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CRAfting a Merger: Agencies Revamp Application Questions Concerning the Community Reinvestment Act

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This past July, the agencies released updated versions of several Interagency documents, one of which was the Interagency Bank Merger Act Application. The merger application contained several changes—primarily clarifications and expanded questions to cut down on some of the usual follow-up and supplemental submissions. Those who have not had occasion to file an application in the last few months may not have noticed one particularly intriguing change: Questions 10 and 11 concerning the Community Reinvestment Act (CRA) were significantly expanded.

CRA has been a topic of much conversation and speculation lately, as the now 40-year-old legislation begins the process of a much-needed refresher. A good CRA rating has long been a criterion for the regulators to approve merger transactions, and CRA concerns have held up merger transactions in the past. Thus, banks must take care that CRA considerations do not fall by the wayside when preparing for a merger.

New Question 10, which addresses how the applicant will meet the "convenience and needs of the community," digs deeper than its previous iteration. Question 10 now asks what research or due diligence the applicant has done to ascertain the needs of the community to be served and inquires further into plans for introducing or discontinuing products and services. Applicants must now prove they can do a good job for the community.

Old Question 11 examined the record of performance of the institutions involved and was more retrospective. The new, expanded question specifically asks how the resultant institution will plan for and comply with CRA in the future:

Question 11. Describe how the applicant and resultant institution will assist in meeting the existing or anticipated needs of its community(ies) under the applicable criteria of the Community Reinvestment Act (CRA) and its implementing regulations, including the needs of low- and moderate-income geographies and individuals. This discussion should include, but not necessarily be limited to, a description of the

following:

a. The significant current and anticipated programs, products, and activities, including lending, investments, and services, as appropriate, of the applicant and the resultant institution.

b. The anticipated CRA assessment area(s) of the resultant institution. If the resultant institution's CRA assessment area(s) would not include any portion of the current assessment area of the target or the applicant, describe the excluded area(s).

c. The plans for administering the CRA program for the resultant institution following the transaction.

d. For an applicant or target institution that has received a CRA composite rating of "needs to improve" or "substantial noncompliance" institution-wide or, where applicable, in a state or a multistate Metropolitan Statistical Area (MSA), or has received an evaluation of less than satisfactory performance in an MSA or in the non-MSA portion of a state in which the applicant is expanding as a result of the transaction, describe the specific actions, if any, that have been taken to address the deficiencies in the institution's CRA performance record since the rating.

Parts (a) and (d) are derivations of the previous question; Parts (b) and (c), however, are new. Part (b) rings familiar for anyone who has followed the handful of redlining cases pursued by the Department of Justice over the last few years. Many community banks are taking a closer look at their own geographic footprints and assessment areas in the wake of such cases, and this new question suggests that the agencies are as well.

Perhaps these revamped questions are designed, in part, to prompt an applicant to think more proactively about its current CRA program and what adjustments might be necessary to accommodate its expanded and potentially evolved market following the transaction. How will the applicant's market demographics change? Do the members of the newly-added communities have different needs or market conditions than those in the applicant's current communities, and if so, how is the applicant preparing to address them? What majority-minority census tracts might be included in (or excluded from) the resultant institution's assessment area? Will there be new opportunities for financial education programs or community sponsorships? Certainly, some of these questions will be more relevant to some institutions than others, but the point is to start asking those questions–and asking them earlier and louder.

Clearly, the agencies are paying closer attention to CRA in merger transactions than before...but to what end? Time will tell. As of September, very few updated applications are available for review, so it is not yet clear what depth of responses the agencies expect or how this information might play into their analysis. Banks who see a merger application in their future will need to thoughtfully strategize not only how to best respond to these questions, but how any anticipated mergers will fit into

and affect their overall CRA compliance plan.