

CRA and Fair Lending Updates

*Presented By:
Rebecca Hughes, CRCM*

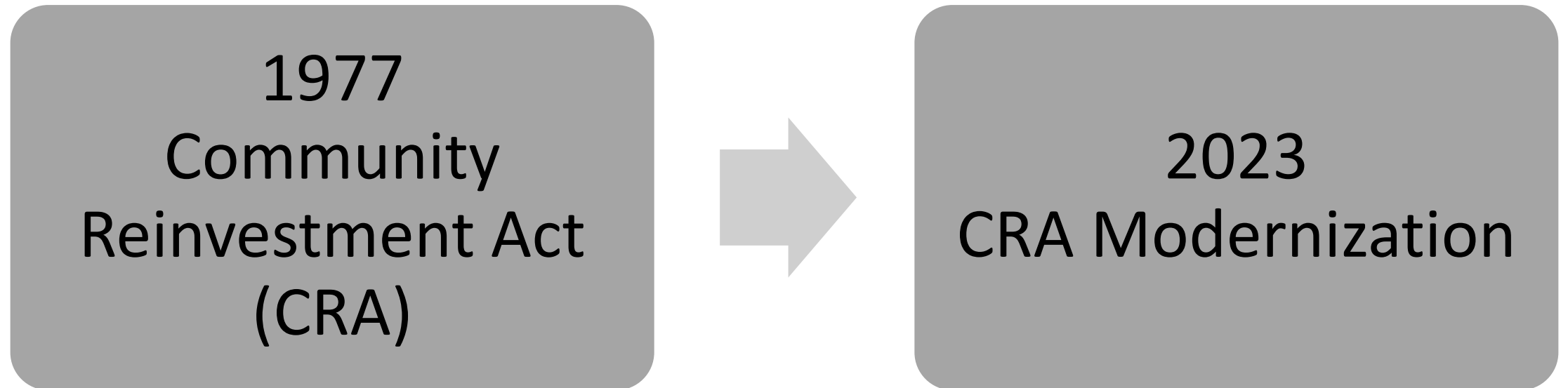
Overview



- Status update on the new CRA Rule
- Redlining News
- Recent Fair Lending Updates

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Community Reinvestment Act (CRA)-Timeline



New CRA Rule Timeline

- The new rule itself was scheduled to become effective on **April 1, 2024**, with a staggered effective dates:
 - **April 1, 2024**, for provisions pertaining to Public File, Public Notice, and Retail-Based Assessment areas.
 - **January 1, 2026**, for new asset-size thresholds, performance tests, and new types of assessment areas.
- **February 5, 2024** - The Independent Community Bankers of America, American Bankers Association, and other organizations file a lawsuit against the federal banking regulators for exceeding their statutory authority with their recent CRA final rule. The complaint asks the court to vacate the final rule and seeks a preliminary injunction to pause the rule while the court decides the merits of the case.
- **March 22, 2024** – The agencies issued an interim final rule extending the applicability date of the facility-based assessment areas and public file provisions from April 1, 2024, to January 1, 2026, aligning these provisions with other parts of the rule.

New CRA Rule Timeline..... *continued*

- **March 29, 2024** – Texas U.S. District Judge grants an injunction to extend the CRA final rule’s effective date (April 1) along with all other implementation dates.
- The effective dates will be extended for each day the injunction remains in place, pending the resolution of the lawsuit.
- Some uncertainty exists because it does not specify whether the injunction pertains to banks that are members of the plaintiff groups and banks that are not members of the groups. A modification might be required, but the decision will significantly delay implementation of the CRA regulations pending further litigation.

Stay tuned.....

CRA Requirements

Public Notice	Public File	Data Collection and Reporting	Assessment Area
<ul style="list-style-type: none"> Place in the public lobby of the institution's main office and in each of the branches State the public is entitled to certain information about the financial institution's operations and their performance under CRA <p><i>Changes effective 4/1/24 1/1/26 TBD?</i></p> <ul style="list-style-type: none"> Include instructions for submitting comments on a financial institution's performance in meeting credit needs not only be mail, but also electronically 	<ul style="list-style-type: none"> Available for public viewing Include certain information as specified in CRA <p><i>Changes effective 4/1/24 1/1/26 TBD?</i></p> <ul style="list-style-type: none"> Update list of branches opened & closed and written comments on a quarterly basis Available on the financial institution's website, if applicable. 	<ul style="list-style-type: none"> <u>Large Banks</u> must report certain information pertaining to: <ul style="list-style-type: none"> Small business loans Small farm loans, and Community development loans <p>No changes</p>	<ul style="list-style-type: none"> Requires financial institutions to delineate one or more assessment areas within which the regulators evaluate the financial institution's record of helping meet the credit needs of its community. <p><i>Changes effective 4/1/24 1/1/26 TBD?</i></p> <ul style="list-style-type: none"> Replaces "assessment area" with "facility-based assessment area" Large banks must delineate facility-based assessment areas composed of whole counties

