The Financial Crimes Enforcement Network (FinCEN) is issuing an Advance Notice of Proposed Rulemaking to request public input on possible future amendments to its Anti-Money Laundering Compliance Program regulatory requirements. FinCEN is considering ways in which it can upgrade and modernize its AML compliance program expectations. FinCEN is requesting comment on whether it is appropriate for the agency to clearly define in its regulations a requirement for an "effective and reasonably designed" AML program. Conceivable, an effective and reasonably designed AML program would be a program that: 1) identifies, assesses, and reasonably mitigates the risks resulting from illicit financial activity consistent with both the institution's risk profile and relevant government-identified national AML priorities; 2) assures and monitors compliance with the BSA recordkeeping and reporting requirements; and 3) provides information with a high degree of usefulness to government authorities consistent with the institution's risk assessment and relevant government-identified national AML priorities. FinCEN is also requesting comment on the issue of whether there should be an explicit regulatory requirement for a risk assessment as a basis for an AML compliance program. Comments are due by November 16, 2020.

- The Federal Deposit Insurance Corporation (FDIC) is proposing to update and revise its Statement of Policy Regarding Minority Depository Institutions (MDIs). The policy statement, based on Section 308 of FIFREA, was last updated in 2002. Changes to the policy statement being considered include:1) clarification that technical assistance provided to minority depository institutions (MDIs) will not be viewed negatively when evaluating institution performance or assigning ratings; 2) expansion of FDIC's outreach to and regarding MDIs; 3) new provision stating that the FDIC staff will routinely solicit feedback from MDIs to assess the effectiveness of the FDIC's technical assistance, outreach and training/education; and 4) new policy section discussing examination considerations for MDIs. Comments are due on the updated statement of policy by November 24, 2020.

December

- The Bureau of Consumer Financial Protection (Bureau) issued a notice and request for information to obtain public input on continued opportunities for preventing credit discrimination, encouraging responsible innovation, promoting fair and nondiscriminatory access to credit under ECOA and Regulation B. The request for information is broad in scope and encourages the public to share their views on the topic of credit discrimination, including: 1) whether the Bureau should provide additional clarity on the disparate impact analysis under ECOA; 2) whether creditors should be encouraged to provide assistance or services in products in other languages to consumers who do not speak English; 3) should the Bureau provide creditors with guidance relating to affirmative advertising; 4) how should Regulation B be updated to be more supportive of small business borrowers, including women-owned and minority-owned businesses, and 5) what guidance should the Bureau provide to lenders who are starting to use artificial intelligence and other machine learning models in credit decision making. The deadline for comments is December 1, 2020.

In the Editor's Opinion

Do We Need Three Different CRA Regulations?

Now that the Federal Reserve Board has issued its own version (at least in proposed form) of a modernized Community Reinvestment Act Regulation, we have a CRA regulatory future that is more confused and fragmented than ever before. The FRB CRA regulation is added to the OCC and FDIC CRA regulations, each of which are (or could be) different.

Depending on the source of information, there are approximately 4,464 banks in the U.S. Of that total, the majority of them (2,998) are state nonmember banks supervised by the FDIC, 822 are national banks and supervised by the Office of the Comptroller of the Currency, and 644 are state member banks that are supervised by the FRB. For each type of bank, there will be a different CRA regulatory regime, if the train continues on the current track. Ever since CRA was enacted and regulations were issued and until recently, CRA has been regulated consistently under a uniform set of standards and rules.

Currently, the OCC is the only banking regulator that has issued a final CRA regulation. The FDIC issued a proposed CRA regulation in December 2019, along with the OCC, which departed company with the FDIC by issuing its own final rule in May 2020. The FDIC has not issued a final regulation. Moreover, the OCC's independent issuance of its final rule indicates the distance between the two agencies' rule approaches. The FRB just issued an advance notice of proposed rulemaking for updates to the CRA Regulation BB, with comments due by February 2021. (Generally, an agency will issue a proposed regulation after issuing an ANPR, which indicates that a final FRB CRA rule is not anticipated until later in 2021 at the earliest.) Right now, as the current CRA regulatory scheme stands, state nonmember and state member banks are subject to the same regulatory requirements and performance standards until the FRB or the FDIC issue final regulations. National banks are subject to the new OCC CRA Regulation on a phased-in schedule, with some portions of the new regulation and some portions of the old regulation applying as of October 1 and additional portions of the regulation delayed depending on the size of the bank until January 2023 or January 2024.

