



MEMORANDUM

TO: Federal Financial Analytics Clients
FROM: Karen Petrou
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Was the new CRA proposal worth waiting for? Advocates on all sides of this question are burrowing into the 678 pages delivered unto them by the FDIC [last Thursday](#). We're doing the same for an in-depth analysis we'll make as objective as possible as quickly as possible. At first glance, there's a lot in the proposal for all sides to like a lot. However, the haste with which the agencies are gathering comment suggests that they hear Republican hoofbeats that may well pick up speed and strength as the industry's deep read concludes.

The [fact sheet](#) released on the proposal laid out the both-sides benefits. Banks would bet certainty combined with points for investing in much of what they now do or want to do in areas such as social welfare, environmental resilience, and deposit-taking. Consumer and community advocates were cheered by the proposal's tougher metrics focus on demographic data designed to demand racial equity, and higher barriers to exemplary CRA ratings.

However, each side carefully hedged its bet. Bank trade associations applauded the proposal's provisions in [broad terms](#), celebrating an inter-agency action along with provisions bringing CRA into the 21st century. However, none blessed the proposal in substance, doubtless because the new demographic-reporting requirements and tougher grading system already give the industry heartburn.

Conversely, [community groups](#) warned that the proposal had better not go soft on banks, especially big ones. Anticipating these concerns, CFPB Director [Chopra](#) made it clear that, while he likes a lot in the proposal, he won't tolerate anything that softens it and, indeed, he wants some of it toughened up.

It will take a while to parse all these pros and cons in so complex a proposal. But, even pending judgment on the proposal itself, I know one think about it: the banking agencies fear that the longer it takes to finalize, the greater the odds that Congress will overturn it.

Typically, agencies set comment deadlines based on a desired number of days following Federal Register publication. But, had the agencies simultaneously given a generous time period – say ninety days – and started the clock upon Federal Register publication, the comment deadline could well have been sometime in September, if not later still. It can take weeks or even months for the Federal Register to print whoppers such as this CRA proposal. This gives commenters plenty of time even if the nominal deadline is thirty or sixty days after publication, but the agencies know well that Republicans have sharply criticized the SEC for following this path on several of its longest, toughest rules.

As a result, the agencies simply set August 5 as the comment deadline. This gives commenters ninety days, preventing complaints about an over-short period, but doesn't depend on the vagaries of Register publication. But, why not simply let the usual process take its course?

The reason is to be found in the Congressional Review Act. Had the agencies allowed the comment process to slide into the fall, it would have taken them until year-end, if not into 2023, to work their way through thousands of comments with hundreds of constructive suggestions and legal niceties. And, even after all this analysis, the next step to a final rule is inter-agency negotiations on what that rule should be, a process that can also take months even if agency heads demand fast finalization. Thus, the soonest a final rule could occur with a conventional comment period is well into 2023, by which time Republicans might well not only have gained control of both Houses of Congress, but also had a chance to hear from industry critics whose own read of the rule lead them to prefer current anachronisms to future requirements.

The agencies will thus need to move very, very fast to finalize a rule by year-end and, even so, they'll have to hope that any Republican-controlled Congress takes so long to organize itself that Review Act deadlines pass before someone tries to stop final implementation. Given how much each of them wants a final rule, this prospect gives bankers considerable leverage over the final rule as long as what they want doesn't press progressives so hard that they decide to craft a super-onerous CRA standard that wins them political points even if the rule never ends up in the book.