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Responding to critics

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Modifies CRA credit for sports stadiums

Applies only to OCC-supervised banks

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OCC

Otting's legacy at OCC? It's complicated

By Kate Berry
May 20, 2020

The ink had barely dried on one of the biggest rulemakings in recent memory from the Office of the Comptroller of the Currency as word circulated that the head of the agency was poised to wave goodbye.

Joseph Otting's decision to step down next week may seem surprising given that he was just halfway through his term and the economy has a long way to go to recover from a public health catastrophe.

Yet Otting and his lieutenants were fond of saying that the former banker came to the job with three main priorities: Community Reinvestment Act reform, providing banks a clearer path to safe small-dollar lending and industrywide improvement in Bank Secrecy Act compliance. His supporters say he accomplished all three, and in fact two of them happened Wednesday — a rule overhauling CRA issued by the OCC, and interagency guidance on small-dollar lending.

Certainly, the CRA rule, which the agency moved ahead without support from the Federal Reserve or the Federal Deposit Insurance Corp., will be the subject of debate for a long time. But it was characteristic of a leader who, like him or not, was willing to take nontraditional and sometimes unpopular actions.

Otting sought to make changes to the DNA of the agency in charge of regulating national banks, his backers say. He coached the OCC's 4,000 federal employees on how they could be more efficient and do their jobs better.

During his roughly two years at the OCC, Otting cut $156 million out of a $1.5 billion budget, which is funded by assessments on banks. He cut assessments by 20% in two years without layoffs.

Some suggest that he was able to reset the OCC's relationships with the financial institutions it regulates by teaching examiners that they could be tough on banks but still collegial, rather than adversarial.

Otting also was praised for punishing misconduct by former Wells Fargo executives who engaged in illegal sales practices. Former Chairman and CEO John Stumpf agreed to pay $17.5 million to settle civil charges and was banned from the banking industry for life while four others face civil charges for failing to perform their duties.

"He has done so much work internally on making the agency itself run better, making it more efficient and accountable," said Keith Noreika, the acting comptroller who immediately preceded Otting and was also known for challenging the status quo.

"He has an amazing mind and business sense and, from a banker's perspective, he was mindful of giving banks a lot of value, of rejuvenating the vibrancy of the [national bank] charter and making the agency work better," said Noreika, now a partner at Simpson Thacher.

Otting officially announced his resignation plans Thursday; he will step aside May 29, and Brian Brooks will become acting comptroller. Brooks, the agency's chief operating officer and first deputy comptroller, had been on the job for just seven weeks. The two had worked together at OneWest Bank in Pasadena, Calif.

On Wednesday Otting was making calls and speaking with others as word circulated that he might be leaving. Brooks, not Otting, fielded questions from reporters on a conference call about the CRA rule.

Otting's next stop is unclear, but speculation immediately began about whether he was headed back to the private sector or might be tapped for another public service role.

President Trump picked Otting to head the OCC in 2017. While serving as comptroller in late 2018, Otting was also selected by the Trump administration as the acting director of the Federal Housing Finance Agency until Mark Calabria was confirmed in April 2019.

Before joining government, Otting had been the president of CIT Bank and co-president of CIT Group but was fired in late 2015 along with more than a dozen other executives by CIT's chief executive at the time, John Thain.

Otting had been the CEO of OneWest, the former subprime lender IndyMac Bank, when it was chaired by Steven Mnuchin, now the Treasury secretary.

Mnuchin led an investor group that bought IndyMac in 2009 for $1.5 billion in an FDIC auction. IndyMac was the costliest bank collapse in history.

Otting was both praised and criticized by community groups when he and Mnuchin sought approval from the Federal Reserve to sell OneWest to CIT Group for $3.4 billion in 2015. It was a hugely profitable deal for the private-equity and hedge-fund investors who owned the bank for six years.

Paulina Gonzalez-Brito, executive director of the California Reinvestment Coalition, said OneWest was one of the most strongly opposed bank mergers in history, in part because of OneWest's lack of commitment to investing in the community.

"The bank was set up to do a private-equity deal," said Gonzalez-Brito. "When we first

AMERICAN BANKER

Established 1836
One State Street Plaza, 27th floor, New York, NY 10004
Phone 212-803-8200 AmericanBanker.com

Editor in Chief Alan Kline 571.403.3846
Managing Editor Dean Anason 770.621.9935
Executive Editor Bonnie McGeer 212.803.8430
Washington Bureau Chief Joe Adler 571.403.3832
Executive Editor, Technology
Penny Crosman 212.803.8673
BankThink Editor Rachel Witkowski 571.403.3857
Community Banking Editor Paul Davis 336.852.9496
Contributing Editor Daniel Wolfe 212.803.8397
Digital Managing Editor
Christopher Wood 212.803.8437

Copy Editor Neil Cassidy 212.803.8440

Reporters/Producers

Laura Alix 860.836.5431, Kate Berry 562.434.5432
Miriam Cross 571.403.3834
Jim Dobbs 605.310.7780
John Heltman 571.403.3847, Allissa Kline 716.243.2679
Hannah Lang 571.403.3855
John Reosti 571.403.3864, Gary Siegel 212.803.1560
Jackie Stewart 571.403.3852, Kevin Wack 626.486.2341

started the whole engagement with the bank we thought he was a CEO we could engage with, but that was dispelled pretty quickly. After [Otting] left and we began to look under the hood, it became pretty clear that the bank was a shell of a bank that hadn't been doing small-business lending."

The experience of having to gain approval for the merger from community groups shaped Otting's view of the CRA, he told The Wall Street Journal in 2018.

"CRA was something he really concentrated his whole time on," Noreika said.

