



bankers' compliance group®

## Updates on the Implementation of the CRA Final Rule\*

**Agencies Delay Applicability of Certain Provisions of CRA Final Rule.** As readers are aware, in October 2023, the FRB, the FDIC, and the OCC (“agencies”) issued a final rule which contained sweeping changes to the Community Reinvestment Act regulations. Although the rule became effective on April 1, 2024, most of the changes to the CRA regulations are not applicable until January 1, 2026, at the earliest.

However, of note, the new rules on a bank’s facility-based assessment area were applicable on April 1, 2024. This earlier applicability date led to some strange results. For example, the asset-size thresholds for intermediate small banks and large banks under the legacy CRA regulations differ from the asset-size thresholds for intermediate banks and large banks in the CRA Final Rule. Thus, certain banks that would be considered large banks during the transition period of April 1, 2024 to January 1, 2026, might be considered intermediate banks after the transition period ends on January 1, 2026. As a result, these large banks would be required to delineate facility-based assessment areas consisting of full counties beginning on April 1, 2024. However, once they are re-designated as intermediate banks as of January 1, 2026, the same banks would have the option to delineate facility-based assessment areas consisting of partial counties, a flexibility they were not permitted to exercise during the transition period. In addition, provisions related to a bank’s public file under the final rule were also applicable on April 1, 2024.

In order to promote clarity and consistency, on March 21, 2024, the agencies issued an interim final rule extending the applicability date of the facility-based assessment areas and public file provisions from April 1, 2024 to January 1, 2026. 89 FR 22060. Thus, banks will not have to make changes to their assessment areas or their public files as a result of the CRA final rule until January 1, 2026. The interim final rule also contained some technical amendments to the CRA final rule.

**Update on Lawsuit Seeking to Invalidate the CRA Final Rule.** As the law firm previously reported to BCG members in our February BCG Newsletter, two days after the CRA Final Rule was published in the Federal Register, the Texas Bankers Association, the Amarillo Chamber of Commerce, the American Bankers Association, the Chamber of Commerce of the United States of America, the Longview Chamber of Commerce, the Independent Community Bankers of America, and the Independent Bankers Association of Texas (collectively “Plaintiffs”) filed a lawsuit seeking to invalidate the CRA Final Rule. *Tex. Bankers Ass’n, et al. v. OCC, et al*, Case No. 2:24-cv-025-Z-BR (N.D. Tex. filed Feb. 5, 2024). After filing the lawsuit, the Plaintiffs filed a motion for a preliminary

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injunction. On March 29, 2024, the U.S. District Court for the Northern District of Texas granted the Plaintiffs' motion for preliminary injunction.

In granting the motion, the Court found that the Plaintiffs had standing to bring the lawsuit and had demonstrated a substantial likelihood of prevailing on the merits. In particular, the Court found that the Plaintiffs had shown a likelihood that the federal agencies had exceeded their statutory authority. In particular, the Court agreed with the Plaintiffs' argument that the Final Rule oversteps the CRA's instruction to assess banks based on their performance within their communities. The rule, according to the Plaintiffs, would assess a bank in both the geographic area where it maintains deposit-taking facilities, as well as other geographic areas where it conducts retail lending. Additionally, the Court further agreed with the Plaintiffs' assertion that the CRA does not authorize the federal agencies to consider deposit products in determining whether a bank is meeting the credit needs of its entire community.

In granting the preliminary injunction, the Court enjoined the federal agencies from enforcing the final rule against the Plaintiffs pending the resolution of the lawsuit. The Court extended the April 1, 2024 effective date of the rule, along with other implementation dates, on a day-by-day basis for the duration of the injunction. Strangely, the Court's Order only references enforcement against the Plaintiffs (none of which are banks), and not the Plaintiffs' various members. It is possible that the Plaintiffs will seek an order clarifying this aspect of the ruling. It is also interesting to note that the injunction is not a nationwide injunction. Even if the Court clarifies that its ruling applies to the Plaintiffs' respective members, it would not apply to other banks.

BCG will be presenting a Seminar on the CRA in May 2024 for BCG members. In the interim, please reach out to Andrew Litchy at [ALitchy@ABLAWYERS.COM](mailto:ALitchy@ABLAWYERS.COM) with any questions or CRA consulting needs.