CRA Asset Size Thresholds

Small Bank	Intermediate Small Bank (ISB)	Large Bank
<p><i>Effective January 2024</i></p> <p>Assets <\$1.564 billion as of December 31 in <u>either</u> of the prior 2 calendar years</p>	<p><i>Effective January 2024</i></p> <p>Assets of at least \$391 million as of December 31 in <u>both</u> of the prior 2 calendar years <u>and</u> <\$1.564 billion as of December 31 in <u>either</u> of the prior 2 calendar years.</p>	<p><i>Effective January 2024</i></p> <p>Assets of at least \$1.564 billion as of December 31 in <u>both</u> of the prior 2 calendar years.</p>
<p><i>New rule - January 2026 (?)</i></p> <p>Assets less than \$600 million in <u>either</u> of the prior 2 calendar years</p>	<p><i>New rule - January 2026 (?)</i></p> <p>Assets \$600 million to \$2 billion in <u>both</u> of the prior 2 calendar years</p> <p><i>(Will then be referred to as “Intermediate” – no longer “Intermediate Small”)</i></p>	<p><i>New rule - January 2026 (?)</i></p> <p>Over \$2 billion in <u>both</u> of the prior 2 calendar years</p>

Applicability of Performance Tests

Small Banks	Intermediate Small Banks (ISB)	Large Banks	Limited Purpose/Wholesale Banks
<ul style="list-style-type: none"> Lending Test <p><i>New rule - January 2026 (?)</i></p> <ul style="list-style-type: none"> Current Small Bank Lending Test <i>Optional:</i> New Retail Lending Test 	<ul style="list-style-type: none"> Lending Test Community Development Test <p><i>New rule - January 2026 (?)</i></p> <ul style="list-style-type: none"> New Retail Lending Test (50%) Current Intermediate Small Bank Community Development Test (50%) <i>Optional:</i> New Community Development Financing Test 	<ul style="list-style-type: none"> Lending Test Investments Test Qualified Services Test <p><i>New rule - January 2026 (?)</i></p> <ul style="list-style-type: none"> New Retail Lending Test (40%) New Retail Services and Products Test (10%) New Community Development Financing Test (40%) New Community Development Services Test (10%) 	<p>Community Development Test</p> <p><i>New rule - January 2026 (?)</i></p> <p>New Community Development Financing Test for Limited Purpose/Wholesale Banks</p>

Is your Public File up to date?

- 2022 saw significant changes in geographic boundaries and census tract designations (both tract income levels and tract minority levels) based on the 2020 Census.
- January 2024 - FFIEC released an updated MSA/MD state county tract crosswalk that includes changes to some counties and MSA's.
- March 2024 – FFIEC released updated tract income level designations

Be sure to review your assessment areas for any impact and update your Public File accordingly.

Redlining

Redlining = A form of illegal disparate treatment in which an institution provides unequal access to credit, or unequal terms of credit, because of the race, color, national origin, or other prohibited characteristic(s) of the **residents of the area** in which the credit seeker resides or will reside or in which the residential property to be mortgaged is located

Reverse redlining = the practice of **targeting** certain borrowers or areas with **less advantageous products or services** based on prohibited characteristics

DOJ Combatting Redlining Initiative

- Redlining enforcement has been on the rise since the U.S. Justice Department (DOJ) launched the Combatting Redlining Initiative in 2021.
- The Department is partnering with U.S. Attorney's Offices and coordinating with financial regulators to ensure that banks and lenders will be held accountable as we work to combat discriminatory race and national origin-based lending practices.
- As of October 2023, has secured over \$107 million in relief for communities of color nationwide that have experienced lending discrimination by banks or other mortgage lending businesses.

Redlining Enforcement Actions

Common Complaint Allegations:

- Engaged in unlawful redlining by avoiding predominantly Black and Hispanic neighborhoods because of the race, color and national origin of the people living in those neighborhoods,
- Branches were concentrated in majority-white neighborhoods,
- Loan officers did not serve the credit needs of majority-Black and Hispanic neighborhoods,
- Outreach and marketing avoided those neighborhoods,
- Internal fair-lending policies and procedures were inadequate to ensure that the bank provided equal access to credit to communities of color.

