



Where Are We Now?

A Fair Lending & CRA Road Trip!

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Overview

- Status and recent developments in Fair Lending, 1071 and CRA
- Disparate Impact
- Debanking Executive Order
- Recent Regulatory Insights

Fair Lending – Recent Developments

Many twists and turns since this administration has taken office.

America is becoming increasingly diverse.

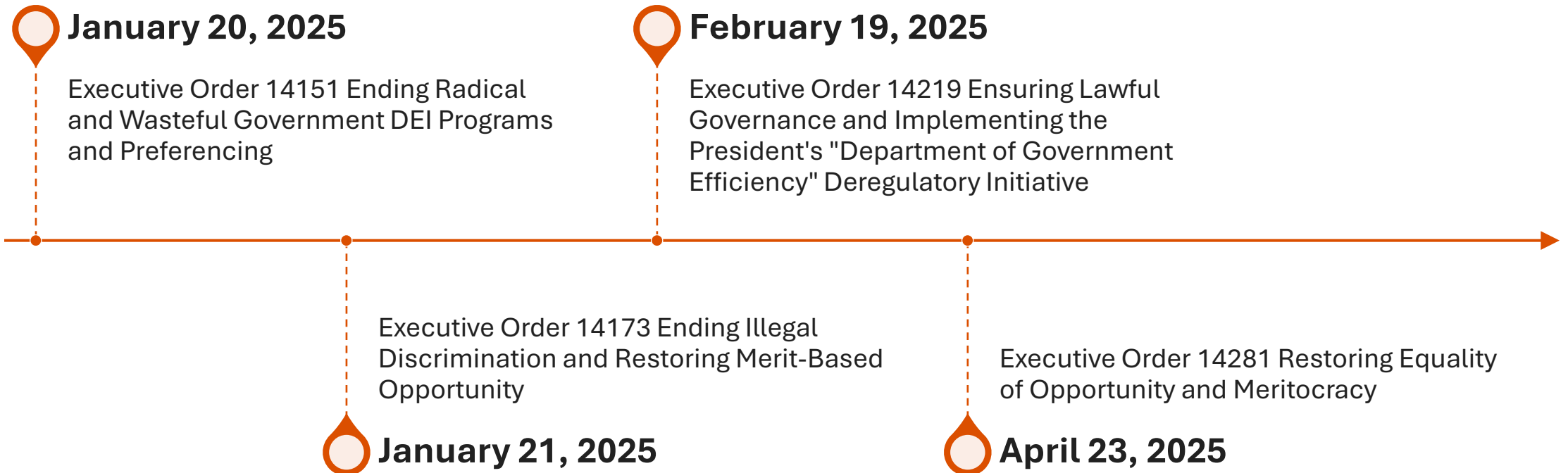
“Keep your hands on the wheel”

Key to navigating this regulatory environment and changing country demographics is no different than under any administration or time ... adhere to regulatory requirements, maintain a strong CMS and manage risk. This will help us prepare for the next administrative shift and changes in our communities.

For **fair lending** that means focus on consistent treatment regardless of class or characteristics, monitor activities for risk, review policies and procedures and make sure fair lending is considered in third party risk and new product initiatives.



Fair Lending - Recent Developments



Fair Lending - Recent Developments

May 12, 2025: CFPB withdrew or rescinded 67 guidance documents

- Statement on Enforcement and Supervisory Practices Relating to the Small Business Lending Rule Under the Equal Credit Opportunity Act and Regulation B, 88 FR 34833 (May 31, 2023)
- Equal Credit Opportunity (Regulation B); Discrimination on the Bases of Sexual Orientation and Gender Identity, 86 FR 14363 (Mar. 16, 2021)
- Equal Credit Opportunity (Regulation B); Revocations or Unfavorable Changes to the Terms of Existing Credit Arrangements, 87 FR 30097 (May 18, 2022)
- Consumer Financial Protection Circular 2022-03: Adverse action notification requirements in connection with credit decisions based on complex algorithms, (87 FR 35864 (June 14, 2022)
- Bulletin 2015-02 Section 8 housing choice voucher homeownership program (May 11, 2015), Bulletin 2013-01 re: indirect auto lending and compliance with the Equal Credit Opportunity Act (Mar. 21, 2013)
- Bulletin 2012-04 lending discrimination