The OCC delivered a final CRA rule in just 41 days after receiving 7,500 comments, an astonishing speed for a banking agency.

Otting wrote in a BankThink piece published Wednesday by American Banker that the new rule will ensure the 1977 law enacted to address redlining can boost investment in low- and moderate-income communities and increase support for small businesses.

Some observers suggest that by casting CRA to focus more broadly on deposits outside a designated service area, more low- and moderate-income people including, including Indian tribes, will benefit.

"The CRA changes that Comptroller Otting put into place will enable banks to reach more people," said Walter Mix, who was a California banking regulator.

Otting's detractors paint a completely different picture.

"When I think about him at the OCC, and CRA, he had one job that he went in there to do, which was to dismantle this really important anti-redlining law," Gonzalez-Brito said.

CRA

OCC goes it alone on narrower CRA rule

By Brendan Pedersen
May 20, 2020

WASHINGTON — The Office of the Comptroller of the Currency released the final version of a rule to modernize the Community Reinvestment Act Wednesday, featuring a sprawling set of changes that will apply just to national banks and thrifts after other agencies declined to support the reforms.

"The final rule is the culmination of a multiyear process and more than a decade of dialogue about improving how CRA works," Comptroller Joseph Otting said in a statement accompanying the rule, adding that the agency's initial proposal received more than 7,400 comments. "We incorporated many of those suggestions in the final rule and appreciate the thoughtful input from all the stakeholders who sought to make the final rule as strong as it could be."

The OCC released the rule, without support from the Federal Deposit Insurance Corp. or the Federal Reserve Board, just as Otting is said to be planning to step down from the agency this week.

While the rule is set to go into effect in October, OCC-supervised banks will have two years before the new examination standards are in place. And many of the most significant changes — such as new data collection requirements — will not go into effect until January 2024. The rule also includes an asset threshold below which most community banks can decide if they want to opt in to the new CRA regime or stick with the old one.

In contrast to the OCC's joint CRA proposal with the FDIC released in December, the OCC is going its own way on the final rule.

"While the FDIC strongly supports the efforts to make the CRA rules clearer, more transparent, and less subjective, the agency is not prepared to finalize the CRA proposal at this time," FDIC Chair Jelena McWilliams said. "The FDIC recognizes the herculean effort community banks are making to support America's small businesses and families during this challenging time and encourages financial institutions to work constructively with borrowers affected by COVID-19."

The Federal Reserve declined to join the rule when it was initially proposed in December.

Even on its own, the speed with which the agency has delivered a final rule — which stretches more than 370 pages — has shocked many observers in Washington. Only 41 days have passed since the rule's comment period ended in mid-April. By comparison, the final version of the CRA's last reform effort, in 1995, was published 164 days after its comment period ended.

The OCC's final rule, while still a towering piece of regulation, has a narrower scope than the initial proposal. In addition to applying only to nationally chartered banks, the final rule's asset thresholds will be raised, in addition to reintroducing the distinction between small and intermediate-sized banks.

The small-bank asset threshold will be raised to $600 million, up from $500 million in the initial proposal. Banks under the new threshold can choose whether they want to adopt the new CRA standards. The intermediate threshold will be raised to $2.5 billion, however, reserving the rule's most stringent requirements for larger banks.

Another change appears aimed at concerns echoed by much of the banking industry and community groups that a performance standard anchored to balance sheet totals would put too much weight on large-dollar CRA work, like mortgages, and disincentivize banks from smaller, more targeted lending. In response, the final rule will put stronger emphasis on loan origination as well as balance sheet volume.

"The OCC agrees that retail loan originations are an important type of credit for certain populations and communities of need. Further, the OCC also did not intend to favor one business model over another," the agency wrote in the final rule. "In response to this and similar comments, the final rule provides that retail loan originations sold at any time within 365 days of origination will receive credit for 100 percent of the origination value."

REGULATORY REFORM

Where OCC bent and where it held firm in final CRA rule

By Brendan Pedersen
May 20, 2020

WASHINGTON — In its final rule revamping supervisory standards in the Community Reinvestment Act, the Office of the Comptroller of the Currency tried to satisfy critics of its December proposal who saw the agency moving the law away from its original goals.

Perhaps most notably, the OCC's final plan waters down proposed number-based measurements of CRA activity that community groups had blasted, returning some discretion to examiners to judge a bank's overall compliance.

Whether the agency has won over any detractors is yet to be seen. Some groups appeared to dislike the rule as much as before. Still, the result of a multiyear reform process led by Comptroller of the Currency Joseph Otting is a somewhat narrower reform framework that made several accommodations to critics.

"The final rule is the culmination of a multiyear process and reflects more than a decade of dialogue about how to make the CRA work better," Otting said in an op-ed published Wednesday in American Banker, one day after news broke of his plan to step down from the agency. "We carefully considered all the comments received and made changes in the final rule accommodating suggestions and issues stakeholders raised."

After the OCC faced criticism for focusing on the CRA rule during the coronavirus pandemic, the agency lost a key supporter: the Federal Deposit Insurance Corp., which had signed on to the CRA proposal in December, declined to support the final rule. The Federal Reserve Board had already opposed the plan.

Ultimately, the CRA reforms unveiled Wednesday only apply to OCC-supervised banks, and the majority of those can opt out under a provision to ease the compliance burden of small banks.

But OCC officials stressed that the agency strived to listen to public concerns about the CRA reform effort in writing the final rule.

"The thing that has impressed me most in my seven or eight weeks at the OCC, watching the final stages of CRA unfold, is how seriously the OCC took the comments that were submitted from multiple different stakeholders in this process," said OCC Chief Operating Officer Brian Brooks, who many see as a likely acting comptroller after Otting departs. "I think what you'll see when you take time to digest the final rule is, it is significantly different in important ways from what the proposed rule was."

