
WHO WILL REALLY RUN CRA? REGULATORS OR THE BUREAU?

CRA officially stays with traditional bank regulators, but the Consumer Financial Protection Bureau won't stay out of it

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The Community Reinvestment Act is one of only a few "compliance" laws that will not move to the new Consumer Financial Protection Bureau. Responsibility for CRA examinations remains with the prudential bank regulators.

Leaving CRA with the prudential regulators makes a lot of sense. Evaluating CRA performance requires putting the bank's loans, services, and investments for low- and moderate-income areas into the context of the bank's overall business and market. CRA consideration includes loans to small farms and small businesses, community development projects, and investments that help to meet CRA's purposes. It doesn't make sense to put this responsibility into the hands of a bureau that is concerned primarily with financial products for consumers.

In addition, the enforcement aspect of CRA is embedded in the regulatory application process. CRA directs the agencies to consider CRA ratings when reviewing and making a decision on applications. That-and the potential bad publicity that could be generated by a low CRA rating-is the enforcement tool. Consideration of applications is a function that the new bureau will not have. So, will the CRA examination and application process continue as we now know them without change? Since the CFPB will not have any CRA authority, why shouldn't things remain as they are now-with the constant and unrelenting pressure to do a bit more each year?

There are several possible ways that the bureau can influence CRA ratings and the CRA examination process-and have the effect of speeding up the increases in expectations.

Bureau influence substantial

The CRA evaluation process considers more than how the institution helps to meet the credit needs of low- and moderate-income areas and borrowers. It also takes into account the performance of the institution on all aspects of consumer protection. Substantive violations of consumer financial protection regulations such as the Equal Credit Opportunity Act and Regulation B and the Truth in Lending Act and Regulation Z can lower the CRA rating. In fact, examiners are directed to lower the CRA rating when such violations are found.

In large banks, it is not the bank examiners but any examiners or investigators working for the bureau that will be looking for consumer protection violations. Given the way CRA works, any findings, such as fair-lending concerns or substantive violations of any consumer protection regulations, mandate lowering the CRA rating. So no matter how much your prudential examiner likes your CRA program, the rating may be lowered by the findings of examiners working for the bureau. If the bureau's examiners find signature violations or underdisclosed finance charges, down goes the CRA rating.

The smaller institutions are not necessarily immune from bureau scrutiny. Primary responsibility for consumer compliance examinations is assigned to the prudential regulators. However, the bureau can go into any bank based on information that raises concerns.

For example, consumer complaints about a specific product or practice in a single institution would cause the bureau to look closely at that institution. Bureau staff could do this indirectly by referring the issue to the prudential regulator and asking for a response. Or the bureau could simply go in and investigate the issue on its own. In either of these situations, the bureau's enforcement activity can have a direct or indirect effect on CRA ratings.

Risk of new regulatory interpretations

There are other ways the activity of the CFPB can impact CRA ratings. One, of course, is through the regulatory process. What regulations require and how regulations are interpreted can have a significant impact on compliance and examination ratings. The bureau's regulations will govern all institutions, not just large ones.

Let's look at a possible example. The bureau will be the primary agency responsible for Regulation B-under whatever name the bureau gives it. Under the current regulation, creditors must not discriminate on the basis of age, but may consider age as a pertinent element of creditworthiness.

The Federal Reserve has applied a reasonableness test to how this should work. If faced with an application for a 30-year mortgage from an 85-year-old applicant, the lender may look at factors related to the loan, such as the LTV and the likely continuation of income. The creditor may not automatically turn this application down, but could consider pertinent factors. An application for a 100% LTV looks quite different than an application for a 50% LTV with both applicants being the same age and offering fixed income. Making the first loan and denying the second would be acceptable under current interpretations of Regulation B. The bureau could change this and limit the ways that age could be considered as a pertinent element of creditworthiness.

Who's the toughest cop?

There is still another way-albeit less direct-that the CFPB could have an influence on CRA ratings. In fact, we are already seeing signs of this: competitive examinations.

With responsibility for consumer protection split between prudential regulators and the bureau, each agency is tempted to prove who can be tougher. It is a bureaucratic version of King of the Mountain.

Prudential regulators are already busily proving that there is no need for the bureau to look into their institutions. Compliance examinations are getting tougher and examiners are digging deeper.

Getting a good compliance rating is no walk in the park. It is turning into a mountain climb. Let's just hope that mountain doesn't turn into Mount Everest!

The idea behind being tougher than the bureau has some logic to it. Prudential regulators don't want anyone else messing around in their institutions. They don't want to get into detailed arguments that involve splitting hairs over violations. So, the tougher the prudential regulator is, the less justification there is for the bureau to come in. That means that your compliance program has to be stronger than ever.

Small business credit issues arise

Finally, there is one more potential twist to the CRA issue: small business loans.

In spite of its "consumer" name, the bureau has ECOA and Regulation B under its wing, which prohibit discrimination in commercial lending as well as in consumer lending. Because responsibility for ECOA and Regulation B will reside with the bureau, it is the bureau that will have interpretive authority over discrimination issues in commercial lending practices. Once something is in the regulation, or covered by interpretation, the prudential regulators will have to examine for and enforce it.

Small business lending plays a significant role in the CRA rating of smaller institutions. In many community banks, it is small business lending that forms the core of the CRA performance. Anything that makes small business lending more difficult-or anything that simply calls more attention to the possibility of discrimination-could have an impact on CRA ratings.

Get ready now

What should you do? Keep your ear to the ground and follow trends. Talk with other compliance and CRA managers in your markets-and across the country. Get the latest information-and new contacts-at ABA's National Regulatory Compliance Conference. And always monitor all consumer complaints about your institution.

About Lucy Griffin

"Lucy and Nancy's Common Sense Compliance" is blogged by both Lucy Griffin and Nancy Derr-Castiglione, both longtime ABA Banking Journal contributing editors on compliance.

- Lucy, a Certified Regulatory Compliance Manager, has over 30 years experience in compliance. She began as a regulator, including stints with the Federal Reserve Board, the Federal Trade Commission, and the Federal Home Loan Bank Board. For many years she managed the ABA Compliance Division. Since 1993 she has served as a compliance consultant as president of Compliance Resources, Inc., Reston, Va. She is also editor of Compliance Action newsletter and senior advisor with Paragon Compliance Group, a compliance training firm.

In addition to serving as a Contributing Editor of ABA Banking Journal, Lucy serves on the faculty of ABA's National Compliance Schools board. For more than a decade she developed and administered the case study at ABA's National Graduate School of Compliance Management. She can be reached at lucygriffin@earthlink.net

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