

NATIONAL ASSOCIATION OF HOME BUILDERS, JESSICA LYNCH

Proposal and Comment Information

Title: Community Reinvestment Act Regulations, R-1869

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Submitter Information

Organization Name: National Association of Home Builders

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NAHB's comment letter in response to the proposed rule, "Community Reinvestment Act Regulations," Docket No. R-1869 and RIN 7100-AG95 is attached.



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Docket No. R-1869 and RIN 7100-AG95

Submitted by Electronic Delivery: <https://www.federalreserve.gov/apps/proposals/>

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Docket ID OCC-2025-0005

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RE: Community Reinvestment Act Regulations

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to provide comments in response to the proposed rule, "Community Reinvestment Act Regulations."

NAHB is a Washington DC-based trade association representing, among others, companies involved in the development and construction of for-sale single-family homes, including homes for first-time and low- and moderate-income home buyers, as well as the production and management of affordable multifamily housing. The ability of the home building industry to meet the demand for housing, including addressing affordable housing needs, is facilitated through Community Reinvestment Act (CRA)-driven loans and investments.

In general, NAHB supports the joint Federal Deposit Insurance Corporation (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") proposal to recodify the 1995 CRA regulations. Nevertheless, we encourage the agencies to

work with interested stakeholders, including NAHB, to develop targeted policies that will enhance the CRA's impact on affordable housing and increase housing supply.

Background

The Community Reinvestment Act ("CRA") is as essential today as it was in 1977 when the statute was first enacted. The original purpose of the was to encourage banks to meet the credit needs of the communities in which they are located, consistent with the safe and sound operation of the bank. The act requires the Federal Reserve, FDIC and OCC to evaluate the CRA performance of the depository institutions each agency supervises. Based on an institution's performance in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, it is assigned a CRA rating and issued a public performance evaluation by the examiner from its federal banking regulator.

In 2023, the agencies finalized a new joint CRA regulation. Their primary objectives in this rule were to modernize the CRA by:

1. Expanding access to credit, investment, and basic banking services in low- and moderate communities;
2. Expanding assessment areas to adapt to changes in the banking industry, including mobile and internet banking;
3. Tailoring CRA rules and data collection to bank size and business models;
4. Providing greater clarity, consistency, and transparency in the application of the regulation;
5. Tailoring performance standards to account for differences in bank size, business model and local conditions;
6. Providing a list of CRA eligible activities focused on low- and moderate-income communities and underserved rural communities;
7. Providing greater transparency on lending to communities of color;
8. Incenting bank collaboration with Minority-owned Depository Institutions (MDIs), Woman-owned Depository Institutions (WDIs), Low-Income Credit Unions (LICUs) or Treasury Department-certified Community Development Financial Institutions (CDFIs);
9. Incenting bank lending, investment, and services in rural communities and Native lands; and
10. Encouraging bank investments in disaster preparedness and climate resilience activities in low- and moderate-income neighborhoods.

Under the 2023 CRA Final Rule, as fully implemented:

- Large banks (institutions with assets of at least \$2 billion as of December 31 in both of the prior two calendar years) would be subject to four performance tests: the Retail Lending Test; the Retail Services and Products Test; the Community Development Financing Test; and the Community Development Services Test.

- Intermediate banks (institutions with assets of at least \$600 million as of December 31 in both of the prior two calendar years and less than \$2 billion as of December 31 in either of the prior two calendar years) would be subject to two performance tests: the Retail Lending Test and the Intermediate Bank Community Development Test.
- Small banks (institutions with assets less than \$600 million as of December 31 in either of the prior two calendar years) would be subject to the Small Bank Lending Test.
- Limited purpose banks (institutions that do not extend closed-end home mortgage loans, small business loans, small farm loans, or automobile loans to customers, except on an incidental and accommodation basis) would be subject to the Community Development Financing Test for Limited Purpose Banks.
- Generally, banks operating under an approved strategic plan would be subject to the same performance tests they would have been subject to in the absence of a plan; the plan itself could include additions or modifications to tailor the applicable performance tests to the bank's business model.
- The agencies would continue to evaluate banks' performance in the areas surrounding their main office, branches, or deposit-taking remote service facilities (*i.e.*, facility-based assessment areas). In addition, the agencies would evaluate the retail lending performance of certain large banks in areas outside their facility-based assessment areas where they have concentrations of retail loans (*i.e.*, retail lending assessment areas) and the retail lending performance of large banks and certain intermediate and small banks in the nationwide area outside their facility-based assessment areas and retail lending assessment areas (*i.e.*, outside retail lending areas). Further, the agencies would consider community development loans, community development investments, and community development services both inside and outside of a bank's facility-based assessment areas.
- Large banks would be required to collect, maintain, and report certain data to enable evaluation under the applicable performance tests.
- With respect to community development:
 - The rule specified in detail the categories of bank activities that would qualify for CRA consideration as a community development loan, community development investment, or community development service;
 - The agencies would provide an illustrative, non-exhaustive list of examples of loans, investments, and services that qualify for community development consideration and a process for banks to inquire whether a particular loan, investment, or service is eligible for consideration; and
 - The agencies would consider impact and responsiveness factors when evaluating a bank's community development loans, community development investments, and community development services.