Here are some key takeaways from the final rule and reaction to it.

Concession on performance standards

Many in the banking industry and among community reinvestment advocates had questioned the proposal's use of prescriptive, quantitative thresholds for evaluating CRA performance, which was based in part on the dollar value of CRA projects.

Critics worried that quantitative measures would put too much weight on large-dollar CRA work, like mortgages, and disincentivize banks from focusing on smaller, more targeted lending.

But the final rule features a major concession. Rather than using fixed percentages suggested in the proposal for certain exam scores — 6% for a "satisfactory" score and 11% for "outstanding" — the final rule concedes that the national bank regulator lacked the data to support those figures.

Instead of prescribing CRA performance thresholds, the OCC will ask banks to submit their CRA data to determine appropriate thresholds.

"The final rule defers setting thresholds for grading banks' CRA performance until the OCC can assess this improved data," Otting said in a statement.

On the whole, the changes to the rule try to preserve a focus on qualitative judgments about a bank's CRA activity, rather than just focusing on quantitative measures.

Higher asset thresholds, longer transition period

In addition to applying only to nationally chartered banks and federal thrifts, the final rule also raises the asset threshold for OCC-regulated institutions — from $500 million to $2.5 billion — that can choose to keep the current CRA regime instead of the new one.

In another change based on public comments on the proposal, the rule will also reintroduce a distinction for intermediate-sized banks that face a simpler CRA compliance burden than the largest institutions. The small bank threshold will be raised from $500 million to $600 million, and the intermediate threshold will be capped at $2.5 billion.

According to OCC staff, banks with assets of more than $2.5 billion represent a "significant majority" of the nation's CRA lending. The OCC has said in the past that its examiners oversee roughly 70% of the country's CRA lending dollars.

While the new framework is set to initially go into effect in October of this year, banks will not need to contend with the new examination standards for at least two years, and many of the most significant changes — such as new data collection requirements — will not go into effect until January 2024.

OCC's approach on assessment areas largely unchanged from proposal

The core of the OCC's proposed overhaul of how CRA assessment areas are determined largely stayed the same in the final rule. If more than 50% of a bank's deposits come from outside of its physical assessment areas, "the bank must delineate separate, non-overlapping 'deposit-based' assessment areas," the final rule says.

In such cases, any geographic area where a bank has a concentration of more than 5% of its deposits would become a new assessment area.

The OCC's final rule will also give banks more credit for maintaining branches and ATMs in low- to moderate-income areas when it comes to a bank's branch distribution score.

"Branches continue to play a large and important role in meeting certain communities' needs and serving certain populations," the final rule says, adding that the measure "retains the branch distribution component of the CRA evaluation measure and enhances the amount of credit that a bank may receive for branches in LMI census tracts and other identified areas of need."

It will be tougher for banks to earn CRA credit through financing sports stadiums

The final rule also expands upon the initial proposal's "illustrative list" of activities most commonly approved for CRA credit by examiners. While the original list stretched 15 pages, the new list has grown to 22 pages.

The agency added activities, including several that revolve around community development lending, investment and services. "This expansion recognized that there are additional activities that meet the credit needs of these populations and areas that are consistent with the statutory purpose of the CRA but that do not currently qualify for CRA credit," the final rule said.

The OCC also clarified the criteria for athletic stadium financing to receive CRA credit, addressing criticism from community groups that including stadiums on the list rewards banks for high-value projects that do not have a clear public benefit.

The new illustrative list says that in order for a bank to receive credit for a sports stadium investment, it should be done through a "qualified opportunity fund" as long as the facility is "owned and operated for community benefit by a local nonprofit in an opportunity zone that is also an LMI census tract."

Industry groups commended the OCC's effort, but reaction to the plan is still mixed

Early reactions to the 372-page final rule signal that the fight over the future of the CRA is far from over.

"This is an awkward, disjointed and rushed move by a single agency that couldn't get agreement from the two other agencies that regulate banks within the same administration," said Jesse Van Tol, CEO of the National Community Reinvestment Coalition. "The OCC should have been able to agree and work with the other two agencies that oversee enforcement of the same law. It couldn't. It failed. That's an administrative fiasco."

Even the OCC admitted in the text of the final rule that the majority of public feedback it received was not supportive of the proposed framework. "Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework," the final rule says.

Reaction to the final rule on CRA followed a similar rhythm as the initial proposal. While banks were generally supportive of the OCC's effort to modernize the 1977 law, some key reservations linger.

The Consumer Bankers Association said in a press release that "the OCC and Comptroller Otting should be commended for attempting to bring an analog regulation into a digital world."

"The end result lays out a more transparent and objective process for measuring banks' continued service to their communities," the CBA said.

But the American Bankers Association emphasized that bankers remain leery of the final rule's data and recordkeeping requirements, which some estimate will cost the industry billions of dollars in compliance costs in the coming years.

"We remain concerned about key provisions of the final rule including the substance and complexity of the performance measurement benchmarks, which will present significant data collection challenges for banks," Rob Nichols, the group's president and CEO, said in a statement.

The Independent Community Bankers of America echoed that, writing in a statement that "community banks remain concerned that the new regulatory framework is too complex and would impose new and excessive data-collection costs that could inhibit their ability to serve local communities."

Bankers are also concerned about regulatory arbitrage as the OCC sets out on its own — a fear only magnified by the FDIC's choice to opt out of the final rule amid the pandemic.

"As the only banking trade association that represents banks of all sizes and charters, we have also advocated for clear and consistent rules for all banks. The fact that only one of the three federal banking regulators overseeing CRA has adopted this final rule means it does not meet that goal," Nichols said.

