

MEMO

TO: The Board of Directors

FROM: Mark Pearce, Director
Division of Depositor and Consumer Protection

DATE: July 9, 2025

RE: Notice of Proposed Rulemaking on Community Reinvestment Act Regulations

I. Recommendation

Staff presents for adoption by the Federal Deposit Insurance Corporation (FDIC) Board of Directors (Board) the attached resolution and accompanying *Federal Register* notice, which would seek public comment on a notice of proposed rulemaking (NPR) to be issued jointly with the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) to: (1) rescind the Community Reinvestment Act (CRA) final rule previously adopted by the Board on October 24, 2023, and published in the *Federal Register* on February 1, 2024 (2023 CRA Final Rule); and (2) replace it with the CRA framework that existed prior to the 2023 CRA Final Rule (1995 CRA Regulations).

CONCUR:

Matthew P. Reed
Acting General Counsel

II. Background

Congress passed the CRA in 1977¹ to encourage regulated financial institutions (banks) to help meet the credit needs of the communities in which they are chartered. The statute requires the agencies to assess a bank's record of meeting the credit needs of its entire community, including low- and moderate-income (LMI) neighborhoods, consistent with the safe and sound operation of the bank.² Agencies must then prepare written evaluations of a bank's record of meeting the credit needs of their entire community³ and consider a bank's CRA performance in its evaluation of an application for a deposit facility by the bank.⁴ The CRA also directs the agencies to issue regulations to carry out the purposes of the statute.⁵ The most substantial update to the regulations occurred in 1995.⁶

The agencies published a joint NPR and request for comment on their proposal to modernize the CRA regulations in the *Federal Register* on June 3, 2022.⁷ After considering the comments received, the agencies issued the 2023 CRA Final Rule on October 24, 2023, which was published in the *Federal Register* on February 1, 2024.⁸ The agencies also issued a supplemental rule to the 2023 CRA Final Rule to amend the Rule's applicability dates and to make several technical, non-substantive amendments.⁹

After the 2023 CRA Final Rule was published in the *Federal Register*, several plaintiffs jointly filed suit against the agencies in the U.S. District Court for the Northern District of Texas on February 5, 2024,¹⁰ and subsequently requested a preliminary injunction on February 9, 2024.¹¹ On March 29, 2024, the court granted plaintiff's request for preliminary injunction, which enjoined the agencies from enforcing the 2023 CRA Final Rule against the plaintiffs, pending resolution of the litigation. The district court's order also extended the 2023 CRA Final Rule's effective date of April 1, 2024, along with all other implementation dates, day for day for each day the injunction remains in place.¹² As a result, the 2023 CRA Final Rule never went into effect and banks continue to be supervised and examined under the 1995 CRA Regulations.

On April 18, 2024, the agencies appealed the district court's preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit.¹³ However, on March 28, 2025, during the pendency of the appeal, the agencies made the unopposed motion to stay the appeal pending completion of a new rulemaking that

¹ Pub. L. 95-128, 91 Stat. 1147 (1977) (codified at 12 U.S.C. 2901 *et seq.* (as amended)).

² 12 U.S.C. 2903(a)(1).

³ 12 U.S.C. 2906(a).

⁴ 12 U.S.C. 2903(a)(2).

⁵ 12 U.S.C. 2905.

⁶ 60 FR 22190 (May 4, 1995).

⁷ 87 FR 33884 (June 3, 2022).

⁸ 89 FR 6574 (Feb. 1, 2024).

⁹ 89 FR 22060 (Mar. 29, 2024).

¹⁰ Complaint, *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Feb. 5, 2024), ECF No. 4.

¹¹ Plaintiffs' Motion for a Preliminary Injunction, *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Feb. 9, 2024), ECF No. 19.

¹² *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, 728 F. Supp. 3d 412 (N.D. Tex. 2024).