Fair Lending - Recent Developments

July 10, 2025

Massachusetts AG reached a \$2.5M settlement with a student loan company. Alleged the company's use of AI models to make loan decisions had a disparate impact. The company failed to test for disparate impact

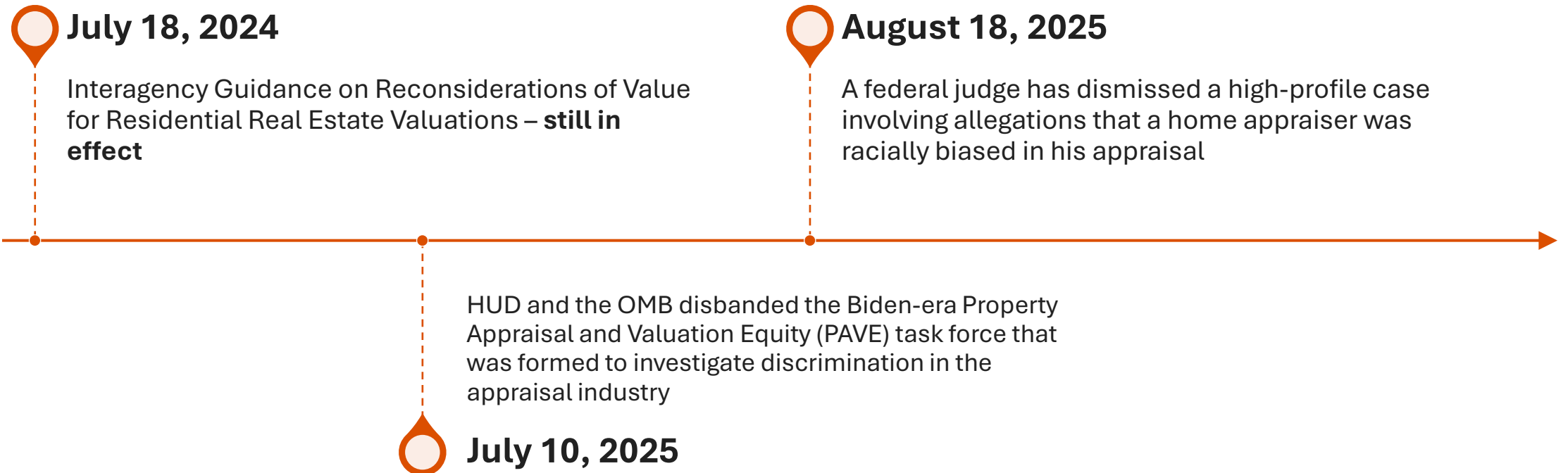
July 29, 2025

A federal judge rejected the Trump Administration's request to release from court supervision a bank that had been accused of discriminatory lending

July 28, 2025

FHFA Issues NPR Repealing Fair Lending, Fair Housing, and Equitable Housing Finance Plans

Fair Lending - Recent Developments - Appraisal Bias



Fair Lending – Disparate Impact

Disparate impact is a form of unintentional discrimination where a seemingly neutral policy or practice unfairly disadvantages a protected group, even if the policy was not intended to be discriminatory

- **Executive Order 14281 Restoring Equality of Opportunity and Meritocracy**
 - Directed federal agencies to deprioritize enforcement and repeal or amend regulations related to disparate impact.
 - Did not alter existing civil rights laws
 - Change primarily affects federal agency enforcement
 - ***Private litigation under Title VII remains possible***
 - ***State AGs may not follow***
- FDIC, OCC, CFPB and DOJ have all announced their adjusted focus and/or exam procedures
- FRB will not be updating their exam manual

Fair Lending - Recent Developments

August 7, 2025 – **Executive Order 14331 Guaranteeing Fair Banking For All Americans**

“It is the policy of the United States that no American should be denied access to financial services because of their constitutionally or statutorily protected **beliefs, affiliations, or political views**, and to ensure that politicized or unlawful debanking is not used as a tool to inhibit such beliefs, affiliations, or political views. Banking decisions must instead be made on the basis of individualized, objective, and risk-based analyses.”

