Published on *The National Law Review* https://natlawreview.com

Final Rule Updating the Community Reinvestment Act Issued by Bank Regulators

Article By:

Daniel C. McKay, II

James W. Morrissey

Jennifer Durham King

Mark C. Svalina

Nicholas S. Zlevor

On October 24, 2023, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency (together, the "Agencies") issued a final rule designed to modernize and fine tune the Community Reinvestment Act's ("CRA") implementing regulations. The Agencies believe that the final rule, which will mostly become applicable between January 1, 2026 and January 1, 2027, is designed to achieve four primary goals:

1. To increase low- and moderate-income communities' access to banking services;
2. To adapt the CRA to address the present-day digital banking landscape (i.e., online/mobile and branchless banking);
3. To enable the Agencies' to apply the CRA to covered financial institutions in a more consistent and transparent manner; and
4. To tailor the implementation of the CRA by considering bank size (i.e., large banks, intermediate banks and small banks), business models and local conditions when performing CRA evaluations and imposing data collection requirements.

With regard to bank size, the final rule creates three new classifications which are described at a high level in the table below; however, the final rule excepts “limited purpose banks” (i.e., banks that do not extend, except on an incidental/accommodation basis, (i) closed-end home mortgage loans, (ii) small business loans, (iii) small farm loans or (iv) automobile loans to retail customers) from such size classifications regardless of their asset amounts.

CLASSIFICATION	ASSET-SIZE THRESHOLD	CRA EVALUATION F
Large Banks	At least $2 billion (held at year-end) in both of the prior two (2) calendar years	Evaluated under (i) the Lending Test, (ii) the R and Products Test, (iii) Community Developm Test and (iv) the Comm Development Services
Intermediate Banks	At least $600 million (held at year-end) in both of the prior two (2) calendar years AND less than $2 billion (held at year-end) in either of the prior two (2) calendar years	Evaluated under (i) the Lending Test and (ii) e Intermediate Bank Co Development Test or t Development Financin
Small Banks	Less than $600 million (held at year-end) in *either* of the prior two (2) calendar years	Evaluated under either Bank Lending Test or t Lending Test

Among many other updates to the CRA’s implementing regulations, it provides the Agencies with six distinct performance tests[1] to be used to evaluate large, intermediate and small banks: (i) the Retail Lending Test; (ii) the Retail Services and Products Test; (iii) the Community Development Financing Test; (iv) the Community Development Services Test; (v) the Intermediate Bank Community Development Test (i.e., the current community development test); and (vi) the Small Bank Lending Test (i.e., the current CRA small bank lending test). While the final rule requires Large Banks to be assessed under the first four tests listed above, it provides Intermediate and Small Banks with greater flexibility as to what tests can be used during evaluations. Overviews of each of the four new performance tests, can be found in the table below.

PERFORMANCE TEST	OVERVIEW
Retail Lending Test	This test is designed to evaluate a bank’s helping to meet the credit needs of its enti through the bank’s origination and purcha

	mortgage loans, multifamily loans, small b and small farm loans, as well as through a lending if the bank is a majority automobil
Retail Services and Products Test	This test evaluates the availability of a ba banking services and retail banking produ responsiveness of those services and pro credit needs of the bank's entire communi low- and moderate-income individuals, lo moderate-income census tracts, small bus small farms.
Community Development Financing Test	This test evaluates how well a Large bank Intermediate bank that opts into this perfo meet the community development financi each facility-based assessment area in w operates, as well as in each state and/or statistical area in which it operates. This t following components: (1) a "Community Financing Metric" used to assess the doll bank's community development loans/inv relative to its deposit base; (2) standardiz use in evaluating performance; and (3) an responsiveness audit to guarantee consid community development loans/investmen decidedly impactful or responsive.
Community Development Services Test	This test considers the importance of com development services in fostering partner different stakeholders, building capacity a conditions for effective community develo including in rural areas.

The new CRA rule also creates new assessment area criteria and provides for evaluating institutions based on lending activities in these assessment areas. In particular, the new rule generally provides for evaluating an institution's lending activities in a "facility based assessment area," which is an area that encompasses or is adjacent to deposit-taking facilities. In addition, Large Banks with 80% or less of their lending in facility-based assessment areas, will also have their closed-end home mortgage or small business lending evaluated in "retail lending assessment areas," which are areas in which they originated more than 150 closed-end home mortgage loans or 400 small business loans in both the prior two years. Large Banks will also be evaluated on retail lending in an "outside retail lending area," which is defined to mean the entire United States and its territories, excluding (1) the bank's facility-based assessment areas and retail lending assessment areas; and (2) any county in a nonmetropolitan area in which the bank did not originate or purchase any closed-end home mortgage loans, small business loans, small farm loans or automobile loans (if the bank engages in auto lending). Also, Intermediate Banks that conduct a majority of their retail lending outside of their facility-based assessment areas, small banks that opt to be evaluated under the Retail Lending Test, would be evaluated based on retail lending in the "outside retail lending area."

Along with the joint press release, the Agencies published an "Interagency Overview of the Community Reinvestment Act Final Rule" (available here) and a condensed fact sheet on the final rule (available here).

[1] The final rule requires the Agencies to evaluate limited purpose banks under a separate seventh performance test, the Community Development Financing Test for Limited Purpose Banks. This test evaluates a limited purpose bank's record of helping to meet the credit needs of its entire community through community development loans and community development investments.

National Law Review, Volume XIII, Number 301