¹³ Defendants' Notice of Appeal, *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, No. 2:24-cv-00025-Z (N.D. Tex. Apr. 18, 2024), ECF No. 79.

would propose rescinding the enjoined 2023 CRA Final Rule and reinstating the 1995 CRA Regulations.¹⁴ The agencies publicly announced this intention the same day.¹⁵ On April 1, 2025, the Fifth Circuit granted the agencies' motion.¹⁶

IV. Proposed Rule

The NPR would seek comment on a proposal to rescind the 2023 CRA Final Rule and replace it with the 1995 CRA Regulations. In light of pending litigation and observed confusion and inconsistent understandings among stakeholders regarding the status of the CRA regulatory and supervisory landscape, staff recommends approval of the NPR to restore certainty in the CRA regulatory framework and limit regulatory burden on banks.

Returning to the 1995 CRA Regulations would alleviate the uncertainty around the CRA regulatory framework. The agencies' observations are that not all stakeholders understand which regulatory framework is currently applicable and, in particular, whether they should continue preparations to comply with the 2023 CRA Final Rule. It would affirmatively resolve for banks that they do not need to allocate resources towards preparing for the 2023 CRA Final Rule.

Further, rescinding the 2023 CRA Final Rule and replacing it with the 1995 CRA Regulations would limit overall regulatory burden for banks because it would mean banks would not have to adjust their CRA policies and procedures to comply with the 2023 CRA Final Rule. It would also allow them to maintain their current policies and procedures as banks are currently subject to and examined under the 1995 CRA Regulations.

The proposed regulations are substantively the same as the 1995 CRA Regulations currently applicable to banks, as published in the electronic Code of Federal Register (eCFR) as of March 29, 2024.¹⁷ Specifically, the proposal provides different methods than the 2023 CRA Final Rule to evaluate a bank's CRA performance depending on bank asset size and business strategy. Under the NPR, banks would continue to delineate one or more assessment areas where they have their main office, branches, and deposit-taking remote service facilities and the surrounding geographies where they have originated or purchased a substantial portion of their loans, including home mortgage, small business, and small farm loans.

¹⁴ Defendants-Appellants' Unopposed Motion to Stay Pending Completion of New Rulemaking Proceedings, *Tex. Bankers Ass'n v. Bd. of Governors of the Fed. Reserve Sys.*, No. 24-10367 (5th Cir. Mar. 28, 2025), ECF No. 165.

¹⁵ Joint Release, Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule (March 28, 2025), <https://www.fdic.gov/news/press-releases/2025/agencies-announce-intent-rescind-2023-community-reinvestment-act-final>.

¹⁶ Order, *Tex. Bankers Ass'n v. Bd. of Governors of the Fed. Reserve Sys.*, No. 24-10367 (5th Cir. Apr. 1, 2025), ECF No. 174.

¹⁷ As required under the 1995 CRA Regulations, the agencies annually adjust their CRA asset-size thresholds based on the annual percentage change in a measure of the Consumer Price Index. The agencies announced the 2025 asset-size thresholds in December 2024 (*see* 89 FR 106480 (Dec. 30, 2024) (Board and FDIC); OCC Bulletin 2024-36 (Dec. 23, 2024), <https://www.occ.treas.gov/news-issuances/bulletins/2024/bulletin-2024-36.html> (OCC)) and are proposing to replace the outdated asset-size thresholds with the 2025 thresholds to ensure the currently applicable 2025 thresholds remain and prevent confusion.

The agencies are also proposing conforming changes to their regulations implementing the CRA Sunshine Requirements of the Federal Deposit Insurance Act to remove all references to appendix G of the 2023 CRA Final Rule and update cross-references to the proposed recodification of the 1995 CRA Regulations. The OCC is also proposing several technical edits to their own regulations.

In accordance with EO 12866, the agencies sent their significance memos to the Office of Information and Regulatory Affairs (OIRA) on June 17, 2025, recommending that the proposal not be considered a significant regulatory action. OIRA has determined that this proposal is not a significant regulatory action for purposes of EO 12866, therefore the agencies can proceed as normal with Principal approval and publication in the *Federal Register*.

V. Conclusion

As discussed above, the attached *Federal Register* Notice would seek public comment on a proposal to rescind the 2023 CRA Final Rule and replace it with the 1995 CRA Regulations, with a public comment period of 30 days after publication in the *Federal Register*.

VI. Staff Contacts

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