As adopted, the 2023 CRA Final Rule would have become effective on April 1, 2024; however, most substantive provisions of the rule would not have become applicable until January 1, 2026, or January 1, 2027. During this transition period, the 2023 CRA Final Rule specified that the 1995 CRA regulations, as reproduced in Appendix G of the 2023 CRA Final Rule, would remain applicable.

On March 21, 2024, the agencies issued a supplemental rule to the 2023 CRA Final Rule which extended the applicability dates of the facility-based assessment area and public file provisions of the 2023 CRA Final Rule from April 1, 2024, to January 1, 2026. The supplemental rule also included some technical, non-substantive amendments to the 2023 CRA Final Rule and related regulations.

The complexity and regulatory burdens of the 2023 CRA rule prompted litigation. On February 5, 2024, several plaintiffs jointly filed suit against the agencies in the U.S. District Court for the Northern District of Texas, and the plaintiffs subsequently requested a preliminary injunction on February 9, 2024. On March 29, 2024, the district court granted plaintiffs' request and 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.¹

On April 18, 2024, the agencies appealed the district court's preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit. However, on March 28, 2025, during the pendency of the appeal, the agencies made an unopposed motion to stay the appeal pending completion of a new rulemaking that would propose rescinding the enjoined 2023 CRA Final Rule and reinstating the CRA framework that existed prior to the 2023 CRA Final Rule.² The agencies publicly announced this intention the same day.³ On April 1, 2025, the Fifth Circuit granted the agencies' motion.⁴ In light of this preliminary injunction, the agencies are not supervising for, or applying, any provisions of the 2023 CRA Final Rule.

Proposed Rule

The agencies are proposing to rescind the CRA final rule issued on October 24, 2023, and published in the Federal Register on February 1, 2024⁵, as subsequently amended⁶ (2023 CRA Final Rule). The agencies also are proposing to replace the 2023 CRA Final Rule with regulations adopted by the agencies and the former Office of Thrift Supervision (OTS) on May 4, 1995,⁷ as amended,⁸ and as published in the Electronic Code of Federal Regulations (eCFR) as of March 29, 2024 (1995 CRA regulations), with conforming amendments to the agencies' definition of "small bank" and technical amendments to the OCC's definition of "small bank" and transition provisions. The agencies are also proposing technical amendments to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act, and the OCC is proposing technical amendments to its Public Welfare Investments regulation.

Banks are currently operating under the framework of the 1995 CRA regulations. Therefore, the agencies anticipate that transition considerations associated with the proposed recodification of the 1995 CRA

¹ *Tex. Bankers Ass'n v. Office of the Comptroller of the Currency*, 728 F. Supp. 3d 412 (N.D. Tex. 2024).

² 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.

³ See OCC, "Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule" (Mar. 28, 2025), <https://www.occ.treas.gov/news-issuances/news-releases/2025/nr-ia-2025-26.html>; Board, "Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule" (Mar. 28, 2025), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250328a.htm>; FDIC, "Agencies Announce Intent to Rescind 2023 Community Reinvestment Act Final Rule" (Mar. 28, 2025), <https://www.fdic.gov/news/press-releases/2025/agencies-announce-intent-rescind-2023-community-reinvestment-act-final>.

⁴ 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.