Community groups, while acknowledging some of the concessions made by the OCC, remain staunchly opposed to the rule.

"Although some changes have been made to the final rule, much of the final rule retains the problematic original proposal," the California Reinvestment Coalition said in a press release. "The hastiness of the process calls into question whether the public comments were fully considered, as is required by the laws governing the rulemaking process."

LAW AND REGULATION

Bankers seek clearer guidance on forgiving PPP loans

By John Reosti

May 20, 2020

New forgiveness guidance for the Paycheck Protection Program has provided some clarity for bankers eager to know all the ground rules.

The Small Business Administration and Treasury Department released partial directions, along with an application, late Friday. That should help lenders and borrowers begin the process of having PPP loans converted into grants.

Still, lenders want more protections when it comes to verifying borrower data. And they are pushing for more flexibility securing forgiveness for nonpayroll expenses.

But any progress after weeks of delays is welcome news.

"We were definitely excited to receive that guidance," said Christopher Chapman, the chief operating officer and chief information officer for national banking at the $49 billion-asset TCF Financial in Detroit.

"It's certainly a good start," Chapman added. "We have been thinking about forgiveness for several weeks now, so it starts to fill in some of the pieces."

Lenders have made more than 4.3 million PPP loans for $513.2 billion, making the program one of the government's signature responses to the coronavirus crisis. Paycheck Protection loans have a 1% interest rate and two-year duration, but proceeds spent on payroll costs and basic operating expenses such as rent, mortgage interest and utilities are eligible for forgiveness by the government.

The coronavirus stimulus package, which authorized the PPP, directed the SBA and Treasury to publish forgiveness guidelines "not less than 30 days after the date of enactment," a deadline that passed on April 27.

In an indication of just how determined lenders are to start submitting forgiveness applications, the American Institute of Certified Public Accountants said a forgiveness calendar it unveiled Thursday and revised Monday is receiving heavy interest. Interest in the calendar is on par with the association's application calculator, which has had more than 70,000 downloads.

"We're already getting feedback from members who've been anxiously awaiting some kind of tool to help them work with their clients," said Lisa Simpson, the institute's director of firm services.

The SBA and Treasury released an 11-page application form containing a template intended to help borrowers calculate their forgiveness amounts. Accompanying instructions answered some outstanding questions.

Borrowers, for instance, can submit both accrued and actual expenses incurred during the eight-week period in which they're required to spend the proceeds from their loans.

Small businesses can also sync that coverage period with their payroll schedules, "which is important for administrative ease," said John Asbury, president and CEO of the $17.8 billion-asset Atlantic Union Bankshares in Richmond, Va.

"I think that was a very smart move on the SBA's part," Asbury said. "It makes it less burdensome for the borrower."

Still, Friday's guidance left several vital issues unaddressed.

Additional guidance should be expected, either in the form of an interim rule or new FAQs, said Suzie Saxman, a lawyer at Seyfarth.

Bankers would like the agencies to confine the scope of a lender's responsibility for comfirming borrower information.

"The outstanding question is do we have any other responsibilities beyond accepting that forgiveness application," said Asbury, who is also incoming chairman of the Virginia Bankers Association.

"Are we required to look at the payroll documentation and try to reconcile that back to the amount [borrowers] requested?" Asbury added. "From our standpoint, if the requirement is to collect the forgiveness application form, ensure that the proper documentation is provided and send it on to the SBA, that's a really good outcome. That's as good as it can get."

Even more crucially, lenders are hoping the SBA and Treasury will adjust program guidelines to allow for more nonpayroll spending. As things stand, nonpayroll spending is limited to 25% of loan proceeds. That threshold was implemented during the rulemaking process; it isn't part of the law's text.

"There's been a lot of interest in the percentage of the loan that must be used for payroll purposes versus other expenses," Chapman said. "It certainly could help customers if they could put more of that forgiveness toward nonpayroll expenses. … Many small businesses would benefit from that."

"The SBA could do that today and … allow up to 50% to be nonpayroll expenses," Asbury said. "That would be very helpful. I personally believe it's more likely than not that we're going to see some relaxation of these requirements."

TCF and Atlantic Union have leveraged technology to make a large number of PPP loans. TCF has made than 16,000 loans for $2 billion, while Atlantic Union has approved more than 11,100 loans for $1.7 billion.

While the SBA and Treasury indicated that more guidance is coming, lenders said that Friday's instruction provided enough details for them to begin building online forgiveness modules.

"We definitely intend to use technology to make it as efficient as possible," Chapman said.

"Our approach has been really to lead with digital, to be able to respond to our customers and give them digital tools to be able to apply and get updates on the progress associated with their loan," Chapman added. "We're envisioning using a similar approach to forgiveness."

Atlantic Union has "been working on this now for a couple of weeks," Asbury said of the forgiveness process. "We've been making educated guesses at what [the application] might look like."

Other lenders have mobilized around the recent guidance.

CapStar Financial Holdings in Nashville, Tenn., on Monday began offering a web seminar and forgiveness application calendar to its borrowers. The $2.1 billion-asset company has made 1,500 PPP loans for $236 million.

The Paycheck Protection Program's momentum has slackened recently. Industry experts have pointed to what had been a lack of clarity on forgiveness and the possibility that many in-need borrowers have already applied.

Volume "has definitely slowed from the peak … but we're still open and we're still receiving a steady flow of applications," Chapman said, noting that TCF has brought in 3,000 new customers with the program. "We're continuing to see demand from existing and new-to-the-bank customers."

Atlantic Union is receiving 50 to 70 applications a day, Asbury said, adding that about a fifth of the approved loans are for new customers.