- Banking regulators must remove reputation risk from guidance documents, manuals and other materials.
- Banking regulators must conduct a review to identify financial institutions that have had any past or current, formal or informal, policies or practices of engaging in politicized or unlawful debanking and take appropriate remedial action.
- Banking regulators must review current supervisory and complaint data to identify financial institutions that may have engaged in debanking
- The EO refers to FTC Act 15 U.S.C 45 and 12 U.S.C. 5531 regarding unfairness and unfair practices
- The CFPB’s revised UDAAP exam procedures that imposed fair lending to non-credit products was shot down by the courts in 2023.
- The only way that the Trump Administration can lift the cloud of uncertainty hanging over the legality of the EO is for Congress to enact legislation essentially codifying the EO. Bills are already pending which would accomplish exactly that result.

Fair Lending – Past Fair Access Initiatives

During Trump's 1st administration, the **OCC** released its fair access rule requiring “covered banks” (i.e., national banks and federal savings associations (FSAs) with at least \$100 billion in assets) to:

- Make financial services available to all persons in their geographic market on “**proportionally equal terms;**”
- Not deny any person a financial service unless the denial is justified by such person’s **quantified and documented failure to meet quantitative, impartial, risk-based standards** established in advance by the covered bank; and
- not deny, in coordination with others, any person a financial service the covered bank offers.

The OCC Final Rule was set to take effect on April 1, 2021, but on Jan. 28, 2021 (shortly after former President Biden took office and imposed a regulatory freeze), the OCC paused the rule’s publication in the Federal Register.

During the Biden administration, a bill titled “**Fair Access to Banking Act**” was introduced in both the **U.S. House and Senate**. The Fair Access to Banking Act aimed to require banks with assets of more than \$10 billion to provide fair access to financial services “**without impediments caused by a prejudice against or dislike for a person or the business of the customer**”.

Fair Lending – Fair Access Directives

August 26, 2025 - The **Small Business Administration (SBA)** sent a letter to over 5K lenders with instructions to cease debanking customers based on political, religious or ideological beliefs and to reinstate clients “who were wrongfully denied financial services.” The letter also stated lenders who fail to comply may be subject to “punitive measures.”

The SBA directed lenders to **take action by December 5, 2025**. Those actions are to:

- Identify any past or current policies that influence institutions to engage in politicized debanking as outlined in Trump’s Executive Order.
- Make reasonable efforts to identify and reinstate clients of institutions who were denied services due to debanking.
- Identify all potential clients denied access to financial services due to debanking.
- Identify all potential clients denied access to payment processing through a politicized debanking action.

Lenders must **submit a report** to the SBA by **January 5, 2026**, providing evidence of their compliance with the directives to remain in good standing with the agency and avoid punitive measures.

Fair Lending – State Fair Access Initiatives

Florida

May 2023 - Florida House Bill No. 3

- Created new “unsafe and unsound practice” standards for certain financial institutions in Florida,
- Prohibiting them from denying, canceling, suspending, or terminating services to current or prospective customers, or otherwise discriminating against customers, on the basis of:
 - the customer’s **political opinions, speech, or affiliations**;
 - the customer’s religious beliefs, religious exercise, or religious affiliations;
 - **any factor if it is not a quantitative, impartial, and risk-based standard, including any factor relating to the customer’s business sector**; or
 - any rating, scoring, analysis, tabulation, or action that considers **a social credit score based on certain factors**.

May 2024 - Florida House Bill No. 989

- Expanded the applicability to bring into scope federal and non-Florida licensed financial institutions conducting business in the state that do not hold status as Florida “qualified public depositories;”
- Created a customer complaint process with the Florida Office of Financial Regulation (OFR)
- Created an investigatory process with the OFR for customer complaints.

Fair Lending – State Fair Access Initiatives

Tennessee

April 2024 – TN House Bill No. 2100

- Imposes fair access requirements on: (a) state and national banks, savings and loan associations, savings banks, credit unions, industrial loan and thrift companies, and mortgage lenders that have more than \$100 billion in assets; and (b) insurers.
- Requires these institutions to make determinations about the provision of services based on an analysis of risk factors **unique to the current or prospective customer**,
- Prohibits them from denying or cancelling services, or otherwise discriminating against a person in making available such services or in the terms or conditions of such services, on the basis of
 - the person's **political opinions, speech, or affiliations**;
 - the person's religious beliefs, religious exercise, or religious affiliations;
 - **any factor if it is not a quantitative, impartial, and risk-based standard, including any factor relating to the person's business sector**; or
 - the use of a rating, scoring, analysis, tabulation, or action that considers **a social credit score based on certain factors**.

