

## LEGAL UPDATES AND NEWS

### FEDERAL BANKING AGENCIES ISSUE FINAL RULE REVISING COMMUNITY REINVESTMENT ACT REGULATIONS

On October 24, 2023, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the “agencies”) jointly issued a final rule to strengthen and modernize the regulations implementing the Community Reinvestment Act. The final rule takes effect on April 1, 2024, with staggered compliance dates.

**Bank Categories and Performance Tests.** The final rule implements a revised regulatory framework that, like the current framework, is based on bank asset size and business model. Depending on a bank’s classification in one of the following four categories (based on updated asset-size thresholds, adjusted annually for inflation, or limited purpose designation), the agencies will evaluate banks performance under one or a combination of the following seven performance tests (with specific weights applied to each test in cases where more than one test is utilized):

| Performance Tests                                              | Bank Categories<br>(with asset-size thresholds, as applicable) |                                                           |                               |                          |
|----------------------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------|-------------------------------|--------------------------|
|                                                                | Small Banks<br>(<\$600 million)                                | Intermediate Banks<br>(\$600 million and<br><\$2 billion) | Large Banks<br>(≥\$2 billion) | Limited Purpose<br>Banks |
| Small Bank Lending Test                                        | Default                                                        | –                                                         | –                             | –                        |
| Retail Lending Test                                            | Opt-in<br>(in lieu of default)                                 | Yes                                                       | Yes                           | –                        |
| Retail Services and Products Test                              | –                                                              | –                                                         | Yes                           | –                        |
| Intermediate Bank Community Development Test                   | –                                                              | Default                                                   | –                             | –                        |
| Community Development Financing Test                           | –                                                              | Opt-in<br>(in lieu of default)                            | Yes                           | –                        |
| Community Development Services Test                            | –                                                              | –                                                         | Yes                           | –                        |
| Community Development Financing Test for Limited Purpose Banks | –                                                              | –                                                         | –                             | Yes                      |

The final rule includes four new performance tests:

1. *Retail Lending Test* evaluates a bank's record of helping to meet the credit needs of its community through the origination and purchase of home mortgage, multifamily, small business, small farm and, for certain banks, automobile loans in the bank's facility-based assessment areas and, as applicable, retail lending assessment areas and outside retail lending areas (see "Assessment Areas" below).
2. *Retail Services and Products Test* evaluates the availability of a bank's retail banking services and retail banking products, and the responsiveness of those services and products to the credit needs of the bank's entire community, including low- and moderate-income ("LMI") individuals, LMI census tracts, small businesses, and small farms. For large banks with over \$10 billion in total assets, the evaluation will include digital delivery systems.
3. *Community Development Financing Test* evaluates how well a bank meets the community development financing needs in each facility-based assessment area, each state, or multistate metropolitan statistical area ("MSA"), as applicable, and at the institution level (*i.e.*, relating to the bank's performance overall).
4. *Community Development Services Test* evaluates a bank's community development services record in fostering partnerships, building capacity, and credit conditions for effective community development, including in rural areas, in facility-based assessment areas, states, multistate MSAs, as applicable, and nationwide.

Banks of all sizes will maintain the option to elect to be evaluated under a strategic plan, with the final rule providing greater clarity regarding the standards for agency approval.

**Assessment Areas.** The final rule continues the current approach of requiring banks to delineate specific "facility-based assessment areas," which comprise the areas around a bank's main office, branches, and deposit-taking remote service facilities (*e.g.*, ATMs). Large banks will be required to delineate facility-based assessment areas composed of whole counties, while intermediate and small banks may continue to use partial counties (but the areas may not reflect illegal discrimination or arbitrarily exclude LMI census tracts).

For purposes of the Retail Lending Test, large banks that conduct 20% or more of their retail lending outside of their facility-based assessment areas will be required to delineate additional "retail lending assessment areas" in an MSA or nonmetropolitan area of a state in which the large banks have a concentration of closed-end home mortgage or small business lending. The agencies will also evaluate the retail lending performance of all large banks in the "outside retail lending area," which consists of the nationwide area outside of the bank's facility-based assessment areas and applicable retail lending assessment areas, excluding certain nonmetropolitan

counties. Intermediate banks and small banks that opt to be evaluated under the Retail Lending Test and that conduct a majority of their retail lending outside of their facility-based assessment areas will also be evaluated in the outside retail lending area.

**Community Development.** All banks will receive consideration for any qualified community development activities (loans, investments, and services), regardless of location (*i.e.*, nationwide), based on the following criteria: (i) affordable housing; (ii) economic development activities; (iii) community supportive services; (iv) activities with minority depository institutions (MDIs), women’s depository institutions, low-income credit unions, and community development financial institutions (CDFIs); (v) financial literacy; and (vi) six categories of place-based activities, including revitalization or stabilization activities, essential community facilities, essential community infrastructure, recovery activities that promote the recovery of a designated disaster area, disaster preparedness and weather resiliency activities, and qualifying activities in Native Land Areas.

**Data Collection.** Large banks will be subject to updated data collection, maintenance, and reporting requirements (leveraging existing data where possible); small and intermediate banks are exempt from the new requirements.

**Compliance Dates.** Although the effective date of the final rule is April 1, 2024, the applicability date for most of the provisions is January 1, 2026, with certain other requirements becoming applicable on January 1, 2027. However, given the significant overhauls, banks should begin compliance planning as soon as possible.

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Luse Gorman routinely advises financial institutions on regulatory and compliance matters, and counsels those institutions on the impacts of new developments at the federal and state level. If you have any questions related to this Client Alert, please reach out to [Agata Troy](mailto:Atroy@luselaw.com) at (202) 274-2025 or by email at [atroy@luselaw.com](mailto:atroy@luselaw.com), or [Brendan Clegg](mailto:bclegg@luselaw.com) at (202) 274-2034 or by email at [bclegg@luselaw.com](mailto:bclegg@luselaw.com). To learn more [about our firm](#) and [services](#), [please visit our website](#).