Paycheck Protection "has been a brand builder like nothing I thought was possible," he added. "We're still open and we'll stay open as long as the funding remains available."

COMMUNITY BANKING

Park National to close 21 branches in Ohio and North Carolina

By Paul Davis
May 20, 2020

Park National in Newark, Ohio, is closing 21 branches.

The $8.7 billion-asset company said in a press release Wednesday that it will shutter branches in Ohio and North Carolina by Sept. 30. Three other branches will be converted to drive-through locations.

Park National said the closings will lower annual operating expenses by about $6.5 million. The decision reflected service-area overlap and customer use at the selected branches.

The closings represent about 18% of Park National's branch network, based on its annual report.

"Our banks continue to add new customer relationships, but more people rely on digital banking services and our other offices to conduct their regular banking," David Trautman, Park National's chairman and CEO, said in the release.

"While our values and service promises remain steadfast, our branch office footprint needs to better align with customer preferences and demand," he added.

Park National has closed 14 branches over the past five years.

DE NOVO INSTITUTIONS

Proposed Georgia bank secures conditional regulatory approval

By Jim Dobbs
May 20, 2020

Organizers of Craft Bank, a proposed de novo in Atlanta, said they have received conditional approval for a banking charter.

The founders said in a press release Wednesday that they have raised two-thirds of the $30 million in initial capital required by the Federal Deposit Insurance Corp. and the Georgia Department of Banking and Finance. Craft is the 11th deposit application the FDIC has approved this year.

Organizers said they plan to open the bank in late summer.

Ross Mynatt, who once managed the residential construction and mortgage departments at Cornerstone Bank, is expected to be the bank's CEO. Mynatt recently served as senior vice president at Georgia Primary Bank.

Two other Cornerstone bankers would join the de novo's management team: Kitty Kendrick as chief financial officer and Beth Martin as chief experience officer.

Greg Griggs, a former banker at Highland Commercial Bank, would be chief lending officer.

Marc Greene, former CEO of Mountain Valley Community Bank, is to be Craft Bank's chairman. The board would include 11 outside directors.

GSE REFORM

FHFA plan would make GSEs hold banklike capital amounts

By Hannah Lang
May 20, 2020

WASHINGTON — Fannie Mae and Freddie Mac would be required to hold more than five times their current capital levels after being released from government control under a much-anticipated proposal from the Federal Housing Finance Agency.

The post-conservatorship capital plan for the mortgage giants offered by FHFA Director Mark Calabria is more aggressive than the now-shelved proposal written by his predecessor.

The plan unveiled Wednesday would align capital requirements for the government-sponsored enterprises with those of the large banks once the two companies are privatized, whenever that is. Under the proposal, the GSEs would have been required to hold a combined $234 billion in capital as of Sept. 30, 2019, representing 3.85% of their total assets and 13.9% of risk-weighted assets. Currently, Fannie and Freddie's retained earnings are capped at $45 billion combined.

"We must chart a course for the enterprises toward a sound capital footing so they can help all Americans in times of stress," Calabria said. "More capital means a stronger foundation on which to weather crises. The time to act is now."

Fannie and Freddie would also have to maintain a leverage capital buffer on top of the proposal's new leverage ratio requirement.

Comparatively, in the original 2018 proposal, drafted by former Director Mel Watt, the GSEs would have had a combined risk-based capital requirement of $180.9 billion, or 3.24% of the companies' total assets. (The earlier plan was based on Fannie and Freddie's 2017 book of business.)

Calabria said in November that his agency would revisit the post-conservatorship capital framework developed by Watt, in part due to the fact that the agency had raised the GSEs' retained earnings cap after the release of Watt's plan.

Of course, no capital regime for Fannie and Freddie would take effect until the two GSEs are privatized and their federal conservatorships end. The FHFA and Treasury Department have been developing a roadmap for releasing the companies from government control in the absence of legislative progress on housing finance reform.

Although the goals of the 2018 proposal were largely applauded by the industry, some commenters expressed concern that the framework was too procyclical and could leave the mortgage giants severely weakened in a crisis. Others urged the FHFA to require the GSES to hold larger capital cushions and expressed concern that the plan could result in higher mortgage costs for lower-income borrowers.

The new proposal largely seeks to address all of those concerns at once, all while preserving the risk-based foundation of the original framework.

Perhaps most notably, the new framework would boost the quality and quantity of both risk-based and leverage capital that the GSEs would be required to hold.

Under the new proposal, the FHFA would impose three levels of bank-like risk-based capital requirements, including a common equity tier 1 capital requirement.

The agnecy would also incorporate the spirit of several post-crisis bank regulations into its framework, including a stress capital buffer, a countercyclical capital buffer and a stability capital buffer that FHFA officials described as analogous to the capital surcharge imposed on global systemically important banks.

Taken together, those three requirements would comprise the "prescribed capital conservation buffer amount." Fannie and Freddie would be required to hold excess regulatory capital in the amount of that buffer or would face limits on capital distributions and bonus payments, similar to the expectations for banks regulated by the Federal Reserve, Federal Deposit Insurance Corp. and the Office of the Comptroller of the Currency.

"These supplemental requirements

mitigate the weaknesses in the Enterprises' statutorily defined capital requirements that became evident in the 2008 financial crisis, ensuring that the Enterprises have a foundation of capital that can truly absorb losses," the FHFA said in a fact sheet detailing the proposal.

Several of the new requirements would also make Fannie and Freddie hold thicker capital cushions. The framework would create a minimum leverage requirement of 2.5% of a GSE's adjusted total assets, with an additional leverage buffer amount of 1.5% of adjusted total assets.

