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Banking regulators announced proposed updates to the Community Reinvestment Act: How proposed changes intersect with large bank digital banking activities

Executive summary

While digital transformation and technological innovation have been top of mind for financial institutions for some time now, the past few years have brought accelerated change across the industry and led to tremendous advancements in the digital banking consumer experience. As a result of this growth of digital banking, regulators are revising rules and guidance in response to customers' increased demand for a more mobile, web-based banking experience as well as the need to implement requirements that promote greater financial equality for low- and moderate-income (LMI) communities.

In a joint notice issued May 5, 2022, the 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) proposed rulemaking that aims to strengthen and modernize the framework of the Community Reinvestment Act (CRA).[1] With the last substantive updates to the CRA in 2005, the agencies recognize the significant changes in the industry, including the acceleration of digital banking, and the need to evolve the CRA regulations accordingly.

The proposed rule includes an updated CRA evaluation framework with tailored performance standards that are applied based on bank asset sizes. The proposed rule introduces four new performance tests to evaluate CRA performance for large banks with assets of $2 billion or more:

01. Retail Lending Test
02. Retail Services and Products Test
03. Community Development Financing Test
04. Community Development Services Test[2]

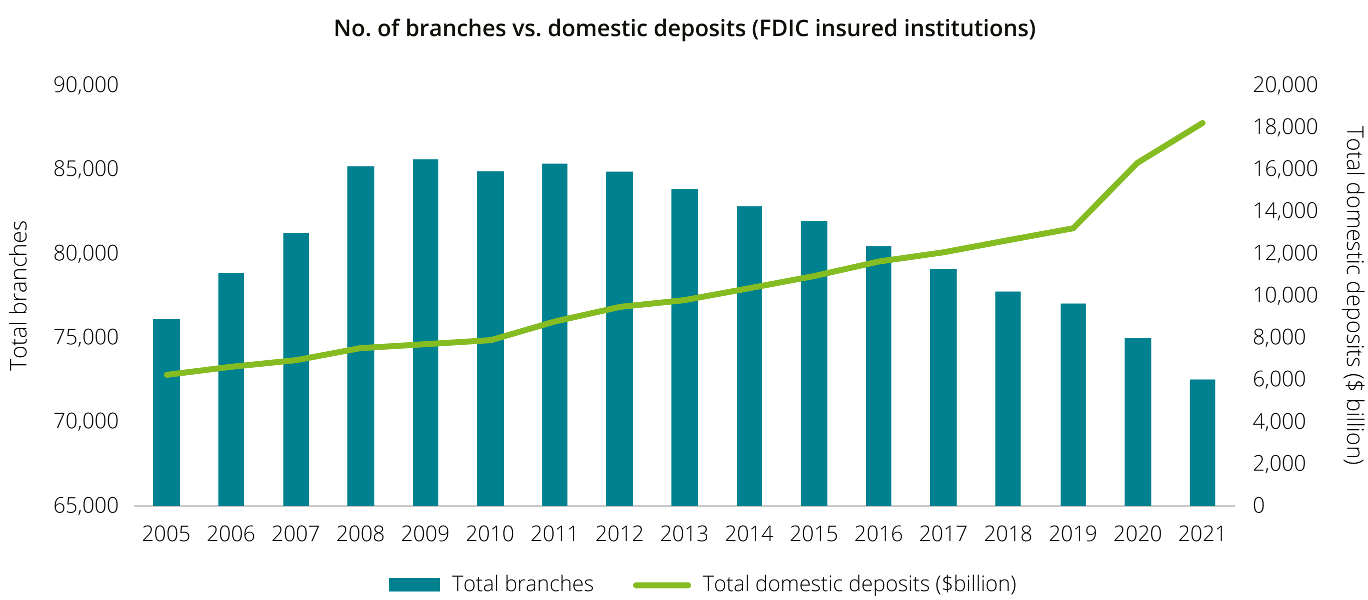
Of note is the fact that only large banks are subject to the Retail Services and Products Test.[3] While the proposed rule focuses on eight key objectives for the agencies, a core component of the proposal is also to adapt to changes in the banking industry, namely the rise of mobile and online banking.[4]

The shift to more digitally focused banking is a key aspect to the evaluation criteria to enable a more holistic review of a bank's retail services. According to the 2019 FDIC Survey of Household Use of Banking and Financial Services, the use of online and mobile banking as the primary method to access a bank account was 22.8% and 34%, respectively, while the use of bank tellers and branch visits continues to decline.[5]

The expansion of digital banking is also evident through the decline of FDIC insured bank branches by nearly 15% despite the total of domestic deposits increasing more than 107% over the last 10 years (figure 1). As banks continue to invest in enhancing their mobile apps and sophisticated online interfaces, and reassess how consumers are banking (i.e., digitally or at branches), it's critical to continue considering the interaction of these systems and the products offered against the needs of LMI communities.

This article focuses on financial institutions, specifically large banks subject to the proposed Retail Services and Products Test, as they begin to monitor the proposed changes and evaluate areas of their digital banking program, including digital activity and delivery system.[6] The most impactful changes for large banks will likely consist of the evaluation of service delivery methods and the availability and fit of credit and deposit product offerings related to key demographics. Preparing for the final rule during the comment period, which ended August 5, 2022, can position large banks for new CRA evaluation criteria while promoting financial inclusion and accessibility.[7]

Figure 1



Source: FDIC Bank Data and Statistics

Intersection of CRA and digital banking

The proposed changes to the Retail Services and Products Test are focused on the evaluation of large banks in two areas: (1) delivery system availability and services, and (2) responsiveness of credit and deposit products and programs to LMI communities' needs.[8] The agencies would evaluate the Retail Services and Products Test components utilizing a predominantly qualitative approach while also incorporating quantitative measures and benchmarks as guidelines.