In 2024, at least **10 other states introduced fair access legislation**, including Arizona, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Nebraska, South Dakota, and West Virginia.

Redlining Data by Administration

DOJ Redlining Case	Geography	Enforcement action year	Years of data
Bank	Jacksonville, FL	2023 (Biden-D)	2016-2021 (Obama-D; Trump-R ; Biden-D)
Company	Rhode Island	2023 (Biden-D)	2016-2021 (Obama-D; Trump-R ; Biden-D)
Bank	Tulsa, OK	2023 (Biden-D)	2017-2021 (Trump-R ; Biden-D)
Bank	Philadelphia, PA	2023 (Biden-D)	2017-2021 (Trump-R ; Biden-D)
Bank	Columbus, OH	2023 (Biden-D)	2015-2021 (Obama-D; Trump-R ; Biden-D)
Bank	Los Angeles, CA	2023 (Biden-D)	2017-2020 (Trump-R)
Bank	Newark, NJ	2022 (Biden-D)	2015-2021 (Obama-D; Trump-R ; Biden-D)
Mtg. Company	Philadelphia, PA	2022 (Biden-D)	2015-2019 (Obama-D; Trump-R)
Bank	Memphis, TN	2021 (Biden-D)	2014-2018 (Obama-D; Trump-R)
Bank	Houston, TX	2021 (Biden-D)	2013-2017 (Obama-D; Trump-R)
Bank	Indianapolis, IN	2019 (Trump-R)	2011-2017 (Obama-D ; Trump-R)
Bank	Minneapolis, MN	2017 (Trump-R)	2010-2015 (Obama-D)
Bank	Cincinnati, Dayton, Columbus, and Indianapolis MSAs	2017 (Trump-R)	2010-2014 (Obama-D)
Bank	Memphis, TN	2016 (Obama-D)	2011-2013 (Obama-D)
Bank	New York City, NY; Camden, NJ; Bridgeport, CT	2015 (Obama-D)	2009-2013 (Obama-D)
Bank	St. Louis, MO	2015 (Obama-D)	2006-2012 (Bush-R ; Obama-D)
Bank	Saginaw, MI	2013 (Obama-D)	2006-2009 (Bush-R ; Obama-D)
Bank	Detroit, MI	2011 (Obama-D)	2004-2007 (Bush-R)
Bank	St. Louis, MO	2011 (Obama-D)	2004-2008 (Bush-R)

DOJ focuses on the existence of a pattern or practice and virtually no statute of limitations

Statute of limitations is generally 5 yrs so what you do in the next few years will be reviewed in the next administration

Fair Lending – What are we hearing?

- Regulators will be relying on complaints as a risk factor more than ever – make sure your complaint program is solid!
- Fintech relationships – understand the lending products and the risks
- Redlining – others will fill in the gap such as State AG's and National and local advocacy groups as they see regulatory scrutiny decline
- Recent work force reductions at the federal level have meant states are scooping up the talent.



Fair Lending – What are we hearing?

- FDIC – Exam recommendations on implementing formal pricing strategies for **commercial lending** and focusing on **exception identification, tracking and monitoring for commercial lending**
- Recent regulatory panel with **FRB, FDIC and OCC**
 - All have fair lending and 3rd party risk included in their priority areas
 - Risk assessments – too general
 - Gaps in fair lending programs
 - Not tailoring FL monitoring programs to products, risks and markets
 - Insufficient monitoring of exceptions for fair lending risk
 - Marketing and outreach not reviewed and monitored for areas reached/ not reached
 - Understanding of what counts for FL outreach – discussing products and activities that could bring in applications
 - 3rd party and FL considerations, AI, machine learning
 - OCC indicated they will look at small business in MMCTs for non-HMDA and CRA filers
 - The FL focus is changed if you are not a HMDA filer – less redlining and more pricing and underwriting
 - FDIC will be coming out any day now with an FIL on compliance exam frequency



So Now What? “Keep your hands on the wheel”

