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Community Reinvestment Act Update: Regulation Modernizations Finalized

On October 24, 2023, the Office of the Comptroller of the Currency (OCC), the Board of Governors for the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) adopted a Final Rule amending regulations under the Community Reinvestment Act of 1977 (CRA). Among the stated goals underlying these changes are (1) to better serve the purpose of the CRA, (2) to modernize the regulations in response to changes in the banking industry, (3) to clarify and provide consistency and transparency in the application of the regulations, and (4) to better tailor standards to different bank sizes, business models, and geographies.

The major changes to the regulations include: (1) increased asset limits for each category of bank, (2) changes in evaluation metrics, and (3) the expansion of the geographic areas in which certain banks are evaluated beyond locations where a bank has a brick-and-mortar presence. These changes, for the most part, will take effect in 2026.

Background on the CRA

The CRA was passed by Congress in 1977 with the goal of encouraging banks to "meet the credit needs of the local communities in which they are chartered." To do this, the CRA requires the OCC, Board, and FDIC to assess banks' success in meeting the credit needs of the communities in which they are present, with particular emphasis on low- and moderate-income neighborhoods. These assessments then must be considered by each agency when evaluating whether to grant banks' applications for deposit facilities.

Amendments to Regulations

1. **Increased Asset Limits**
   The new regulations have increased the asset limits for each bank size. For small banks, the limit has increased from $376 million to $600 million. For intermediate banks, the limit has increased from $1.503 billion to $2 billion. Large banks are now considered to be those with assets of at least $2 billion.

2. **Changes in Evaluation Metrics**
   The final rule introduces new performance tests. These tests are (1) the "Retail Lending Test," (2) the "Retail Services and Products Test," (3) the "Community Development Financing Test," and (4) the "Community Development Services Test." The Retail Lending Test measures a bank's origination

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of home mortgage loans, multifamily loans, small business loans, and small farm loans, as well as automobile lending if the bank is a majority automobile lender, with respect to low- and moderate income customers, small businesses, and small farms. The Retail Services and Products Test measures the availability of a bank's retail banking services and retail banking products, as well as how well those products serve the needs of a bank's community, with emphasis on low- and moderate-income individuals and census tracts, small businesses, and small farms. Additionally, under this test banks are given exclusively positive consideration for deposit products and credit products. The Community Development Financing Test measures how well banks meet community development financing needs in their assessment areas, and under this test banks are given credit for community development activities including Low-Income Housing Tax Credit (LIHTC) and New Markets Tax Credit (NMTC) investments. The Community Development Services Test is a review of a bank's community engagement for the purpose of community development and responsiveness to community needs.

Under the new regulations, large banks will be evaluated with weight being distributed under the various performance tests as follows: 40% Retail Lending Test, 40% Community Development Financing Test, 10% Retail Services and Products Test, and 10% Community Development Services Test.

Intermediate banks will be evaluated with 50% of weight given to the Retail Lending Test and 50% given to either the pre-existing community development test (the "Intermediate Bank Community Development Test") or the Community Development Financing Test, as the bank elects.

Small Banks will continue to be evaluated under the pre-existing small bank test (the "Small Bank Lending Test") or, at the election of the bank, the Retail Lending Test.

3. **Geographic Evaluation Area Expansion**
   Certain banks will now be evaluated beyond the geographic areas where the banks have a physical presence. In addition to the areas where these banks have a physical presence, banks will be evaluated in "retail lending assessment areas" where the bank originated at least 150 closed-end home mortgage loans or at least 400 small business loans if the bank does not originate more than 80% of its lending in areas where it has a physical presence.

If you have any questions about the new CRA regulations, please contact Kutak Rock attorneys Frederic Marienthal or Anna Wilbourn, listed on the left. You may also visit us at www.KutakRock.com.