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Locke Lord QuickStudy: OCC Formally Rescinds June 2020 CRA ?Rule and Generally ?Reinstates 1995 Banking ?Agencies' Joint ?CRA Rule?

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On December 14, 2021, the U.S. Office of the Comptroller of Currency ("OCC") adopted a new ?final ?rule ("Final Rule")? under the Community Reinvestment Act of 1977, as amended (the ??"CRA") which ?will be effective on January 1, 2022, with certain compliance requirements ?delayed to April 1, 2022. ?The Final Rule replaces the Community Reinvestment Act rule that ?was proposed by the Trump ?Administration June 5, 2020 (the "June 2020 Rule"), which is effective ?from October 1, 2020 until its ?replacement by the Final Rule; some of the more material aspects of ?the June 2020 Rule had ?delayed compliance dates beginning on January 1, 2023, or January 1, ??2024. Since substantial ?portions of the June 2020 Rule had not been implemented, the Final ?Rule, in sum keeps much of the ?existing CRA rules in force and provides a platform for future ?rulemaking by the OCC, the Board of ?Governors of the Federal Reserve System ("Board"), and ?Federal Deposit Insurance Corporation ??("FDIC" and, collectively with the OCC and Board, the ??"Banking Agencies").?

The primary purpose of CRA is to encourage insured depository institutions ("IDIs") to help ?meet the ?credit needs of the communities in which they are chartered, including low- and ?moderate-income ?neighborhoods, consistent with the safe and sound operation of such ?institutions.?

The Final Rule is largely a reinstatement of the 1995 CRA rules ("1995 CRA Rules") that were ?jointly ?promulgated by the Banking Agencies. The OCC states in the Final Rule that it is ?intended to drive ?cooperation among the Banking Agencies for collaboration to make further ?CRA refinements and ?that another benefit of the Final Rule is the reestablishment of uniformity ?of enforcement of CRA ?requirements on IDIs among the Banking Agencies. The June 2020 Rule ?had been unilaterally ?adopted by the OCC without the concurrence of the Board or FDIC.?

Importantly, Final Rule generally re-adopts the 1995 CRA Rules definitions of "qualifying ?activities". ?The Banking Agencies believe that this change will promote confidence that (1) IDIs ?will receive ?consideration for activities that the Banking Agencies have collectively recognized ?help to meet ?community credit needs; (2) consistent rules from each Banking Agency will apply ?to all IDIs; (3) IDIs ?will receive credit for dollars that are already legally committed; and (4) the ?OCC will be able to work ?more effectively with the Board and the FDIC to determine the types ?of activities that should receive ?consideration under any future Banking Agencies' CRA rules. The Final ?Rule includes a provision ?in subpart D that explains when activities will qualify for CRA ?consideration in CRA examinations ?based on the rule that was in effect at the time that the activities ?were conducted.?

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The Final rule offers the following key changes to the rescinded June 2020 Rule.?

The Final Rule reinstates different performance tests and standards for banks of different sizes, ??structures, and operations. Specifically, the Final Rule provides an assessment method for:?

- ?small banks, that emphasizes lending performance. The small bank lending test could ?also ?have included consideration of community development (CD) loans. Qualified ??investments and CD services could have been considered at the bank's option for an ???"outstanding" rating, but only if the bank met or exceeded the lending test criteria in the ??small bank performance standards; ?
- intermediate small banks, that focuses on lending and CD activities (i.e., CD loans, ??investments, and services); ?
- large retail banks, that focuses on lending, investment, and service performance. Lending ??and service tests would have considered both retail and CD activity, while the large bank ??investment test will focus on qualified investments; and ?
- wholesale and limited purpose banks, which is based on CD activities. ?

The Final Rule allows any bank, regardless of its size or business strategy, the option to allow its ??prudential regulator to evaluate it under its strategic plan (see below for updates to strategic plan ??requirements). ?

The Final Rule also:?

- ?requires an IDI's prudential regulator, when determining the IDIs CRA rating, to ?consider ?the IDIs violations of, among other things, the Equal Credit Opportunity Act, ?Fair Housing ?Act, Homeownership and Equity Protection Act, the prohibition against ?unfair or deceptive ?acts or practices in section 5 of the Federal Trade Commission Act, ?Section 8 of the Real ?Estate Settlement Procedures Act, the Truth in Lending Act, credit-?related violations of the ?Military Lending Act (MLA), and Servicemembers Civil Relief ?Act; in each case based on ?guidance that predates the June 2020 Rule;?
- allows IDIs to receive consideration for affiliate activities as provided for in the Final ?Rule, ?which (1) enables IDIs to retain their existing business models for engaging in CRA ??activities; (2) ensures that IDIs receive consideration for CRA-qualifying activities; and ??(3) ?promotes continued efforts for IDIs to serve their communities;?
- allows strategic plans approved under the June 2020 Rule to remain in effect but these ??plans must conform with the provisions of the Final Rule. For instance, the provisions in ??strategic plans that include goals for activities outside a bank's assessment area(s) will no ??longer be applicable and will no longer be evaluated when assessing the bank's ??performance;?
- includes a number of non-substantive or technical changes to proposed part 25 and its ??appendices to reflect the integration of the national bank and savings association rules. ??For example, Section 25.11(c)(1)(iii) of the final rule explains that the phrase ''appropriate ??Federal banking agency'' will mean the OCC when the institution is a national bank or ??Federal savings association and the FDIC when the institution is a state savings ??association; and
- excludes for consideration any CRA activities that do not directly or indirectly serve ?either a ?bank's assessment area(s) or the broader statewide or regional area(s) that include ?a ?bank's assessment area(s).?

The Final Rule delays until April 1, 2020, certain new requirements under: ?

- ?§25.43, which will require IDIs to maintain a public file containing, among other things, ??(1) ?all written comments received from the public for the three year period then ended that ??specifically relate to the IDIs performance in helping to meet community credit needs, ?and ?any response to the comments; and (2) a copy of the public section of the IDIs most ?recent ?CRA Performance Evaluation prepared by its prudential regulator; and
- §25.44, which will require IDIs to display in the public lobby of its main office and each ?of ?its branches the appropriate Community Reinvestment Act Notice which, among other ??things, invites community input regarding the IDI's CRA performance.?

Please reach out to the authors on any questions related to these topics. As we have in the past, ??we ?will ?continue to monitor these issues and will provide future client updates. This ?QuickStudy ??is for ?guidance only and ?is not intended to be a substitute for specific legal advice.?

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