Federal, State Agencies Promote Expanded Oversight of Bank and Nonbank Community Development Activities

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On November 2, 2023, the Consumer Financial Protection Bureau (CFPB) **issued a survey on state Community Reinvestment Acts** (CRAs) aimed at informing states without CRAs about actions they could take to promote lending and investment in communities of color. In connection with the release, the bureau highlighted the explosive growth of mortgage lending by nonbanks as compared to banks—only the latter of which are covered by the federal Community Reinvestment Act. Just two days earlier, the New York attorney general **released a report on racial disparities in homeownership**, finding that historic lending practices have prevented consumers of color from purchasing homes and deepened wealth inequality. These reports build upon a deluge of public policy efforts – such as **interagency promotion of special purpose credit programs** and the Department of Justice's **Combating Redlining Initiative** – aimed at driving additional lending and investment in communities of color.

Seven states have CRA laws creating an affirmative obligation for financial institutions to meet the lending, investment and service needs of their communities

The CFPB's survey highlights the variety of approaches various states take to ensure financial institutions adequately serve the communities in which they operate. Chief among the bureau's concerns is that the federal CRA and four of the seven state CRAs do not apply to nonbank financial services companies. The bureau notes that when the federal CRA was enacted in 1977, banks originated 74% of all mortgages; however, as of 2021, nonbank mortgage companies originated 64% of conventional home purchase loans. While the bureau does not expressly recommend expanding all CRA laws to nonbank mortgage companies, it implies as much by noting that their business model "would not be viable" without federally supported institutions – the justification for subjecting banks to the federal CRA.

The survey also explores the host of enforcement mechanisms state regulators use to promote compliance with CRA obligations. While no state provides for the assessment of civil monetary penalties for noncompliance, the bureau found that states can restrict M&A activities, mandate corrective action, limit product offerings and examine highly rated institutions less frequently.

New York attorney general pushing for increased enforcement resources and tools

The New York attorney general and New York State Department of Financial Services have in recent years focused on alleged discriminatory lending practices in mortgage lending and auto lending. The attorney general's new report explores racial and ethnic disparities in homeownership, mortgage application and approval rates, and mortgage pricing. To rectify these issues, the attorney general recommends, among other things, that the legislature increase funding for government agencies to conduct fair lending work. Noting how resource-intensive it is to bring fair lending investigations, the report concludes that "many lenders escape review." The attorney general also recommends that the state directly subsidize down payments for first-generation homeowners to address historical inequities that created the racial wealth gap, thereby limiting asset accumulation for families of color.

Looking ahead

Federal and state policymakers and regulators continue to use a variety of tools to press financial institutions to serve communities of color. Perhaps the most prominent initiative is the DOJ's Combating Redlining Initiative, which recently secured its 10th redlining settlement. DOJ also recently disclosed it has **more than 24 active investigations across the country**. In response to this pressure, both bank and nonbank financial institutions will need to continue to look for opportunities to support communities of color – whether it is through affirmative marketing and outreach, strengthening support for consumers with limited English proficiency, or developing new products.