The new proposal would also beef up capital requirements on the amount of exposure a GSE retains through a credit risk transfer. Fannie and Freddie can enjoy capital relief by transferring some credit risk to investors. However, the plan makes clear they must still protect against losses from the amount of risk they retain.

The plan aims to allow Fannie and Freddie to dip into their capital buffers during periods of financial stress while enabling them to build up those cushions as the economy stabilizes, the FHFA said.

Several commenters in 2018 had also expressed concern that the framework's use of mark-to-market loan-to-value ratios would contribute to the plan's procyclical nature.

While the new proposal would continue to use updated home values to establish mark-to-market LTVs, it would also incorporate a "countercyclical adjustment" to prevent Fannie and Freddie from holding too little capital during extreme economic conditions.

That adjustment acts as a circuit breaker: If home prices were to either increase or decrease by more than 5%, the FHFA would stop making further adjustments to prevent the GSEs from shedding capital at the peak of the cycle, senior agency officials said.

Although the new framework would result in higher capital requirements for Fannie and Freddie, the FHFA argued that it would not restrict affordable access to mortgage credit.

The agency said that the new components of the framework meant to promote procyclicality would result in more stable levels of capital, which it said in turn would actually expand access to credit and reduce borrowing costs.

The FHFA also reduced the risk-based capital requirements for low down payment loans with private mortgage insurance, and removed risk multipliers from the 2018 proposal that would have priced loans with one borrower as more risky than loans with multiple borrowers.

Moreover, the risk-based capital buffers under the new proposal would be based on a GSE's adjusted total assets, rather than risk-weighted assets, "ensuring that these buffers do not fall disproportionately on higher-risk exposures," the agency said.

The public will have 60 days to comment on the proposal from when it is published in the Federal Register, but the FHFA will have the proposed framework on its website for 30 days before it is officially published, which the agency says will effectively give commenters 90 days to review the proposal.

That timeline will almost certainly be met with pushback. The FHFA extended the comment period for its proposal in 2018 to 90 days, and even then commenters argued that they needed more time to review the details of the framework.

Now, as the coronavirus pandemic is rocking the economy and shifting attention and resources elsewhere, lawmakers as well as advocacy and industry trade groups have called on federal agencies to pause all rulemaking not related to the coronavirus.

Sen. Sherrod Brown, D-Ohio, the ranking member of the Senate Banking Committee, sent a letter March 17 to eight federal agencies, including the FHFA, urging an "immediate moratorium on rulemakings not related to the virus response or other imminent health and safety concerns," adding that the public might not currently be able to provide thoughtful suggestions and comments on proposed rules.

The Independent Community Bankers of America also asked several financial regulators in a March 30 letter for a six-month halt in non-COVID-19 rulemaking to allow banks to focus on working through the fallout from the pandemic.

But senior FHFA officials said that now is the right time to debut the agency's overhaul of the proposal, arguing that the pandemic has only highlighted the need to have adequate levels of capital during a downturn.

"This national health crisis has affirmed the importance of the enterprises' mission to serve the American housing market during good times and bad," Calabria said. "When credit dries up, low- and moderate-income households are hurt most."

PAYCHECK PROTECTION PROGRAM

Citigroup to buy PPP loans from minority-owned banks

By John Reosti

May 20, 2020

Citigroup plans to buy up to $50 million in Paycheck Protection Program loans from minority-owned depository institutions.

The $2.2 trillion-asset Citigroup developed the loan-purchase program in partnership with the National Bankers Association, a trade group representing 22 minority banks. The program aims to boost capital levels at participating minority institutions.

Citigroup said in a press release Wednesday that the originating banks will service the loans and can retain the fee income paid by the Small Business Administration.

"By moving these loans off our balance sheet, we are able to redeploy capital into further assisting our customers and supporting our local economy," Laurie Vignaud, CEO of the $106 million-asset Unity National Bank in Houston, said in the release.

Unity also partners with Citigroup as part of the Treasury Department's Financial Agent Mentor-Protégé program, which pairs large banks that process financial transactions for the government with minority depository institutions.

Citigroup, which has originated more than $3.3 billion in PPP loans on its own, is donating the fee income it earns to its Citi Foundation.

"Our country needs banks of all sizes to serve businesses of all sizes and from all communities," CEO Michael Corbat said in the release. "Citi actively partners with minority-owned banks to support their vital efforts to serve their diverse client base, and we applaud the work they did to ensure that the benefits of the PPP program reached minority-owned businesses."

Minority depository institutions have made nearly 95,000 PPP loans, totaling for $9.7 billion, according to the SBA. Overall, the program has approved more than 4.3 million loans for $513.2 billion.

The SBA and the Treasury are jointly administering the program, which was launched April 3 to support small businesses impacted by the coronavirus pandemic. The SBA will pay PPP lenders an origination fee for each loan they make based on its dollar size.

WORKFORCE MANAGEMENT

JPMorgan expects to keep offices half full after lockdown ends

Bloomberg News
May 20, 2020

When employees return to work at JPMorgan Chase their coffee mugs and pictures of the kids probably won't be where they left them.

The bank has been placing workers' personal items into sealed boxes to prepare desks for common use after lockdowns tied to the coronavirus pandemic begin to ease, according to an internal memo seen by Bloomberg.

Co-workers will be harder to find, too: The bank expects to keep its offices half full at the most for the "foreseeable future," the memo states. Capacities will vary by location, according to a person briefed on the plans.

"As we prepare for this level of flexible seating and put protocols in place for all areas to be cleaned and disinfected effectively, we have started clearing all desk surfaces and floor areas of any personal and business-related work items," JPMorgan said in the memo. "We know how important your items are and will continue to make every effort to treat them with care."