Remarks from the DOJ

Two DOJ officials shared remarks at the annual CRA and Fair Lending Colloquium in November 2023:

- Confirmed recent public statements by Attorney General Merrick Garland that approximately two dozen redlining investigations are underway at the DOJ.
- Highlighted two common trends the DOJ is seeing in redlining enforcement actions:
 1. Lenders' awareness of redlining risks, sometimes for years, without taking corrective action; and
 2. Evidence of discrimination in employee or manager emails, i.e., disparaging descriptions of certain neighborhoods or toward protected groups.

DOJ Best Practice Recommendations

- Engage with regulators and promptly implement any recommendations following a fair lending examination.
- Understand the full scope of the communities where the institution lends.
- Ensure that the institution's compliance management system is accurately measuring redlining risk (using accurate metrics).

Source: <https://www.justice.gov/opa/speech/remarks-assistant-attorney-general-kristen-clarke-annual-community-reinvestment-act-and>

Other observations

- Assistant Attorney General Clarke also noted that over the last 24 months, the DOJ has closed investigations without further enforcement action *when it is clear that the lender promptly addressed redlining risk that it or its regulator identified* — not as a reaction to an imminent referral to the DOJ, but because the institution was proactive in its efforts to do better.

Source: <https://www.justice.gov/opa/speech/remarks-assistant-attorney-general-kristen-clarke-annual-community-reinvestment-act-and>

Identifying Redlining

- Exam teams use publicly available HMDA data, as compared to census data “demographic Profiles”
- as compared to other lenders in the same assessment / market area ... to identify institutions that received significantly fewer applications / originations in predominantly minority areas relative to other lenders in that area
- Underserving, not total avoidance

Identifying Redlining Risk – Peer Benchmarking

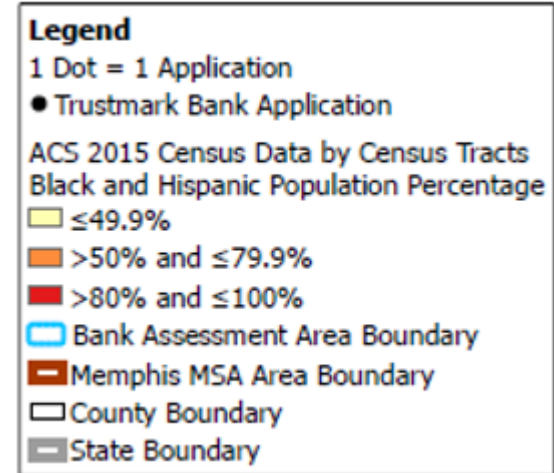
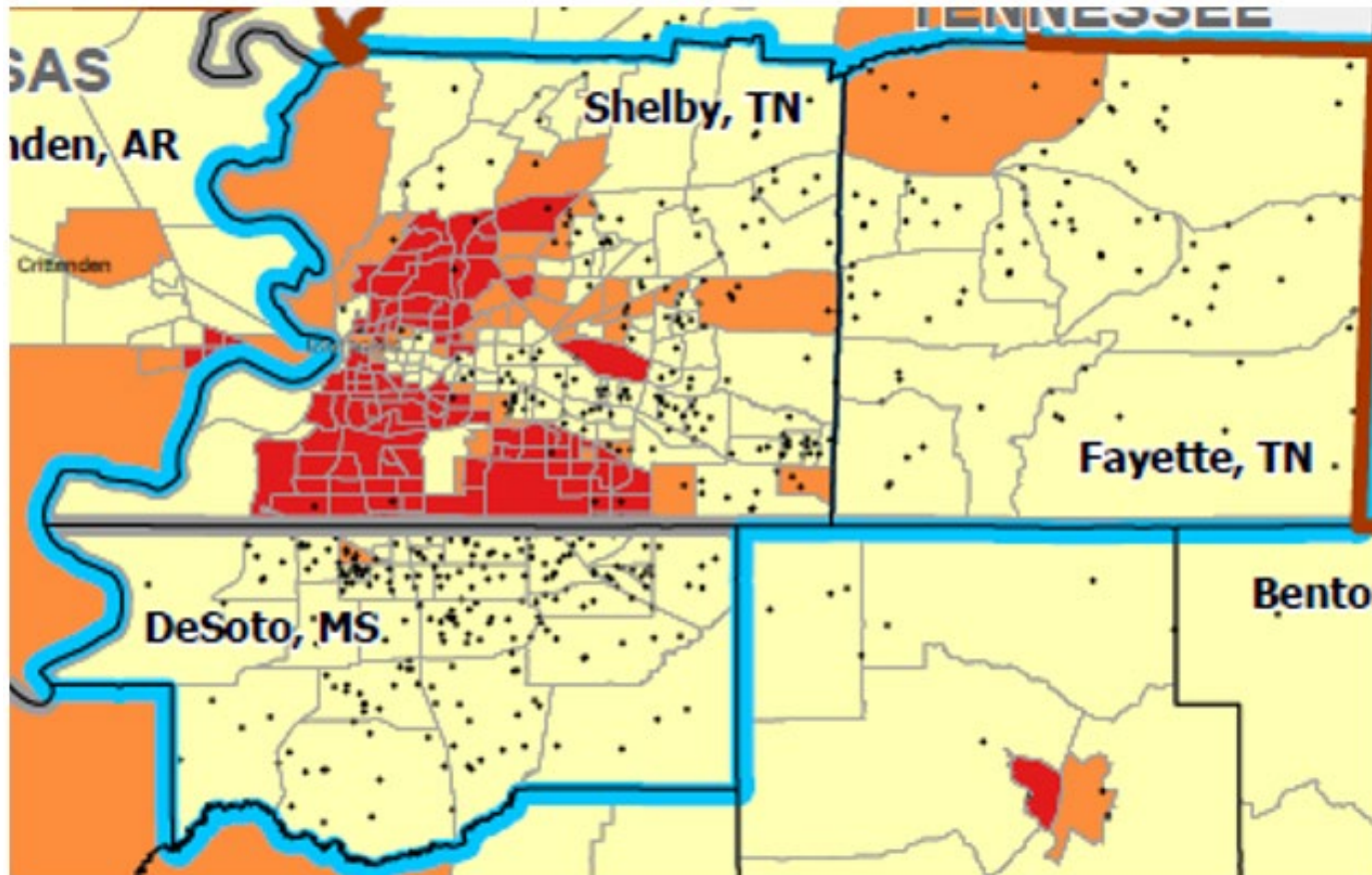
- Consider differences between the subject institution and **other lenders** in the percentage of their HMDA applications or originations that come from minority areas