The entire CRA regulatory reform process is recalling many familiar issues that take us back many years. Issues like the need for level playing field among financial institutions and competition among regulators are not new but are certainly among the issues being pondered in connection with the regulators' approach to CRA reform. Banks that are subject to more stringent requirements or more complex standards compared to their peers yet are evaluated based on how well they perform in relation to those peers question the uneven playing field among institutions. Regulators may not fret overly about the added level of complexity in complying with CRA for holding companies with banks with different types of regulators. However, this too is an issue that should be considered.

One of the more significant issues in connection with the current CRA regulatory reform may be the level of future uncertainty over the direction the actions the regulators will take. Two of the regulators have only proposals (or ANPRs) for regulation changes. Their final regulations could look very different from the proposals. The November 2020 election may even spark changes in agency direction that impact existing efforts and plans for CRA reform.

The primary area of agreement among the three regulators seems to be that the CRA regulation needs to be modernized. The only point of disagreement is how. Like our politicians in Washington, there seems to be no ability to work together to accomplish the task of creating a uniform regulatory approach for the banking industry.

ComplianceNotes

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Identification Program (CIP) rules (USA PATRIOT Act Section 326). The exemption allows institutions to make loans to all types of customers for purchases of property and casualty insurance (premium finance loans) without having to comply with the identification collection and verification requirements of the CIP rules. A previous exemption has been in place since 2018, but it only applied to premium finance loans made to commercial customers.

The agencies note that the exemption does not apply to other types of insurance product financing, such as life insurance products. The order is effective as of issuance, which was October 5, 2020.

List of Major Drug Transit or Illicit Drug Producing Countries

The list of major drug transit or illicit drug producing countries for fiscal year 2021 has been issued by the Office of President, with no changes from prior lists. The list remains the same for the past nine years with the following countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela. A bank's anti-money laundering compliance program should consider the risk of transactions in connection with these countries.

No 1099-C Form for PPP Loans Forgiven

In Announcement 2020-12, the IRS made it known that lenders should not file a Form 1099-C for the amounts of loans forgiven under the SBA Paycheck Protection Program. Normally, lenders are required to file Form 1099-C for the amount of loan forgiveness of $600 or more with the IRS.

Questions & Answers

Question: We seem to have a situation in which a referral was made for a settlement service in connection with a mortgage loan and we are required to provide an Affiliated Business Arrangement Disclosure Statement. RESPA refers to the model form in Appendix D. However, we are wondering if we can just use our own form as provided by our loan system vendor instead of the model form in Regulation X. It looks different from the model form in Appendix D.

Answer: When you make a referral that is considered an affiliated business arrangement under RESPA the person making the referral is required to provide an AfBA Disclosure Statement. The AfBA Disclosure Statement must be provided to the person whose business is referred. Regulation X specifies that the disclosure is in writing and that it be in the format set forth in Appendix D of the regulation. It must also be on a separate piece of paper from other disclosures. The model form of Appendix D is what you want to use and not a different form provided by your loan system vendor that looks different from the format of Appendix D.

Question: We are refinancing a loan that was originally made by one of our affiliates. If we are only refinancing the loan with no increase in principal, is the loan rescindable?

Answer: Assuming the loan is secured by the consumer's principal dwelling, the new loan you are making would be rescindable. Because the loan was originally made by one of your affiliates, you are a new creditor for this loan. Regulation Z does provide an exemption to the rescission requirement for refinancings by the same creditor for extensions of credit secured by the consumer's principal dwelling. However, Regulation Z does not recognize holding company relationships and loans made by affiliates as qualifying for this exemption. You are a new creditor for this transaction, and therefore, would be required to provide a right to rescind even though it is a refinancing and no new money is being advanced.

Question: The CFPB recently issued a set of FAQs on RESPA Section 8 (Prohibition Against Kickbacks and Unearned Fees), which included not only a number of questions and answers about Marketing Service Agreements (MSAs), but also an announcement that a 2015 CFPB Compliance Bulleting (2015-05) on MSAs was being rescinded by the CFPB. Could you give some examples of an MSA?

Answer: The CFPB defines an MSA as an agreement that involves an arrangement where one person agrees to market or promote the services of another and gets compensated for doing so. An MSA is generally legal under RESPA when the compensation is reasonably related to the value of the services performed. A common example of an MSA would be one in which a real estate broker makes an arrangement with a particular lender to place an advertisement in its weekly newsletter or a banner ad on its website, allow loan officers to attend open houses that the broker holds, or display bank brochures at open houses in exchange for a fee. An MSA can easily tip over into the illegal kickback category if payment is in excess of reasonable market value for the services performed or if payment is made for services not actually rendered.

