

Issue Update

On October 24, 2024, the Federal banking agencies adopted a final rule that modernizes the regulations implementing the Community Reinvestment Act (CRA). In issuing the new rule, the agencies aimed to adapt to changes brought about by mobile and online banking and to provide greater clarity and consistency in applying the CRA regulations. While these are laudable goals, the rule has many shortcomings. It is inconsistent with the agencies' authority under the CRA statute; it is overly complex; and the agencies offer insufficient analysis to support their legal conclusions and policy decisions.

On February 2, 2024, ABA and six other trade associations filed a lawsuit in the Northern District of Texas against the banking agencies for exceeding their statutory authority and acting arbitrarily and capriciously in adopting the new CRA rules. The plaintiffs requested the court to vacate the new rules and to issue a preliminary injunction pausing the new rules while the court decides the merits of the case. The court could rule on the preliminary injunction motion by late March or early April.

Why it Matters To Your Community

The new rule is a significant regulatory shift and may reduce—rather than expand—access to credit for mortgages, small business loans, and community development financing.

It dramatically expands what constitutes a “community” where regulators will evaluate CRA performance. For example, certain “large” banks (assets of \$2B or more) will be evaluated in Retail Lending Assessment Areas (RLAAs) and Outside Retail Lending Areas (ORLAs) beyond their branch network. In addition, the rule applies a complicated series of benchmarks, thresholds, and ratings methodologies (including a 100-page appendix of calculations) that will compare banks to all lenders who make loans in a particular geography. And, the rule raises the bar for performance—such that the agencies estimate that 34% of “large” banks will receive less than a Satisfactory rating in the newly required RLAAAs.

To address concerns about the complexity and volume of calculations in the rule, the agencies pledged to develop and make freely available tools that would leverage reported loan data to calculate the retail lending distribution benchmarks that applied to a bank's assessment areas in recent years. Unfortunately, it appears that the agencies will not make the tools available before the rule's implementation deadlines. As such, banks—including many community banks—must unravel the rule's detailed calculations, benchmarks, and thresholds without the promised tools to predict their performance, identify gaps, and adjust their business strategies accordingly, before the rule's implementation deadlines.

Recommended Action Items

Tell the Federal banking agencies to:

- Provide data tools prior to the rule's implementation deadlines; and
- Provide compliance aids, case studies, sample calculations, and an opportunity to ask questions and get answers.