(1) Delivery systems evaluation

As part of the delivery systems evaluation, the agencies have proposed a more balanced evaluation framework that maintains an emphasis on branches (i.e., availability and services) while increasing the focus on digital and other delivery channels.[9] For large banks with more than $10 billion in assets, the digital and other delivery systems evaluation is required, but for large banks with less than $10 billion in assets it would be optional.

The proposal to consider the availability and responsiveness of not only a large bank's digital delivery systems (i.e., mobile and online banking services) but also other delivery systems (e.g., telephone banking, bank-by-mail, bank-at-work programs) demonstrates the broadened approach to assessing how banks deliver services to LMI customers in addition to typical branch services.[10]

(2) Credit and deposit products evaluation

The second proposed evaluation would be to evaluate the availability of credit and deposit products, with a focus on the extent to which these products are responsive to the needs of "LMI individuals, small businesses, and small farms."[11] This more holistic approach to evaluating credit and deposit products includes the requirement for banks to demonstrate "that their products or programs are provided in a safe and sound manner."[12] Examples of responsive credit products outlined by the agencies include programs that facilitate mortgage and consumer lending for LMI borrowers (e.g., small-dollar mortgages and consumer lending products using alternative credit histories) or programs that meet the needs of small businesses and small farms (e.g., microloans). Additional examples include programs that are conducted in cooperation with minority depository institutions (MDIs), women's depository institutions (WDIs), low-income credit unions (LICUs), and Treasury Department-certified community development financial institutions (CDFIs).

The proposal also outlines the agencies' consideration of the availability and usage of deposit products, which provide a critical entry point for LMI communities into banking. For large banks with more than $10 billion in assets, the evaluation of deposit products responsiveness is required, but for large banks with less $10 billion in assets it would be optional.

How can financial institutions prepare for what's next?

While there is still uncertainty on what the final CRA rule may look like as well as the enforcement of these changes, large banks have a unique opportunity to begin to evaluate their digital banking programs, focusing on key areas, including:

- **Digital and delivery systems**—Conduct an evaluation of existing delivery systems to better understand and enhance, if applicable, the scope and use of digital banking services to their customers. Large banks should consider the availability of their online and mobile banking services in LMI communities, including ability to access the services on different device types and in more rural areas.
  - Large banks should be prepared for the agencies to evaluate the range of digital and other delivery systems (e.g., online, mobile, and telephone banking) to determine how customers are served beyond established branches.[13]
- **Digital banking activities**—Analyze digital banking activities by individual in low-, moderate-, middle-, and upper-income census tracts to determine the responsiveness and utilization of digital banking services. Large banks should gather data related to the number of checking and savings accounts that are opened digitally as well as data for account holder usage by type of delivery system.[14]
  - Large banks should be prepared for the agencies to utilize these data points to understand how institutions are serving all potential customer bases as banking business models evolve with the growing technology implementation.
- **Credit and deposit products**—Assess existing credit and deposit product offerings through the perspective of product availability and features that increase accessibility for different communities. Large banks should consider if their deposit products include low-cost features, such as no overdraft or insufficient fund fees, accounts with no or low opening balance, accounts with no or low monthly maintenance fees, etc. as well as the accessibility for different communities, including in-network ATM access.
  - Large banks should be prepared for the agencies to evaluate deposit product features including low-cost features, broad functionality and accessibility, and the inclusivity of access to these products for those without or with adverse banking or credit histories. The agencies have also proposed evaluating the usage of such responsive deposit products by considering at a minimum the number of accounts opened and closed.[15]
- **Marketing and awareness initiatives**—Evaluate marketing strategies and due diligence processes to determine how existing marketing efforts are promoting accessibility to digital delivery systems and credit and deposit product offerings. For example, strategic partnerships with community-based organizations in LMI communities may increase uptake of digital delivery systems and related awareness of products.
  - Large banks should be prepared for the agencies to evaluate the strategies and initiatives that exist to serve LMI communities, including outreach activities to increase uptake of different delivery channels and awareness of products to understand the extent to which LMI area needs are being met.[16]

While this component of the proposed CRA updates is only applicable to large banks, all financial institutions should pay close attention to these evolving requirements for digital banking and consider how the extension of expectations could impact their processes and products.

Conclusion

As the industry awaits any additional announcements and updates related to the proposed CRA updates, large banks should consider preparing for the implications of upcoming CRA exams, as well as regulators' alignment of regulatory expectations with digital banking.

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Endnotes

1 Office of the Comptroller of the Currency (OCC), "Community Reinvestment Act: Interagency Notice of Proposed Rulemaking to Implement the CRA," OCC Bulletin 2022-14, May 5, 2022.

2 Ibid.

3 OCC, "Community Reinvestment Act (CRA) Reform Update: Overview of the Interagency CRA Notice of Proposed Rulemaking," presentation, May 11, 2022.

4 OCC, "Summary of Key Objectives of the Interagency CRA Proposal," May 2022.

5 Federal Deposit Insurance Corporation (FDIC), "How America Banks: Household Use of Banking and Financial Services," 2019 survey results, last updated December 17, 2021.

6 OCC, "Community Reinvestment Act."

7 OCC, "CRA Reform Update."

8 OCC Federal Reserve System, and FDIC, "Community Reinvestment Act," joint notice of proposed rulemaking, May 5, 2022.

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.

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