Program Element	Tips / Action Items
CMS / FL Program	• Take an assessment of your CMS and fair lending program
Monitoring	• Exceptions – frequency of occurrence, not the percentage of total loan amount originated • Disparity analysis • Comparative file reviews • Redlining analysis with peer benchmarking
Polices and Procedures	• Review policies, credit standards and pricing strategies
Board / Exec. Mgmt. Engagement and SUPPORT	• How often do you report FL activities / monitoring results? • If there are gaps identified: ○ Develop a plan to address them ○ Outline roles and responsibilities for moving the needle
Data Collection	• HMDA accuracy
Documentation	• Review credit underwriting/approval memos for character narratives • Properly approved exceptions and reasons for exceptions documented • Best practice is a set of approved mitigating factors
Training	• Roles based and frequent • The more you discuss it, the more it becomes second nature



Small Business Lending Collection and Reporting Rule - 1071

April 3, 2025: The CFPB advised the U.S. District Court for the Southern District of Florida that "CFPB's new leadership has directed staff to *initiate a new Section 1071 rulemaking*." The agency "*anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible*."

April 30, 2025: The CFPB officially **deprioritized enforcement and supervision** for entities not covered by existing court stays. **There has not been any official statements from other regulators.**

June 2025: The CFPB issued an interim final rule establishing new compliance deadlines.

- Tier 1 (2,500+ transactions): Collect data by July 1, 2026 → **File by June 1, 2027**
- Tier 2 (500+ transactions): Collect data by January 1, 2027 → **File by June 1, 2028**
- Tier 3 (100+ transactions): Collect data by October 1, 2027 → **File by June 1, 2028**

Small Business Lending Collection and Reporting Rule - 1071

July 23, 2025: A coalition including Rise Economy, the National Community Reinvestment Coalition, Main Street Alliance, and an Iowa small business owner filed a suit against the CFPB in the U.S. District Court for the District of Columbia alleging the CFPB violated federal law by delaying implementation and enforcement of the requirements in Section 1071 of the Dodd-Frank Act.

If successful, the lawsuit **could reinstate earlier compliance dates**. The litigation runs concurrently with existing challenges in Texas, Kentucky, and Florida, which have stayed the rule for now. Resolution could take months, though interim court orders remain possible.

Small Business Lending Collection and Reporting Rule - 1071

Will there be any more legislative efforts to delay or stop 1071?

Two Congressional bills introduced in February could significantly impact Section 1071:

- H.R. 976: 1071 Repeal to Protect Small Business Lending Act - Complete repeal of demographic and application data collection requirements
- H.R. 941: Small LENDER Act - Maintains underlying data requirements and provides three-year transition period plus two-year enforcement grace period for qualifying small-business lenders

Small Business Lending Collection and Reporting Rule - 1071

How should financial institutions plan to comply with 1071?

- Depends on your Tier level
- Distinguish between statutory mandates and regulatory additions

Statutorily Required (Will Remain Unless Congress Acts)		Regulatory Additions (May Change)
Business demographic status inquiry (women-owned, minority-owned, small business)	3-year record retention	LGBTQI+-owned business status
Core application data (number, date, type, purpose, amounts, action taken)	Public data availability	Comprehensive pricing details
Geographic data (census tract)		100-transaction institutional threshold
Financial data (gross annual revenue)		Extensive transaction exclusions
Principal owner demographics (race, sex, ethnicity)		Enhanced procedural requirements
Annual Bureau reporting		Safe harbor provisions

1071 and CRA Connection

Besides allowing for monitoring of discrimination practices, the CRA Modernization rule would have replaced the current small business / small farm reporting with the 1071 reporting.

- If 1071 is repealed, can we assume the SB/SF reporting remains?
- If 1071 is only revised, will this be an additional reporting requirement or will CRA be revised to have 1071 replace SB/SF reporting?

Community Reinvestment Act

July 16, 2025: Banking Agencies proposed to rescind 2023 Community Reinvestment Act rule

Comments on the proposal are due on or before August 18, 2025.

The FDIC, OCC and the Federal Reserve Board said they would replace it with the CRA regulations that were issued in 1995 and are now in place, with certain technical amendments.

