

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

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DATE: March 11, 2024

TO: Board of Governors

FROM: Staff<sup>1</sup>

SUBJECT: Supplemental Interim Final Rule and Final Rule Amending Community Reinvestment Act Regulations (Regulation BB) and Related Regulations

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**ACTION REQUESTED:** Approval to publish in the Federal Register the attached combined draft interim final rule and final rule related to the agencies' Community Reinvestment Act<sup>2</sup> (CRA) final rule issued on October 24, 2023 (2023 CRA Final Rule). The interim final rule and final rule would be published jointly with the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC). Staff also request authority to make technical, non-substantive changes to the attached draft interim final rule and final rule prior to publication in the Federal Register.

**I. Summary**

The draft supplemental rulemaking would have two parts. First, the Board, the OCC, and the FDIC (together, the agencies) would adopt an interim final rule that extends the applicability date of the facility-based assessment areas provision and public file provision in the 2023 CRA Final Rule, from April 1, 2024, to January 1, 2026. Second, the agencies would adopt a final rule that makes technical amendments to the 2023 CRA Final Rule and related regulations. These technical amendments would not change the substance or meaning of the 2023 CRA Final Rule.

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<sup>1</sup> Mr. Belsky, Mr. Firschein, Ms. Johnson, Ms. Neill, Mr. Patel, Ms. DiGiovanni, and Mr. Hawkins (Division of Consumer and Community Affairs); Mr. Van Der Weide, Mr. Winerman, and Mr. Gaffney (Legal Division).

<sup>2</sup> 12 U.S.C. 2901 *et seq.*

The interim final rule and final rule would be effective on April 1, 2024, which is also the effective date of the 2023 CRA Final Rule. To ensure that the interim final rule and final rule would take effect on the same day as the 2023 CRA Final Rule, the agencies would rely on the good cause exceptions to the Administrative Procedure Act's requirements for public notice and comment in advance of a final rule and for publication 30 days in advance of a final rule's effective date.<sup>3</sup> However, the agencies would request comment on the interim final rule, with a 45-day comment period.

In addition to the rulemaking, the Federal Register notice would include a correction to the OCC's Unfunded Mandates Reform Act<sup>4</sup> regulatory analysis in the preamble to the 2023 CRA Final Rule.<sup>5</sup>

## **II. Background**

On October 24, 2023, the agencies issued the 2023 CRA Final Rule, amending their CRA regulations to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The 2023 CRA Final Rule was published in the Federal Register on February 1, 2024,<sup>6</sup> and it takes effect on April 1, 2024, with staggered applicability dates of April 1, 2024, January 1, 2026, and January 1, 2027. Relevant provisions of the agencies' current CRA regulations,<sup>7</sup> as reproduced in appendix G of the 2023 CRA Final Rule (CRA legacy regulations), will apply until the applicability dates for the corresponding provisions in the 2023 CRA Final Rule.

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<sup>3</sup> See 5 U.S.C. 553(b) and (d).

<sup>4</sup> 2 U.S.C. 1531 *et seq.*

<sup>5</sup> Specifically, the cost estimate provided in the OCC's Unfunded Mandates Reform Act analysis in the 2023 CRA Final Rule assumed that the implementation period would be complete within the first year after the effective date of the 2023 CRA Final Rule. The correction would indicate that the actual 2023 CRA Final Rule implementation period is through January 1, 2026, and, for data reporting provisions, January 1, 2027.

<sup>6</sup> 89 FR 6574 (Feb. 1, 2024).

<sup>7</sup> See 12 CFR part 25 (OCC); 12 CFR part 228 (Board); and 12 CFR part 345 (FDIC).

### **III. Interim Final Rule (Extension of Applicability Dates)**

As noted, the interim final rule would extend the applicability date of the facility-based assessment areas provision and the public file provision in the 2023 CRA Final Rule (§§ \_\_.16 and \_\_.43, respectively), from April 1, 2024, to January 1, 2026, and would request comment on these changes. Staff believe that moving the applicability date of §§ \_\_.16 and \_\_.43 is the most clear, timely, and effective way to avoid potential uncertainty that could result from an April 1, 2024, applicability date for these provisions.

*Facility-based assessment areas (§ \_\_.16).* Section \_\_.16 of the 2023 CRA Final Rule provides that a bank must delineate one or more facility-based assessment areas within which the agencies evaluate the bank’s record of helping to meet the credit needs of its entire community. Section \_\_.16 prescribes the types of deposit-taking facilities that trigger the requirement to delineate a facility-based assessment area, the geographic requirements of a facility-based assessment area, and other limitations on the delineation of facility-based assessment areas.

