

MEMO

TO: The Board of Directors

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

DATE: March 14, 2024

RE: Supplemental Rulemaking Related to Conforming and Technical Changes to the Community Reinvestment Act (CRA) Regulations and the CRA Sunshine Regulations

I. Recommendation

Staff recommends that the Federal Deposit Insurance Corporation’s (FDIC) Board of Directors (Board) approve the attached notice of interim final rule and final rule making technical corrections (collectively, supplemental rulemaking, and independently, interim final rule and technical corrections final rule) to be issued jointly by the FDIC, the Board of Governors of the Federal Reserve System (Federal Reserve) and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies), and authorize its publication in the *Federal Register* with an effective date of April 1, 2024. The supplemental rulemaking revises, and makes technical corrections to, the Agencies’ joint final rule that amended the Agencies’ regulations implementing the Community Reinvestment Act of 1977 (CRA) and was published in the *Federal Register* on February 1, 2024 (2023 CRA Final Rule).¹

As explained in more detail below, the Agencies’ interim final rule revises, and requests comments on, the applicability date of the facility-based assessment area and public file provisions in the 2023 CRA Final Rule. The interim final rule moves the applicability date of these provisions from April 1, 2024 to January 1, 2026. The Agencies are requesting comments on the interim final rule for a period of 45 days after its publication in the *Federal Register*. The Agencies’ technical corrections final rule makes the following technical corrections: (i) corrects the applicability of the public notice provision in the 2023 CRA Final Rule from April 1, 2024 to January 1, 2026; (ii) corrects the asset-size thresholds in appendix G of the 2023 CRA Final Rule, which contains the CRA regulations in effect on March 31, 2024 (legacy CRA regulations); (iii) corrects their agency-only amendments to the strategic plan provision in the 2023 CRA Final Rule; and (iv) corrects cross-references in the Agencies’ regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act (CRA Sunshine regulations).

CONCUR:

Harrel M. Pettway
General Counsel

¹ 89 FR 6574 (Feb. 1, 2024).

II. BACKGROUND

Congress passed the CRA in 1977 to require each appropriate Federal supervisory agency to use its authority when examining regulated financial institutions (banks) to encourage such banks to help meet the credit needs of the local communities in which they are chartered to do business, consistent with banks' safe and sound operations.² In connection with this examination, the CRA requires the Agencies to "prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods"³ and to consider a bank's CRA performance "in its evaluation of an application for a deposit facility by such institution."⁴ The Agencies implement the CRA and establish the framework and criteria by which they assess a bank's performance through their individual CRA regulations.⁵

The Agencies and the Office of Thrift Supervision (until 2011) (collectively, the Federal banking agencies), are charged with implementing the CRA, and first issued joint regulations in 1978 to implement the statute. Since then, the Federal banking agencies have revised the CRA regulations several times and have provided guidance on the interpretation and application of the CRA regulations through the Interagency Questions and Answers Regarding Community Reinvestment.⁶ Until recently, the last major revisions to the Agencies' CRA regulations were completed in 1995.

On June 3, 2022, the Agencies jointly published in the *Federal Register* a notice of proposed rulemaking (NPR) with a comment period ending on August 5, 2022, proposing comprehensive amendments to modernize their CRA regulations.⁷ The Agencies received approximately 950 unique comment letters from various stakeholders.

On October 24, 2023, after considering the public comments received in response to the NPR, the Agencies jointly issued the 2023 CRA Final Rule to amend their CRA regulations to update how activities qualify for consideration, where CRA activities are considered, and how activities are evaluated. The 2023 CRA Final Rule was published in the *Federal Register* on February 1, 2024, with an effective date of April 1, 2024, and staggered applicability dates of April 1, 2024, January 1, 2026, and January 1, 2027.

III. SUPPLEMENTAL RULEMAKING

As described below, the supplemental rulemaking includes an interim final rule and a technical corrections final rule.

² 12 U.S.C. 2901 *et seq.*

³ 12 U.S.C. 2903(a)(1).

⁴ 12 U.S.C. 2903(a)(2).

⁵ 12 CFR parts 25 (OCC); 228 (Federal Reserve); and 345 (FDIC). The Agencies' 2023 CRA Final Rule citations in this memorandum are provided in the format "12 CFR __.xx," for clarity and to streamline references.

⁵ 87 FR 33884 (June 3, 2022).