⁵ 89 FR 6574 (Feb. 1, 2024).

⁶ 89 FR 22060 (Mar. 29, 2024).

⁷ 60 FR 22156 (May 4, 1995). The OCC reissued its 1995 CRA regulation, as amended, with non-substantive changes on December 15, 2021. See 86 FR 71328. For purposes of this SUPPLEMENTARY INFORMATION, reference to the 1995 CRA regulations includes the OCC's 2021 CRA final rule.

⁸ See *e.g.*, 70 FR 44256 (Aug. 2, 2005); 75 FR 61035 (Oct. 4, 2010); 82 FR 55734 (Nov. 24, 2017).

regulations would be de minimis. The agencies believe the recodification of the 1995 CRA regulations would best achieve the agencies' objectives at this time.

NAHB Comments

NAHB members are interested in the CRA because it motivates banks to participate in activities that support access to financing for home builders, developers and remodelers, access to affordable mortgage credit for low- and moderate-income families and families in low- and moderate-income census tracts, the production of affordable owner occupied and rental housing and community and economic development.

NAHB agrees with the agencies' premise that repealing the 2023 CRA regulation and recodifying the 1995 CRA rules would restore certainty in the CRA framework for stakeholders, limit regulatory burdens on banks, and ensure that banks continue to focus on the purpose of the CRA. We commend the agencies for working together on this joint proposal, and we urge them to quickly reinstitute the 1995 CRA rules.

We are also pleased that recodifying the 1995 CRA rules will preserve the separate CRA investment test, which has been an essential driver for banks' LIHTC equity investments in affordable rental housing. Banks' LIHTC investments provide the equity that enables LIHTC project owners to maintain long-term affordable rents for low-income tenants.

The LIHTC program is the largest and most successful federal production program for affordable multifamily housing. It is a public-private partnership that represents exactly the type of community investment CRA should continue to support. According to the National Council of State Housing Agencies, LIHTC has financed more than four million apartments for low-income households, adding between 100,000 and 150,000 units to the inventory each year.⁹ As LIHTC properties must generally remain affordable for 30 years or longer, they provide long-term rent stability for low-income households. Consistent with CRA objectives, banks' LIHTC investments play an important role in revitalizing communities by generating significant economic activity. LIHTC construction creates well-paying construction jobs and generates tax revenue for local governments. Once built, these apartments require maintenance personnel, property management staff, and vendors to supply goods and services. Often, LIHTC developments become catalysts for neighborhood revitalization. At this critical time when the One Big Beautiful Bill Act substantially increases states' LIHTC allocations, banks' LIHTC equity investments must continue to be strongly encouraged and rewarded with CRA credit.

Finally, NAHB urges the agencies to engage with interested stakeholders to develop additional policies that will facilitate banks' financing of new construction and preservation of affordable single-family homes and apartment developments. Some possible ideas include, but are not limited to, creating incentives for banks to:

- **Support acquisition, development and construction (AD&C) financing to help home builders and developers increase the supply of single-family homes affordable to low- and moderate-income homebuyers.** The agencies should develop policies that encourage banks to make more construction loans for 1-4 family residential properties. This incentive is important because commercial banks and thrift institutions are the primary source of financing for small- to mid-sized builders and developers.

⁹ National Council of State Housing Agencies, *State HFA Factbook: NCSHA Annual Survey Results 2023*, October 2024. Also see "The Low-Income Housing Tax Credit Frequently Asked Questions" updated February 2025, at <https://www.ncsha.org/wp-content/uploads/Housing-Credit-FAQs.pdf>.

- **Increase affordable housing investments in “CRA deserts” which struggle to attract loans, investments and services because they are located outside banks’ facility-based assessment areas.** Incentives could include allowing banks to receive CRA credit for LIHTC investments outside of their traditional facility-based assessment areas and providing CRA credit for the full amount of the loan or investment for a LIHTC-financed project as eligible for CRA credit regardless of the number of affordable units.

Conclusion

Thank you for your consideration of NAHB’s comments. For more information, please contact Michelle Kitchen, Senior Director of Multifamily Finance, at mkitchen@nahb.org.

Sincerely,

A handwritten signature in black ink that reads "Jessica R. Lynch". The signature is written in a cursive, flowing style.

Jessica R. Lynch
Vice President