The world's biggest banks have been studying how best to safely bring employees back to the office once restrictions put in place to stem the spread of COVID-19 are lifted. Planners are trying to figure out how to reorganize lobbies, elevators and work spaces to prevent contagion and keep employees far enough apart to meet social-distancing guidelines.

At JPMorgan, that means some staff will be sitting at different desks, and in some cases different floors, when they get to work, according to the memo, which was sent Wednesday to employees in the Europe, Middle East and Africa region. Similar notices were sent to U.S. workers other than branch staff, the person said, asking not to be identified because the moves haven't been announced publicly.

Not everyone will come back at the same time or even to the same location where they used to work, and the return will happen slowly and "in waves," according to the memo. Officials at American Express and Visa have said the majority of their workers won't be coming back at all for the rest of the year.

JPMorgan still doesn't have a timeline for getting employees back to buildings that have been shut to most workers since March.

The bank is also working to remodel reception areas to make them safer for staff who work there, and will be removing lobby furniture and limiting elevator capacity to maintain social-distancing protocols.

It's currently conducting a study of "people flow" across major offices to figure out how best to manage movement within buildings. Other companies are considering making routes around offices one-way only, using protocols already enacted at some grocery stores, where paths are marked by arrows on the floors or walls.

"We know that the office you return to will be different from the one that you left," the bank's task force on returning to the office wrote in the memo. "We will all adjust to this 'new normal' in different ways, but remember, we're all in this together."

BANKTHINK

The final CRA rule is in. Here's why it's better.

By Joseph Otting
May 20, 2020

On Wednesday the Office of the Comptroller of the Currency approved a final rule to strengthen and modernize the regulatory framework of the Community Reinvestment Act.

The agency's action will make evaluating national banks and federal savings associations for CRA performance more objective and transparent. And it will encourage those banks to lend, invest and provide more services to the communities they serve, including low- and moderate-income (LMI) neighborhoods, across the country.

The OCC's objective from day one has been to clarify: what counts; where it counts; how to count it; and to make recordkeeping and reporting more transparent and timelier.

The rule helps ensure the CRA remains a relevant and powerful tool for the revitalization of communities and for the nation's civil rights by making capital and credit more accessible in these neighborhoods for many decades to come.

Since being enacted in 1977, the CRA has encouraged trillions of dollars to flow into the communities that banks serve. Wednesday's final rule encourages banks to do even more to help communities.

The final rule is the culmination of a multiyear process and reflects more than a decade of dialogue about how to make the CRA work better. It builds on recommendations that federal banking agencies submitted to Congress in 2017 as part of their required decennial review of laws and regulations, and the recommendations released by the Treasury Department in April 2018.

The final rule is informed by the feedback gathered and published by the Federal Reserve. Most important, it is shaped by the thousands of personal conversations that we've had with stakeholders of all kinds and the firsthand experiences we gained visiting communities that banks serve across the nation.

We also gathered roughly 1,500 comments from the 2018 advance notice of proposed rulemaking, and then more than 7,500 comments submitted by stakeholders in response to the 2019 notice of proposed rulemaking.

We carefully considered all the comments received and made changes in the final rule accommodating suggestions and issues stakeholders raised.

For instance, the final rule defers the establishment of thresholds for grading banks' CRA performance until the OCC reviews improved data that will be used to implement the final rule.

This was in response to the OCC recognizing important weaknesses in current data regarding CRA performance.

The final rule also increases credit for mortgage origination to promote the availability of affordable mortgages in LMI areas. And it revises the approach to deposit-based assessment areas by focusing on internet banks and banks that do not rely on branches — while fully retaining the importance of branches and assessment areas around physical branches.

The final rule clarifies that the volume and quality of CRA activity matter as much as the dollar value of activity in bank evaluations.

Overall, the final rule will benefit individuals and communities in the following ways:

It increases support for small businesses as well as small and family-owned farms. The final rule also raises the eligible size for loans to receive CRA credit for the first time in 25 years, which increases capital available to help create jobs and economic opportunity.

The final rule reduces so-called CRA deserts by clarifying when banks can receive credit outside their assessment areas, and what specific activities serving rural and underserved areas would qualify for CRA credit.

The final rule eliminates uncertainty that discourages investment. It removes subjectivity and lack of transparency that leaves bankers and stakeholders guessing what qualifies for CRA credit and how much credit they will receive.

It also refocuses the CRA on long-term activity by recognizing banks' sustained commitment to the credit needs within their communities and rewarding long-term investment that can help make more meaningful and lasting change.

The final rule accommodates different bank sizes and business models. It provides an opt-in for smaller banks to choose whether to be evaluated under existing criteria or the revised framework based on their unique business model. But it also preserves community development obligations for banks that have them today.

The final rule also gives more CRA credit for maintaining branches in LMI areas in order to help keep branches in areas of need.

In addition, the rule gives banks credit for CRA-qualifying activities in Indian Country and rural areas, regardless of the banks' assessment areas.

The OCC has also added provisions that allow it to more thoroughly evaluate banks' performance in all their assessment areas, not just a limited evaluation in some of them.

This completed modernization will ensure CRA remains a relevant and effective tool for encouraging banks to meet the credit needs of their entire communities, including LMI neighborhoods and rural areas, for future generations.

Over the months we have worked on this rule, many asked me, "Why now?"

The answer has always been because we can do more to support communities in need across the country. The coronavirus pandemic has only made it more dire that communities — particularly LMI neighborhoods — need more capital and better access to credit. And they need it now.

This final rule encourages the banks and savings associations that already conduct the majority of CRA activity do even more in their communities.

Joseph Otting is the 31st comptroller of the currency.

SMALL BUSINESS LENDING

Fed receives bipartisan critique for stalled Main Street lending

Bloomberg News
May 21, 2020

The Federal Reserve received a bipartisan critique Wednesday from members of a congressional oversight panel who said the central bank has been slow to launch a key emergency lending program for midsize companies.

