

ICBA Regulatory Update: Community Reinvestment Act Modernization

Topic/Issue: Community Reinvestment Act

Agency: OCC, FDIC, FRB

Overview:

On October 24, 2023, the Federal Reserve Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation issued a new CRA rule. The nearly 1500-page rule is the culmination of a years-long process to “modernize” the Community Reinvestment Act. ICBA and other trade associations have sued the FDIC, the OCC, and the Federal Reserve Board over the implementation of CRA in U.S. District Court for the Northern District of Texas.

We allege that the rule exceeded the agencies’ authority under the Community Reinvestment Act and that the rulemaking violated the Administrative Procedure Act. Judge Matthew Kacsmaryk granted an injunction to extend the CRA final rule’s effective date, along with all other implementation dates. The effective dates will be extended for each day the injunction remains in place, pending the resolution of the lawsuit.

ICBA Position:

ICBA supported CRA modernization in general, but we cannot support a rule as complex and burdensome as the rule the agencies have finalized. We support the rule’s increased asset thresholds – \$600 million for small banks and \$2 billion for large banks. We further support the ability for small banks to retain the current exam framework or opt-in to the new Retail Lending Test. We are very concerned, however, about the complexity of the rule’s new tests and the costs that intermediate and large banks will be required to incur in order to comply with the new framework, as well as the potential that banks will be evaluated outside of their assessment areas. Furthermore, we oppose the idea that a greater number of banks should be rated as “low satisfactory” or “needs to improve,” which is a probable outcome of the new metrics as currently calibrated.

Talking Points:

- The \$600 million and \$2 billion thresholds are improvements over the current levels, **but more could be done to differentiate larger community banks from the largest money center banks.**
- It is positive that banks under the small bank threshold will have the option to opt in to the new framework or continue to be evaluated under the existing small bank test.
- Intermediate banks will be able to opt into the new community development test, or keep their current community development investment evaluation framework, but they will be required to comply with the new retail lending test. This will lead to increased complexity.
- Large banks will have new tests for retail lending and services and community development lending and services.

- The final rule includes a detailed list of qualifying activities and a process to get binding preapproval that a loan or investment qualifies for CRA credit which should increase ex ante certainty.
- The new retail lending test is more complicated than the existing framework and is likely to result in a significantly greater number of community banks receiving low satisfactory or needs to improve ratings. This appears to be a deliberate policy choice by banking regulators to “raise the bar” for CRA expectations.