<i>Peer Comparisons (50%-200% of Bank)</i>	Corpus Christi MSA AA (Nueces and San Patricio Counties)				
	2021 BANK		2021 Aggregate Peer Group		
Tract Minority %	# Apps	% Apps	# Apps	% Apps	<i>Disparity</i>
50-80% (MMCT)	86	32.1%	4,258	51.8%	61.9%
80-100% (HMCT)	7	2.6%	1,198	14.6%	17.9%
Total	268	100.0%	8,216	100.0%	

Significant Disparity <85% of Peers

Severe Disparity <50% of Peers

Identifying Redlining Risk - Mapping



Fair Lending- Appraisal Bias

- A form of discrimination in the property valuation process which occurs when an appraiser considers illegal or irrelevant factors, such as:
 - race or ethnicity of the homeowner or the neighborhood,
 - the owner's asking price, or
 - the buyer's offer price.
- The Fair Housing Act (FHA) and the Equal Credit Opportunity Act (ECOA) prohibit discrimination in appraisal valuation.
- In June 2021, the Property Appraisal and Valuation Equity Interagency Task Force (PAVE) was created, and it is composed of 13 federal agencies and offices.
- In March 2022, the Action Plan to Advance Property and Valuation Equity was introduced and serves as a guide for how consumers can benefit fairly from the equity of home ownership.
- **In June 2023, 5 regulatory agencies issued proposed guidance for addressing reconsiderations of value (ROV) for real estate transactions.**

Recent Fair Lending Issuances

OCC revises “Fair Lending” booklet of the Comptrollers Handbook, January 2023 - *first revision since 2010.*

CFPB Supervisory Highlights Issue 30, 2023

- Pricing Discrimination in mortgage lending

CFPB Supervisory Highlights Issue 25, 2021

- Pricing Discrimination in mortgage lending
- Religious Discrimination in business lending

Contact



Rebecca Hughes, CRCM

Senior Consultant, Financial Institutions

Rebecca.Hughes@SaltmarshCPA.com

(850) 435-8334 Direct

(800) 477-7458 Toll Free