

Issue Update

On October 24, 2023, 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. We 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. On March 29, 2024, Judge Mathew Kacsmaryk granted the preliminary injunction motion, concluding that we demonstrated a substantial likelihood of success on the merits of the case. The federal banking agencies have appealed the injunction, and the district court proceedings have been stayed until the Fifth Circuit rules on the preliminary injunction appeal.

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. These changes would have real-world impacts on bank business models and where they choose to lend.

The complexity and statutory overreach presented by the 2023 CRA rule is a pronounced departure from the original goal of CRA modernization, which was to clarify—not complicate or overhaul—the CRA regulatory framework.

Recommended Action Items

Tell the Federal banking agencies to issue a proposed rule that would repeal the 2023 CRA rule and replace it with the 1995 CRA rule, which remains in effect pending the resolution of ABA's legal challenge. Then, the agencies should repropose updates to the 1995 CRA rule that are consistent with the agencies' authority under the statute, such as clarifying what counts for community development consideration and developing a pre-clearance process for identifying qualifying community activities.