



## **Review of Treasury's CRA Recommendations\***

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On April 3, the U.S. Department of Treasury ("Treasury") issued a memorandum with recommendations ("CRA Memo") to the banking agencies (Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("FRB"), and Federal Deposit Insurance Corporation ("FDIC"), collectively, the "Agencies") to modernize the Community Reinvestment Act ("CRA"). This is a brief review of the CRA Memo.

### **Overview**

In the CRA Memo, Treasury proposes solutions to long-recognized issues with several aspects of CRA including assessment areas, examination process, and performance ratings. Treasury wants CRA to be modernized to account for advancements in financial services that have occurred since CRA was enacted in 1977. Treasury also wants the Agencies to enhance the clarity and consistency of CRA examinations and reduce the subjective elements of CRA. Treasury advocates for reform to: the definition of assessment area, the use of performance context as part of a CRA examination, and the fundamental nature of the rating determination process. While at times the recommendations lack specificity, the CRA Memo does provide a roadmap for CRA reform. It is worth noting that nearly all of the recommendations in the CRA Memo could be made through rulemaking or other action by the Agencies and would not require an act of Congress.

### **Treasury Recommendations**

These are the key recommendations Treasury makes in the CRA Memo:

Assessment Areas: Assessment areas should include where the bank is physically located, LMI communities outside of where the bank has its physical footprint, and in areas where the bank accepts deposits and does substantial business.

Eligible Activities: Agencies should 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 Agencies, and simplify record-keeping procedures to make eligibility updates more regular and timely. Treasury also

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recommends that banks be allowed to obtain a limited number of eligibility determinations in advance on specific loans, investments, or services. These determinations should be made publicly available.

Performance Context: Research and policy staff of the Agencies should be involved in developing the performance context in advance of CRA examinations.

Examination Criteria: The Agencies should establish clear criteria for grading CRA activities. The actual "measurement" of CRA activity, like other regulatory standards such as liquidity, capital, and leverage, should be reportable in a clear and transparent manner. This would enable measuring the impact of CRA against a well-defined, consistent unit of measurement, such as total assets, capital, or another similar standard. This also would allow banks to provide regular updates on CRA performance, and frequent CRA performance evaluations could then be possible.

Service Test: A modernized, forward-looking approach to the Service Test that relies less on branch location is necessary, as well as expanding the framework of CRA-eligible services to promote innovation and address the reality of technological advancements.

Examination Timeliness: The Agencies should standardize the CRA examination schedules. Treasury supports statutory changes, if necessary, that would enable more timely evaluations and ratings.

Downgrades for Violations of Consumer Protection Laws: The Agencies should adopt uniform guidance similar to that of the OCC in which a determination of how evidence of discrimination or illegal credit practices in a bank's CRA lending activities affects a bank's CRA rating is guided by two principles: (1) there must be a logical nexus between the bank's CRA rating and evidence of discriminatory or other illegal credit practices; and (2) the OCC considers any remedial action taken by the bank.

Performance Evaluation Delays Due to Consumer Protection Laws Investigations: CRA performance evaluations should not be delayed due to pending consumer protection law investigations or enforcement actions. If evidence of a violation of a consumer protection law is discovered after the issuance of a performance evaluation, that evidence should be reviewed in the subsequent performance evaluation. In cases where evidence of discriminatory or illegal credit practices is verified after the issuance of the performance evaluation, an addendum should be attached to a performance evaluation detailing the facts of the verified consumer protection law violation.

Impact of Less than Satisfactory Ratings and Remediation: The FDIC and FRB should adopt policies and procedures that are generally aligned with the OCC's approach for evaluating various bank applications in which the OCC applies enhanced scrutiny to a bank with a less than Satisfactory CRA rating but would approve an application after considering certain factors. The Agencies should use the application process as an incentive to encourage

less than Satisfactory banks to commit to engaging in additional CRA-eligible activities in LMI communities.

Community Benefit Plans: The Agencies should clarify that a community benefit plan is just one tool for demonstrating how a bank will meet the convenience and needs of the community, but that it is not required.

Public File: CRA regulations should be amended to allow banks to store the public file electronically on the bank's website.

Treatment of Debt and Equity Investments: Community development loans should receive the same annual consideration as community development investments.

Inclusion of Affiliates in CRA Assessments: The Agencies should evaluate their approach to affiliates in order to ensure that performance evaluations accurately reflect the CRA-eligible activity of the overall bank.

Impact of CCAR on CRA Investments: The Agencies should review the Comprehensive Capital Analysis and Review ("CCAR") treatment for public welfare investments ("PWIs"), including consideration of whether current capital standards are reflective of the actual performance of all PWIs, and whether the PWI category should be broken out into sub-categories where capital standards could be more appropriately measured and reflected.

Nonbanks and CRA: The Agencies should continue to monitor the impact of the emergence of nonbanks on the effectiveness of CRA. More research should be conducted on the extent to which nonbanks are meeting the credit needs of LMI communities, with a particular focus on loans guaranteed by the Small Business Administration and Federal Housing Administration.