⁶ 81 FR 48506 (July 25, 2016).

⁷ 87 FR 33884 (June 3, 2022).

a. INTERIM FINAL RULE

i. *Facility-Based Assessment Areas*

The 2023 CRA Final Rule requires, among other things, that a bank's facility-based assessment areas include each county in which a bank has a main office, a branch, or a deposit-taking remote service facility, as well as the surrounding geographic areas in which the bank has originated a substantial portion of its loans. As provided in the 2023 CRA Final Rule, beginning on April 1, 2024, large banks and limited purpose banks will be required to delineate assessment areas that consist of full counties. Small and intermediate banks will be permitted to adjust the boundaries of their facility-based assessment areas to include a portion of a county that the bank can reasonably be expected to serve.

The Agencies have identified certain challenges with the April 1, 2024 applicability date of the facility-based assessment area provision as it relates to certain other provisions and terms with a January 1, 2026 applicability date. For example, the facility-based assessment areas provision references "performance tests and strategic plan" as described in the Evaluation of CRA performance in general, a provision of the 2023 CRA Final Rule, which is not applicable until January 1, 2026. In addition, the requirement to delineate facility-based assessment areas consisting of full counties will apply to some banks that are currently defined as large banks until December 31, 2025, but will be defined as "intermediate banks" as of January 1, 2026, when the new definitions of "small bank" and "intermediate bank" become applicable under the 2023 CRA Final Rule. However, once these banks are re-designated as "intermediate banks" as of January 1, 2026, they will have the option to delineate facility-based assessment areas consisting of partial counties. Finally, delineating facility-based assessment areas under the 2023 CRA Final Rule beginning on April 1, 2024, involves evaluating banks according to different facility-based assessment area delineation standards within a single year.

ii. *Content and Availability of Public File*

The 2023 CRA Final Rule requires a bank to maintain a public file, in either paper or digital form that includes specific information related to the bank's branches, services, and performance in helping meet community credit needs. The 2023 CRA Final Rule maintained most of the public file requirements of the legacy CRA regulation's public file requirements with revisions to clarify aspects of the requirements and to reflect relevant terminology and provisions of the 2023 CRA Final Rule. As provided in the 2023 CRA Final Rule, beginning on April 1, 2024, banks must maintain their CRA public file on the bank's website, if the bank maintains one. If a bank does not maintain a public website, the bank must maintain its public file consistent with the Agencies' legacy CRA regulations.

As with the facility-based assessment area provision, the Agencies have identified challenges implementing the public file provision of the 2023 CRA Final Rule with an applicability date of April 1, 2024, because other provisions and terms referenced in the provision are not applicable until January 1, 2026. For example, the public file provision refers to terms that are not applicable until January 1, 2026, such as "facility-based assessment areas," "retail lending assessment areas," "operations subsidiaries" or "operating subsidiaries," "large bank," and "small bank."

To address these challenges, the Agencies are changing the applicability date of the facility-based assessment areas and content and availability of public file provisions from April 1, 2024 to January 1, 2026, and are requesting comments for a period of 45 days after the interim final rule's publication in the *Federal Register*.

b. TECHNICAL CORRECTIONS FINAL RULE

i. Public Notice

The 2023 CRA Final Rule requires a bank to provide in the public area of its main office and each of its branches a public notice, as set forth in appendix F (CRA Notice), that includes, among other things, information about the availability of a bank's public file, the availability of the appropriate Federal financial supervisory agency's CRA examination schedule, and how a member of the public may provide a public comment. This requirement is substantively the same as the longstanding CRA public notice requirements in the public notice provision and appendix B of the Agencies' legacy CRA regulations, which are set forth in the 2023 CRA Final Rule as appendix G.⁸ Appendix G reproduces the legacy CRA regulations that apply to banks until March 31, 2024, when they will be superseded by the provisions of the 2023 CRA Final Rule that become applicable on April 1, 2024, January 1, 2026, or January 1, 2027.

The 2023 CRA Final Rule provides that the public notice requirements apply as of April 1, 2024, but that the CRA Notice set forth in appendix F is applicable on January 1, 2026. The 2023 CRA Final Rule also provides that banks must comply with relevant provisions of the legacy CRA regulations, which, as noted above, are set forth in appendix G of the 2023 CRA Final Rule.⁹ Thus, banks would need to comply with the public notice requirements in the 2023 CRA Final Rule as of April 1, 2024, but use the CRA Notice in appendix G of the 2023 CRA Final Rule, which is the same notice banks are required to use today.