CRA Modernization vs. Current CRA

Objectives and Key Elements of Final Rule

1. Strengthen the achievement of the core purpose of the statute
2. ***Adapt to changes in the banking industry, including the expanded role of mobile and online banking***
3. ***Provide greater clarity and consistency in the application of the regulations that translate into performance conclusions***
4. ***Tailor performance standards to account for differences in bank size, business models, and local conditions***
5. Tailor data collection and reporting requirements and use existing data whenever possible
6. Promote transparency and public engagement.
7. ***Confirm that CRA and fair lending responsibilities are mutually reinforcing***
8. Promote a consistent regulatory approach that applies to banks regulated by all three agencies

CRA Modernization vs. Current CRA

Adapt to changes in the banking industry, including the expanded role of mobile and online banking

Modernization

- Recognized the use of internet and mobile banking and hybrid models of physical and online presence
- Still focused on deposit-taking facilities but also recognized lending outside of the traditional assessment areas by creating Retail Lending Assessment Areas (RLAA).
- Allowed for the consideration of nationwide Community Development (CD) activities

Current

- Assessment areas (AA) are based on deposit-taking facilities
- AA expansion is possible with significant lending outside of the defined CRA AAs
- **In/Out Test remains**
 - Banks with partnerships, nationwide or expanded lending
- CD activities only count within your AA or within a larger region that contains your CRA AA

CRA Modernization vs. Current CRA

Provide greater clarity and consistency in the application of the regulations that translate into performance conclusions

Modernization

- Adopted new metrics and benchmarks used by the agencies to assess retail lending performance that translate into performance conclusions
- Clarifications on what activities will receive CRA credit (such as affordable housing), providing for a public list and approval process to confirm an activity's eligibility, and evaluating CD activities in light of their impact

Current

- Same metrics
- **Same uncertainties and inconsistencies within and among agencies**

CRA Modernization vs. Current CRA

Tailor performance standards to account for differences in bank size, business models, and local conditions

Modernization

- Assets Sizes
 - Small banks: < \$600M
 - Intermediate banks: \$600M - < \$2B
 - Large banks: ≥ \$2B
- Adjusted annually for inflation
- Utilize community and market benchmarks that reflect differences in local conditions
 - LMI tracts, LMI borrowers, Businesses with revenues ≥ \$1M
 - Includes a weighted average approach for the Retail Lending Test

Current

- Assets Sizes
 - Small banks: < \$402M
 - Intermediate banks: \$402M - < \$1.509B)
 - Large banks: ≥ \$1.609B
- Adjusted annually for inflation
- Metrics based on:
 - LMI tracts, LMI borrowers, Businesses with revenues ≥ \$1M

CRA Modernization vs. Current CRA

Confirm that CRA and fair lending responsibilities are mutually reinforcing

Modernization

- Continues to prohibit banks from delineating facility-based assessment areas that reflect illegal discrimination or arbitrarily exclude LMI census tracts
- Retains and clarifies the provision that CRA ratings can be downgraded as a result of discriminatory and other illegal credit practices

Current

- No changes
- 1071 reporting would have / may provided another avenue for identifying possible discriminatory practices

Now What? Take this time to review your CRA program

Program Element	Tips / Action Items
Monitoring	• How often do you look at the following? ○ In/Out ratios ○ LMI tract ratios ○ LMI Borrower / small business ratios • ISB / Large Banks – How often to you look at CD activities?
Board / Exec. Mgmt. Engagement and SUPPORT	• How often do you report CRA activities / monitoring results? • If there are gaps identified: ○ Do you come up with a plan to address them? ○ Do you outline roles and responsibilities for moving the needle?
Data Collection	• Are you collecting service hours throughout the year or only in response to CRA exam request list? • How are you identifying CD loans and when?
Documentation	• Does the documentation you have for CD services & loans adequately support inclusion as a CD activity? • Are you getting revenues for your business purpose loans so you can get credit for the loans to businesses with revenues of ≤ \$1M?
YOUR STORY	• Performance Context – Know your market demographics, opportunities and challenges • Document your efforts and outreach

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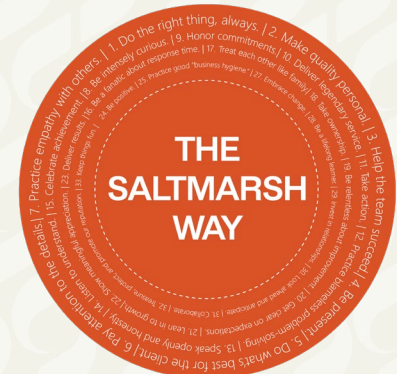
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