Rep. French Hill, an Arkansas Republican, and Rep. Donna Shalala, a Florida Democrat, expressed concern that the Main Street Lending Program — which targets companies too large for small business assistance and too small to qualify for corporate lending facilities — was not yet operational.

"I'm disappointed that it's taken as long as it has," Hill said in an interview of the program, which was announced April 9.

The central bank received more than 2,000 comments on the program from April 9 to 30, and then announced that it would be broadened to include more businesses. Fed Chair Jerome Powell says the program will be operational by early June and disputed the notion that the central bank could be moving more quickly.

"We are working literally around the clock and have been for weeks to have this ready," Powell said.

Both the Fed and the Trump administration have projected economic hardship at least through June as the U.S. copes with the coronavirus pandemic. Powell has warned of broad dangers to the economy, saying a recovery would take time and that the country was at risk of long-term economic damage.

Trump's economic advisers say the economy could contract 40% for the second quarter through June. More than 36 million people already have lost their jobs.

The Fed and Congress have pumped trillions of dollars into the economy to stem the damage, but the central bank is still grappling with what Powell has called "complex and challenging" emergency facilities.

"Main Street is in a class by itself," he told senators Tuesday during a virtual hearing. "These are small and medium-sized businesses. They live in a world of bank lending. That's a world of negotiated documents. We're trying to enter that world and make loans to qualifying buyers."

'Commercially reasonable'

The Main Street lending facility is also a key area of interest for the oversight panel. Carlos Condarco, a spokesman for Shalala, said the Florida Democrat wants to make sure the terms of the lending programs benefit the small and medium-sized businesses most in need.

The Fed, when it expanded the facility, said participants should make "commercially reasonable" efforts to refrain from laying off workers.

Lawmakers say that while Congress did not place restrictions on retaining payroll levels in exchange for federal support that comes from the central bank, the Fed should still require it to follow the spirit of the law.

Hill said he plans to ask Treasury and Fed officials what they mean by "commercially reasonable."

"The principal mission of the Main Street Lending Program is to bridge companies cash-flow needs across this coronavirus impact on the economy and keep as many Americans employed as possible," Hill said in the interview. "That's certainly the full intent of not only the the law but also the regulations."

WORKFORCE MANAGEMENT

Citi eyes offices in suburbs to ride out Manhattan's recovery

Bloomberg News
May 20, 2020

Citigroup is considering opening satellite offices outside New York City as the finance industry grapples with when it will be safe to bring workers back to Manhattan.

With the pandemic fueling anxiety about public transportation and dense urban offices, large banks and financial firms in Manhattan are looking elsewhere for space to let workers spread out and avoid commuting into the city.

Citigroup is considering short-term leases for space that is furnished and ready to be occupied in locations including Long Island, Westchester and New Jersey, according to people familiar with the matter. The discussions are preliminary as the company weighs its options, the people said.

Citigroup declined to comment.

Financial firms have reached out to RXR Realty, a major Manhattan landlord that also owns office space in the suburbs, to inquire about its buildings in Long Island and Westchester, according to a person familiar with the matter.

Rubenstein Partners, which owns offices in northern New Jersey and Stamford, Conn., has gotten inquiries on "several hundred thousand square feet" of space, mostly from New York-anchored firms, according to Brandon Huffman, a principal at the firm.

"There's an overwhelming number of employees that need mass transit to access the urban environment," he said. "Nobody knows how that's going to work in a social-distancing world."

Real estate brokers and landlords have also seen a surge in interest for offices outside New York from media and technology companies and law firms. The new interest could provide a boost to suburban properties previously seen as less desirable than glassy towers in Manhattan.

Big banks and money managers have been moving employees away from New York and the surrounding area to cheaper U.S. cities for years. Goldman Sachs Group has built up operations in Salt Lake City, Deutsche Bank AG has expanded in Jacksonville, Fla., and AllianceBernstein is moving its corporate headquarters to Nashville, Tenn. The pandemic could speed up the exodus, at least in the short term.

The coronavirus outbreak has raised questions about the safety of crowded building lobbies and packed elevators, not to mention the wisdom of long commutes into Manhattan after months of workers at home with minimal hiccups.

Morgan Stanley CEO James Gorman recently said he could imagine a future with "much less real estate," while JPMorgan Chase, which is building a new tower near Grand Central Terminal, expects to keep its office half full, at most, for the "foreseeable future."

Many of Citigroup's employees, like others in Manhattan's finance industry, have been working from home since March, with no set date for a return. The bank has spent years investing in a massive renovation of its offices in Tribeca that will allow it to fit more employees in the building, with floor-by-floor renovations combining 388 and 390 Greenwich St. into a single headquarters.

Citigroup has moved employees from offices in midtown Manhattan and Queens into the Tribeca location in recent years. The bank is slated to exit one of its offices in Long Island City when its lease ends this year. It has said it will still house at least 1,000 employees in a neighboring building after exiting the lease.

For now, Manhattan-based finance firms are focused on suburban office leases of two to three years, with options to renew. Most of them are still trying to figure out how much space they need and discussions largely revolve around elevator flow and whether bathrooms will be shared, according to brokers.

Companies are also evaluating how many people they can keep permanently at home, says Brett White, the CEO of Cushman & Wakefield. Many have realized that many workers will still want some access to an office, but the key issue is a safe commute, he said.

"New York is a classic example where mass transit is such a big issue, it's the most dangerous place an employee's going to be in their workday in terms of infection," White says. "Companies will look at satellite offices in places people can get to easily without mass transit, whether they drive or bike."❑