Fed’s Brainard offers glimpse of what revamped CRA could look like

By **Hannah Lang**

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WASHINGTON — A Federal Reserve Board governor detailed possible steps forward on reforming the Community Reinvestment Act, including an updated approach to CRA assessment boundaries, revising how banks are tested for community development activities and tailoring certain CRA requirements based on bank size.

Gov. Lael Brainard said one idea under discussion is allowing banks "of a certain scale" to have separate assessment areas for their retail activities and community development activities. The aim is to recognize activities beyond a bank's branch network — the traditional CRA assessment boundary — while still prioritizing activities within that network.

“By creating separate assessment areas for retail and community development activities, we believe that banks would continue to place their community at the center of their retail lending and service activities while participating in meaningful community development opportunities that may have greater impact due to their broader reach,” she said in a speech Tuesday to a conference of the National Community Reinvestment Coalition.

"Banks are uniquely situated to evaluate the community development finance projects in the states where they operate and to provide the smaller, more complex, and often more impactful, investments that don't attract institutional investors," said Federal Reserve Gov. Lael Brainard.

The Fed, Office of the Comptroller of the Currency and Federal Deposit Insurance Corp. have struggled to develop a joint CRA reform plan, but Brainard's comments appeared to give a glimpse into their discussions. She said some of the ideas on the table have been triggered by public comments responding to the OCC's advance notice of proposed rulemaking on reforming CRA policy.

In addition to separate assessment lines for retail and community developments activities, Brainard also raised the idea of a "comprehensive" test for community development. In large-bank CRA assessments, community development loans currently fall under the lending test but community development investments are judged in a separate category. Spreading those activities across separate tests can lead to "distortions," Brainard said.

Currently, the large-bank performance tests might actually be preventing community development, Brainard noted.

“If a bank is concerned about passing its lending test, it might structure financing as a loan rather than an investment to beef up its lending test performance even if an investment would be more effective,” she said.

Brainard said separate assessment areas and performance tests for retail versus community development could make it easier for regulators to streamline CRA exams banks of different sizes and business approaches.

“Small banks could have their lending and retail services evaluated under the retail test, while larger banks could be evaluated under both the retail and community development tests,” Brainard said.

She also raised the prospect of a more flexible definition of lower-income communities for the purposes of CRA-related activities.

"There are ... suggestions that in high-poverty rural areas, where incomes overall may be low relative to federal benchmarks, it may be helpful to adjust the definition of what qualifies as low and moderate income so that more CRA activity receives consideration, which we will study," Brainard said.

The CRA reform process has hit several obstacles, including apparent disagreement between the regulators, but Brainard's speech indicates the three agencies are discussing substantive changes. But it is unclear whether there is a consensus around the ideas she discussed. The OCC's decision to issue a notice of proposed rulemaking on its own was inconsistent with the typically joint nature of CRA deliberations. Regulators say they want an actual CRA proposal to be issued on an interagency basis.

Brainard emphasized the Fed's commitment to approaching reforms to CRA as a joint effort, echoing comments made by Fed Chairman Jerome Powell in prerecorded remarks to the NCRC conference. "I do want to express my support for an interagency effort to revise the regulations to promote clarity and consistency in our evaluations of banks, particularly in light of the changes in the way bank products and services are delivered," Powell said.

On changing assessment areas, Brainard said that "community development activities ... often operate in larger areas that may not neatly overlap with a bank's assessment area."

"A more expansive and ex ante clearer community development assessment area definition would afford CRA consideration for any such activity in a state where the bank has an assessment area," she said.

Some have suggested that the OCC appears eager to expand the assessment areas based on the feedback it requested. While industry stakeholders largely submitted comment letters supporting the expansion of assessment areas, critics and consumer advocacy groups warned that widening assessment areas could dilute resources and undermine the law's intention.

However, if the agencies decide to offer financial institutions separate assessment areas for retail activities and community development activities, it would not only eliminate uncertainty for banks, but could also "encourage more capital for affordable housing, community facilities and economic development activities in underserved areas," Brainard said.

An expanded assessment area could also target the concentration of investments in metropolitan areas with a large number of bank branches as opposed to rural areas with fewer banks, she said.

Noting that it "is not surprising" that banks invest in community development where they know for certain it will qualify for CRA consideration, Brainard said a separate community development test could encourage banks to offer financing in underserved areas.

"This is important because banks are uniquely situated to evaluate the community development finance projects in the states where they operate and to provide the smaller, more complex, and often more impactful, investments that don't attract institutional investors," Brainard said.

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