To simplify the CRA regulation, the Agencies are correcting the misalignment in applicability dates for the substantive public notice requirements and the CRA Notice in appendix F, and making both applicable as of January 1, 2026. This change clarifies the Agencies' intention in the 2023 CRA Final Rule that banks may continue to use the CRA Notice in the legacy CRA regulations, as provided in appendix G, to comply with public notice requirements until January 1, 2026.¹⁰ The change in the applicability date of the public notice provision to January 1, 2026, has no substantive effect on the 2023 CRA Final Rule.

ii. Asset-Size Thresholds

Appendix G of the 2023 CRA Final Rule includes the Agencies' legacy CRA regulations in effect on the date the Agencies adopted the final rule, October 24, 2023. Since that date, the Agencies have increased the asset-size thresholds for small and intermediate small banks based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, pursuant to the annual inflation adjustment mechanism in the Agencies' legacy CRA regulations,¹¹ and the FDIC and the Federal Reserve amended their

⁸ See appendix G of 12 CFR part 25 (appendix B) (OCC); appendix G of 12 CFR part 228 (appendix B) (Federal Reserve); and appendix G of 12 CFR part 345 (appendix B) (FDIC).

⁹ See 12 CFR __.51(a)(2)(iii) (cross-referencing 12 CFR __.51(a)(2)(i) and (ii)).

¹⁰ See 2023 CRA Final Rule, 12 CFR __.51(a)(2)(iii).

¹¹ See the Agencies' legacy CRA regulations, 12 CFR 25.12(u)(2) (OCC), 12 CFR 228.12(u)(2) (Federal Reserve), and 12 CFR 345.12(u)(2).

regulations to reflect this increase.¹² These new asset-size thresholds are: (1) for small banks: less than \$1.564 billion as of December 31 of either of the prior two calendar years; and (2) for intermediate small banks, at least \$391 million as of December 31 of both of the prior two calendar years and less than \$1.564 billion as of December 31 of either of the prior two calendar years. The FDIC and the Federal Reserve are updating the asset-size thresholds in appendix G so that appendix G remains consistent with the Agencies' legacy CRA regulations, as intended.

iii. Agency-Specific Technical Corrections

The Agencies are adopting a technical amendment to their agency-specific amendments in the 2023 CRA Final Rule that adds a missing conforming amendment in their strategic plan provisions. This amendment changes “[Operations subsidiaries or operating subsidiaries] to “Operation subsidiaries” for the Federal Reserve and “Operating subsidiaries” for the FDIC and the OCC. The Board and the FDIC also are correcting an otherwise incomplete cross-reference of an amendatory instruction for appendix B of the 2023 CRA Final Rule. These agency-specific amendments do not change the substance or meaning of the 2023 CRA Final Rule.

iv. Updates to Agencies' CRA Sunshine Regulations

In 2001, the Federal banking agencies published their CRA Sunshine regulations to implement the CRA sunshine requirements of section 48 of the Federal Deposit Insurance Act, which were contained in section 711 of the Gramm-Leach-Bliley Act.¹³ This statute requires nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements in fulfillment of the CRA to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The CRA Sunshine regulations contain a number of cross-references to the Agencies' regulations implementing the CRA. The Agencies are amending their CRA Sunshine regulations to update these cross-references to conform to changes made by the 2023 CRA Final Rule.

IV. EFFECTIVE DATE AND COMMENT PERIOD

This supplemental rulemaking will be effective on April 1, 2024. The Agencies are requesting comments on the interim final rule for a period of 45 days after its publication in the *Federal Register*.

V. CONTACTS

Sherry A. Betancourt, Counsel, Legal Division (202) 898-6560
Pamela A. Freeman, CRA Program Manager, DCP (202) 898-3656
Patience R. Singleton, Senior Policy Analyst, DCP (202) 898-6859

¹² 88 FR 87895 (Dec. 20, 2023). The OCC does not amend its CRA regulations to reflect the annually adjusted asset-size threshold. Instead, it issues an OCC Bulletin to announce the revised threshold. See OCC Bulletin 2023-40 (December 26, 2023).

¹³ Pub. L. 106-102, 113 Stat. 1338 (Nov. 12, 1999).