The 2023 CRA Final Rule provides that the facility-based assessment areas requirements in § \_\_.16 apply as of April 1, 2024. In the course of implementation work, staff have identified issues that arise due to this applicability date, including potential uncertainty regarding how to comply with § \_\_.16 as of April 1, 2024. Specifically, staff recognize that § \_\_.16 references certain provisions and terms of the 2023 CRA Final Rule that do not apply until January 1, 2026.<sup>8</sup> For example, some banks that will be considered “large” banks until new bank asset-size definitions apply on January 1, 2026, will be required to delineate facility-based assessment areas consisting of full counties beginning on April 1, 2024;<sup>9</sup> however, once they are re-

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<sup>8</sup> See § \_\_.51(a)(2)(i) (listing the provisions of the 2023 CRA Final Rule that apply as of January 1, 2026, including § \_\_.12 (Definitions) and § \_\_.21 (Evaluation of CRA performance in general)).

<sup>9</sup> See § \_\_.16(b)(2).

designated as “intermediate” banks on January 1, 2026, when the new bank asset-size definitions of the 2023 CRA Final Rule apply, these same banks will have the option to delineate facility-based assessment areas consisting of partial counties.<sup>10</sup> In addition, delineating facility-based assessment areas under new requirements beginning April 1, 2024, will involve evaluating banks according to different facility-based assessment area delineation standards within a single year.

Staff believe that aligning the applicability date of § \_\_.16 with the applicability date of the substantive performance tests and other evaluation area provisions in the 2023 CRA Final Rule—January 1, 2026—would promote greater stability and certainty for banks and other stakeholders in transitioning to the provisions of the 2023 CRA Final Rule. In addition, by moving the applicability date to the beginning of a calendar year, the interim final rule would eliminate potential confusion resulting from evaluating banks according to different facility-based assessment area delineation standards within a single year.

*Content and availability of public file (§ \_\_.43).* Section \_\_.43 of the 2023 CRA Final Rule requires a bank to maintain a public file, in either paper or digital format, that includes specific information related to the bank’s branches, services, and performance in helping meet community credit needs. Section \_\_.43 largely retains the public file requirements of the agencies’ legacy CRA regulations,<sup>11</sup> with revisions to clarify aspects of the requirements and to reflect relevant terminology and provisions of the 2023 CRA Final Rule.<sup>12</sup>

As with § \_\_.16, staff believe that moving the applicability date of § \_\_.43 from April 1, 2024, to January 1, 2026, would alleviate potential confusion regarding compliance with the public file requirements and promote greater stability and certainty for banks and other

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<sup>10</sup> See § \_\_.16(b)(3).

<sup>11</sup> See 12 CFR \_\_.43 of the agencies’ legacy CRA regulations.

<sup>12</sup> See 89 FR 6574, 7082-7085 (Feb. 1, 2024).

stakeholders in transitioning to the provisions of the 2023 CRA Final Rule. In particular, consistent with the considerations discussed above regarding § \_\_.16, staff recognize that § \_\_.43 references certain provisions and terms of the 2023 CRA Final Rule that do not apply until January 1, 2026, or January 1, 2027.<sup>13</sup>

#### **IV. Final Rule (Technical Amendments)**

The technical amendments in the final rule would not change the substance or meaning of the 2023 CRA Final Rule. Specifically, the technical amendments would: (1) clarify the January 1, 2026, applicability date of the public notice provisions (§ \_\_.44);<sup>14</sup> (2) correct errors in certain amendatory instructions in the 2023 CRA Final Rule; (3) ensure that recent inflation adjustments to the CRA asset-size thresholds are reflected in appendix G of the 2023 CRA Final Rule (which, as noted, reproduces the agencies' legacy CRA regulations); and (4) update cross-references to reflect the 2023 CRA Final Rule in related regulations.

#### **RECOMMENDATION:**

Based on the foregoing, staff recommend that the Board approve the attached combined draft interim final rule and final rule for publication in the Federal Register. Staff also recommend that the Board delegate to staff authority to make technical, non-substantive changes to the attached materials to prepare them for publication in the Federal Register.

#### Attachment

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<sup>13</sup> See § \_\_.51(a)(2)(i) (listing the provisions of the 2023 CRA Final Rule that apply as of January 1, 2026, including § \_\_.12 (Definitions) and § \_\_.21 (Evaluation of CRA performance in general), and January 1, 2027 (Reporting requirements)).

<sup>14</sup> Section \_\_.44 of the 2023 CRA Final Rule requires a bank to post a CRA Notice in the public area of its main office and each of its branches, as set forth in appendix F, that includes, among other things, information about the availability of a bank's public file, the appropriate Federal financial supervisory agency's CRA examination schedule, and how a member of the public may provide public comment. The posting requirement in § \_\_.44 is substantively the same as the longstanding CRA public notice requirements in the agencies' legacy CRA regulations. See 12 CFR \_\_.44 and appendix B (reproduced in appendix G of the 2023 CRA Final Rule).