House Bill To Revise Community Reinvestment Act Would Put New Focus on Fair Lending

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Legislation introduced on September 15, 2022 by Maxine Waters (D-Cal.), chair of the House Committee on Financial Services, would significantly revise the Community Reinvestment Act (CRA), adding a number of new substantive and procedural requirements.

If enacted, House Resolution 8833, the "Making Communities Stronger Through the Community Reinvestment Act," would represent the most significant revisions to the CRA in more than a decade. These changes include:

- new data-gathering requirements;
- expansion of the types of legal violations that could affect CRA ratings;
- mandatory advisory committees in each market where the bank is located; and
- additional requirements to receive community service and charity work credit.

The legislation could delay pending proposals by financial authorities to update current CRA regulations.

Purpose and Key Provisions

The text of the bill and statements by Chair Waters make it clear that a core focus of the bill is to address perceived "redlining" by financial institutions. In a press release, Chair Waters stated that the bill is a part of:

> continuing efforts to root out discrimination in our modern-day banking system and close the racial wealth and homeownership gaps … . Congress passed the CRA in 1977, but after nearly 45 years, the law has not kept up with changes in the banking system and is in need of reform to ensure that banks serve communities that have been historically redlined and left behind by our financial system.

The purpose of the bill is further reflected in its first section, which recites testimony from the author of the Community Reinvestment Act of 1977 about redlining.

The bill's amendments to the CRA would include:

- **Legal violations.** Evidence of "any violation" of federal or state law, "regardless of whether the violation is credit-related or not," would result in negative credit to the bank's CRA performance evaluation. Current CRA regulations provide that evidence of "discriminatory or other illegal *credit* practices" would receive negative consideration.
- **Community advisory committees.** Banks would be required to form separate community advisory committees in markets. Banks with assets of at least $2 billion must establish committees in each metropolitan statistical areas (MSAs) where the bank or any of its subsidiaries has a branch or other facility (including an ATM), or where the bank has a "substantial number of customers" with deposit accounts. Banks below the $2 billion threshold must establish community advisory committees in each MSA where the bank or any of its subsidiaries are "located." The executives of a bank must meet with the community advisory committees quarterly and when certain transactions are proposed by a bank. Topics addressed in the meetings must include meeting the credit and deposit needs of low- and moderate-income individuals and underserved communities, persons with disabilities, LGBTQ+ communities and 27 specified racial and ethnic communities.

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- **Community service and charity work.** Institutions with assets of $2 billion or more would not be eligible to receive consideration for community service and charity work unless (a) they collect and report information regarding the community service and charity work in a format prescribed by regulators; and (b) the institution "demonstrates the impact of the community service or charity work on low- and moderate-income neighborhoods," with 10 specified criteria for doing so.
- **Partnerships with non-depository lenders.** Regulators would be required to consider a bank's performance in originating specified types of loans "in partnership with one or more non-depository lenders."
- **Small home mortgage lending.** Regulators would be required to consider a bank's performance in facilitating lending to low- and moderate-income borrowers including "small-dollar," first-lien mortgages of $100,000 or less and certain other types of loans.
- **Data reporting.** "Large" banks (a category that would be defined in rulemaking) would be required to report information relating to demographics of borrowers, including income as well as "gender identity" and "sexual orientation," and whether the institution has a special purpose credit program for specified categories of borrowers.
- **Discrimination study.** Every two years, the appropriate federal financial supervisory agencies would be required to complete an "interagency statistical study" to identify MSAs and rural counties that "either experience ongoing discrimination or exhibit significant racial disparities in access to credit."

The bill provides minimal detail with respect to how a number of these provisions would be implemented, and thus the subsequent rulemaking process would be critical in determining more precisely what would be expected of financial institutions.

Looking Ahead and Key Takeaways

Prospects for the bill to become law are uncertain. If Democrats retain control of the House of Representatives next year, the bill may become a major legislative priority for the Financial Services Committee. However, should Republicans gain control of one of the houses of Congress after the midterm elections, it is very unlikely that the bill would pass. The draft legislation is nonetheless significant for several reasons.

First, should the bill become law or appear likely to pass, it may further delay or influence finalization of revised CRA regulations proposed by federal banking regulators in May 2022. Efforts to modernize and overhaul CRA regulations have been underway for several years, and it was not until this year that regulators were able to put forward a unified proposal. While regulators appear poised to enact significant CRA changes in the near term, H.R. 8833 may delay that process as regulators assess whether the legislation is likely to pass and if any of the concepts in it would be appropriate for inclusion in the pending rulemaking process.

Second, the legislation would directly inject several fair lending concepts into the CRA. There has always been a nexus between the CRA and fair lending, and redlining concerns were an aspect of the CRA legislative history as recited in the bill. Furthermore, fair lending violations can be the basis for lowering the rating that an institution would otherwise receive. However, regulators have traditionally focused on bank performance as measured against income levels of areas or individuals. The bill would bring redlining and other fair lending issues to the forefront of CRA concerns with its numerous provisions that explicitly address discrimination based on an expansive list of prohibited factors.

Third, the legislation represents a continued federal governmental focus on redlining, which is likely to continue and intensify under the current administration.

In sum, the bill serves as an important reminder of the interplay between fair lending and the CRA. In addition to monitoring and preparing for potential implementation of major CRA changes in the near term based on the current regulatory proposals, banks may wish to examine their redlining risk through data analysis and by reviewing compliance and risk management policies and procedures.