Question: Is a member of the U.S. Coast Guard covered under the Servicemembers Civil Relief Act? Since the Coast Guard falls under the Department of Homeland Security and not the Department of Defense, we were not sure if the Coast Guard was considered part of the military.

Answer: Yes. Members of the Coast Guard are part of the military and are considered members of the U.S. Armed Forces just like the Army, Navy, Air Force and Marine Corps. They are covered under both the SCRA and the Military Lending Act. {I happen to know this one, because I have a son who is in the Coast Guard.}

Question: On a prequal, is it a denial if there are certain requirements for a type of loan (i.e., special loan for firefighters) and you relay to the customer that he/she is not eligible?

Answer: There are a couple of issues here. First, if someone is trying to prequalify for a loan and you tell them that they are not eligible for the loan (that they don't prequalify), then that would be a denial and you would need to provide them with an adverse action notice. The Regulation B Commentary explains that "...if in giving information to the consumer the creditor also evaluates information about the consumer, decides to decline the request, and communicates this to the consumer, the creditor has treated the inquiry or prequalification request as an application and must comply with the notification requirements under Sec. 1002.9." The second issue is whether the denial is exempt from the definition of adverse action because the refusal to extend credit was because the creditor does not offer the type of credit requested. You characterize the type of loan as a special loan for firefighters. A special loan for firefighters could mean a number of things. If it means a special loan promotion with unique terms that are available only for that segment of the population, that would not be a "type" of loan. Unique loan terms for a loan promotion would not qualify as a loan type that would be exempt from the requirement to provide an adverse action notice. On the other hand, if the bank created an entirely new type of loan product that was offered only to firefighters, a denial of that product to someone who is not a firefighter could be exempt from the adverse action notice requirement.

*Compliance*Online

FCRA at 50

The Fair Credit Reporting Act is 50 years old this year. The FTC posted a blog on its website celebrating that milestone with highlights from FCRA's first half century

https://www.ftc.gov/news-events/blogs/business-blog/2020/10/50-years-fcra

*Compliance*Action

PURPOSE:

To keep your compliance, audit, and legal officers and staff up-to-date on regulatory and compliance issues and industry related techniques;

To provide guidance for implementing and managing your compliance program;

To increase your awareness and understanding of compliance developments;

To provide you with information that will be useful in communicating compliance information to bank staff; and,

To assemble all of the above in a readable, understandable, usable format that can be photocopied and distributed in-house by each subscriber.

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Fed Joins the CRA Bandwagon with Proposal
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- **Retail Services Subtest**
  This subtest has both qualitative and quantitative elements. Retail services would include both delivery systems through branches as well as non-branch delivery channels, and deposit products, especially those geared to LMI customers. Hours of operation, bilingual services, and accommodations for disabled customers are evaluated under this subtest. A bank's activity in relation to benchmarks partially determines performance.

- **Community Development Financing Subtest**
  Community development financing includes both community development loans and investments. This subtest is primarily a quantitative performance measure. A bank's qualifying community development loans and investments are aggregated and compared to its total deposits as a measure of performance.

- **Community Development Services Subtest**
  Community development services are generally the activities of employees and board members that support community activities targeting LMI individuals, technical assistance for small businesses, and other community development organizations. The FRB is considering expanding the scope of activities that would qualify as community development services. This subtest is primarily a qualitative test, with possible quantitative measures added. For example, the FRB is proposing to add an "impact score" that would help quantify the activities with the number of clients reached or accounts opened as a result of the activity.

For both the community development subtests, the FRB is proposing to provide more definition around "community development." Community development is currently the subject of many individual interagency Q&As under the current CRA regulations, and even then, there is a lot of uncertainty about what qualifies as a community development loan, investment or service. Like both the FDIC proposal and the final OCC regulation, the FRB is proposing to create an illustrative list of community development activities and a process for banks to obtain pre-approval from the FRB for community development activities.

Data Collection and Reporting

For small banks that opt-in to the metrics approach, existing deposit information from FDIC Summary of Deposits reports would be used for any Retail Lending Subtest screening. In addition, loan data would be provided, either as a sample of bank loans or as a download from the bank's internal loan systems. Small banks that do not opt-in to the metrics approach under the new Retail Lending Subtest and continue to be evaluated under the existing small bank performance standards would not have any data collection and reporting requirements.

For large and small banks that are subject to any of the other subtests, the FRB is looking for input on how to create an expanded data collection and reporting process. No details are provided in the ANPR other than it is likely that a process will be in a standardized, machine-readable format.

*Action*Steps

✓ **Review the ANPR with affected areas of your bank and consider how the changes will impact your bank. A comment letter to the FRB will help shape a proposed rule.**