

Lifting CRA's Threat to Mergers Series: 12

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ABSTRACT (ABSTRACT)

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The safe-harbor proposal, moreover, matches many of the major themes of the [Bill Clinton] campaign. Increased community investment should create jobs, help alleviate the problems of cities, and result in increased would not not increase the budget deficit, especially since the reinvestment act most directly targets the solvent, expanding banks that want to merge or open branches.

The safe harbor provision might also limit formal protests against applications except where there is substantial and specific evidence of reinvestment-act problems at the bank.

FULL TEXT

Peter P. Swire, photo

The current system of Community Reinvestment Act compliance is expensive and unpredictable. Besides the cost of exams, banks face the risk that the agencies will deny merger and other applications, as well as the threat that protests against mergers will arise.

Even exemplary performance will not necessarily prevent the delay and cost of protests. And small banks face the special burden of devoting scarce management time to compliance with the act.

Here is a way to avoid the looming collision between banks and a more activist administration in Washington:

Provide banks with a "safe harbor" in the form of automatically favorable treatment on reinvestment-act examinations and on applications subject to review under the act.

In return for the safe harbor, the banks would commit to substantial investment in community development banks and other qualifying investments. Clinton's Blueprint

During his presidential campaign, Bill Clinton highlighted his long standing commitment to the act and called for the creation of 100 community development banks nationwide, with a total investment of \$1.5 billion.

But he also showed a sensitivity to banks' concerns, promising to emphasize "performance, not paperwork" and noting that "the CRA paper trail burdens banks and still fails to promote adequate community lending."

If the act were to continue as is, it is hard to see how enforcement could be stricter and less burdensome at the same time.

With the safe harbor, however, banks would be natural sources for more community development bank funding. Meanwhile, the paperwork and other compliance costs would be eased. Indeed, much of the additional investment could be funded by lower compliance costs. In Line with Other Themes

The safe-harbor proposal, moreover, matches many of the major themes of the Clinton campaign. Increased community investment should create jobs, help alleviate the problems of cities, and result in increased would not not increase the budget deficit, especially since the reinvestment act most directly targets the solvent, expanding banks that want to merge or open branches.

One special attraction of the proposal is that it can be accomplished entirely by regulation, without changing the statute. The reform can thus be accomplished quickly. Implementing the Plan

The proposal must establish how to earn the safe harbor and define what protection it offers.

To support the safe-harbor proposal, the Clinton administration would have to be convinced that additional investment would occur in poorer communities. Such investment would also reduce objections from community groups.

The political reality for banks, therefore, is that current levels of community investment will probably not be enough.

It would be a tough sell to win approval for the American Bankers Association proposal to give a safe harbor to all banks that get an "outstanding" rating under the act.

Instead, the regulations could define a minimum qualifying level of investment, perhaps based on the activity of banks with the strongest Community Reinvestment Act records. The level might be linked to asset size.

Or the agencies could set sub-goals relating to such categories as community development banks, low-cost deposit accounts, affordable housing loans, and small-business loans.

But as the safe harbor became more complicated, its benefits would be reduced. The Preclearance Option If regulators did not wish to set general categories for investment, an alternative would be preclearance, under which a bank could submit a community-investment plan in order to earn its safe harbor.

The protection offered by the safe harbor could also vary.

The reinvestment-act examination for qualifying banks, for instance, might be limited to compliance with the agreed-upon level of investment.

For applications, the safe harbor might lead to automatic clearance on community investment grounds. Or the agencies might retain the right to review applications when special conditions were met. Curb on Protests

The safe harbor provision might also limit formal protests against applications except where there is substantial and specific evidence of reinvestment-act problems at the bank.

The advantages of a strong safe harbor would be reduced compliance costs and the strongest possible incentive to increase community investment.

Such investment would be in the hands of private-sector lenders, not second-guessed by examiners and community activists. And this could be made politically palatable by the extra investment in communities that receive too little today.

Mr. Swire is an associate professor of law at the University of Virginia, Charlottesville. A longer version of this article will appear in the March issue of the Virginia Law Review.

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