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Community Development Finance Alert

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Joint agencies rescind 2023 final CRA rules

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By rescinding 2023 CRA rules, federal agencies will revert to pre-2023 regulations, and future regulatory changes are expected.



What's the impact?

- The decision to rescind the Community Reinvestment Act rules marks a significant development in the ongoing efforts to modernize the CRA regulations.
- Upon the rescission, the agencies will revert to the pre-2023 CRA regulations, and the formal rescission notice is expected to offer additional insights into the future of CRA regulations.

On March 28, 2025, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Federal Reserve Board jointly announced their intention to rescind the final Community Reinvestment Act (CRA) rules that were jointly promulgated by the agencies on October 24, 2023 (the 2023 Rules). This action marks the latest development in a long-running battle over multiple administrations to “modernize” the CRA through regulatory action. We consider some potential ramifications of this development for tax credit investors and syndicators as they grapple with this ever-changing regulatory landscape.

The CRA's impact on financial institutions

For nationally chartered banks or bank holding companies, the CRA directs the applicable federal regulator to “assess the institution’s record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution.” The CRA itself does not define the phrases “credit needs” or “entire community.” Instead, a series of interagency regulations have been issued to further clarify how CRA assessments are performed and how the results of different banking activities are measured when considering whether regulated institutions are responsive to the statutory directive, with the most recent significant regulations being issued in 1995. Coming in at 1,500 pages of text, the 2023 Rules represented the most comprehensive effort by the agencies to update CRA regulations since the 1995 regulations were enacted.

The 2023 Rules set forth four tests to determine the extent to which a financial institution is meeting the credit needs of the entire community it serves:

- / Retail lending test
- / Retail services and products test
- / Community development financing test
- / Community development services test

Large banks (i.e., those with more than \$2 billion in assets), which make the substantial majority of tax credit investments in CRA-eligible projects involving both low-income housing tax credits and new markets tax credits, were to be evaluated on all four tests on a weighted average consisting of 40% for the community development financing test (which covers tax credit investments), 40% for the retail lending test, 10% for the community development services test, and 10% for the retail services and products test. Intermediate banks had the option of opting into the community development financing test.

In February 2024, a state banking trade association filed a motion to preliminarily enjoin the enforcement of the 2023 Rules in the Northern District of Texas. In *Texas Bankers Association et al. v. Office of the Comptroller of the Currency et al.*, the bank plaintiffs argued that the regulators exceeded their authority by expanding the retail lending test to define assessment areas as anywhere a bank either originated a certain number of mortgages and small loans or any “nationwide” area where a bank made any CRA-relevant loans outside the customary CRA assessment area based on a bank’s physical presence (i.e., corporate offices, branches and other deposit-taking facilities). The thrust of the plaintiffs’ argument was that the expansion of the assessment area under the retail lending test stretched the meaning of the phrase “entire community” beyond the intended statutory meaning. The court agreed and held that the phrase “entire community” was intended to be limited to the defined geographic area where a bank maintains a physical presence, noting that the statutory text itself focuses on “local communities,” “neighborhoods,” and “domestic branch offices.” The court also agreed with the

plaintiffs' claim that the new retail services and products test erroneously focused on deposit-taking activities rather than the "credit needs" of the community. As a result, the court found that the plaintiffs were substantially likely to prevail on the merits and suffer irreparable harm in the form of excessive compliance costs. The court entered a preliminary injunction against the agencies' enforcement of the 2023 Rules, pending a full proceeding on a permanent injunction. The agencies appealed the district court's ruling to the Fifth Circuit Court of Appeals, where it was briefed extensively and set for oral argument.

Future of CRA regulations and potential policy shifts

When the agencies issued their intent to rescind the 2023 Rules, the *Texas Bankers Association* case became moot and will not proceed forward. And once the rescission formally becomes effective, the agencies will revert to the rules in effect prior to the issuance of the 2023 Rules. These rules are currently largely governing most investors because the effective date of the 2023 Rules was delayed, and questions continued to surround their validity as a result of the holding of *Texas Bankers Association*.

The reversion may offer more efficiency and transparency in the near term, as the industry is long familiar with the various regulatory preferences and expectations under these rules. The usual CRA community development investment patterns should continue business as usual for now. But this does raise interesting questions about what may happen going forward now that the 2023 Rules are back on the shelf.

The first Trump administration proposed updates to the CRA rules in 2020, which were then rescinded in 2021 by the Biden administration. Will this administration now attempt to go back to those rules it proposed in 2020? Or will it just leave the 1995 rules in place in an effort to avoid expanding the current regulations? Or will it go in an entirely different direction? The formal rescission notice should provide some additional insight into these questions and how the CRA landscape may continue to evolve over the next four years.

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