Key Takeaways from the New CRA Regulations

The three agencies that oversee the Community Reinvestment Act (CRA)–designed to ensure banks invest in the low- and moderate-income areas where they receive deposits–released their final regulations Oct. 24, making the first substantial change to CRA regulations since 1995. In this week's Tax Credit Tuesday, Michael Novogradac, CPA, and Peter Lawrence, Novogradac's director of public policy and government relations, discuss the new CRA regulations and how they may affect various tax incentives. They begin by looking at the provisions of the final rule, then discuss the implications for the low-income housing tax credit (LIHTC) and new markets tax credit (NMTC) before moving on to see how the regulations might affect the historic tax credit (HTC), renewable energy tax credits (RETCs) and the opportunity zones (OZ) incentive. After that, they discuss the possible timeline and share resources about the coming changes.

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Transcript

Introduction

[00:00:11] **Michael Novogradac, CPA:** Hello, I'm Michael Novogradac and this is Tax Credit Tuesday. This is the Nov. 14, 2023, podcast.

Three weeks ago today, on Oct. 24, to be exact, the three federal banking agencies that oversee the Community Reinvestment Act released their final regulations. Now those three agencies are The Federal Reserve Board of Governors, or Federal Reserve, the Office of the Comptroller of the Currency, or the OCC, and the Federal Deposit Insurance Corporation, or FDIC.

Now this final rule is the first major rewrite of the CRA regulations since 1995, just about 30 years ago. We're discussing these regulations today because CRA is a significant motivator for banks to invest equity in, as well as provide loans to low-income housing tax credit properties, as well as other businesses that use community development incentives.

Now, the release of these final regulations brings to focus a critical question: to what extent will they alter the volume and manner of such investments by banks going forward? Now before we discuss the recently released final regulations, I wanted to first do a bit of level-setting by providing a brief overview of the regulations that they're going to be replacing over time.

So, under the current regulations, and I note they are still in effect today, but they will be replaced over the next few years by these recently released final regulations, large banks were evaluated under the Community Reinvestment Act, based on a three-part test. First, there was a lending test and that lending test accounts for 50% of a bank's CRA score. Second, there's a services test, and that accounts for the other 25%, or 25% of their score. And then there's an investment test, and it's the investment test that accounts for the other 25% of the score: 50% lending, 25% services, 25% investment. Now, there were other aspects of the regulations, but it's the investment test that was a key motivation for banks to invest equity in affordable housing and community development businesses.

And of course, when I say invest equity in affordable housing and community development businesses, I mean most often investing in now-income housing tax credits as well as investing in new markets tax credits, it also could provide an incentive in many situations for investments in historic tax credits, opportunity zone areas, as well as renewable energy developments. Now, the release on Oct. 24 of these final regulations does come about 17 months after the release of proposed regulations.

So, let me say a bit about the proposed regulations before we jump into the final regulations. Now, these proposed regulations generated several concerns from the affordable housing and community development worlds. And I would say that largest and most central concern was the proposed elimination of the investment test for large banks.

Now, in lieu of an investment test, the proposed regulations were going to create a community development financing test. And the community development financing test was going to combine community development investments, equity investments, with community development loans. And as you can imagine, the community development world feared that by combining debt and equity under a community development financing test, that banks might be incented to invest less in tax credit equity and more toward lending, in part because capital charges banks have to set aside for tax credit equity are larger than those for lending.

Now, the proposed regulations that came out the 17 plus or minus months ago were also more heavily weighted toward retail lending and services. They received a 60% score, while community development financing and services was given only a 40% weight. Mathematically, lending was basically getting more than 50% under the proposed regulations than in the past. A portion of it through the retail lending test and a portion of it through community development lending. Now, the proposal also included a provision to identify assessment areas as being primarily where banks take deposits. That said, large banks would be allowed to include community development activity regardless of when it takes place.

Now turning to the final rule, as opposed to the proposed rule, the good news is that the final rule is, directionally speaking, more encouraging of equity investments than the proposed rule was. And the big question is to what extent is the final rule at least at equilibrium with the rules that are in place now with the investment test. We'll talk about that more today. And to do that, let me introduce my guest.

My guest today is Peter Lawrence, Novogradac's director of public policy and government relations. Peter is no stranger to our listeners on Tax Credit Tuesday. Peter is a frequent guest. In fact, he's my most frequent guest. Today is Peter's 12th appearance on Tax Credit Tuesday.

Now in today's podcast, Peter and I are going to discuss some of the key provisions in the final rule, provisions that we believe will affect a bank's desire and motivation to make equity investments in affordable housing and community development businesses and projects. We're also going to highlight some of the notable changes from the proposed regulations and then we'll discuss the implications, obviously for the low-income housing tax credit and new markets tax credit but we'll also discuss the historic tax credit, renewable energy tax credits and the opportunity zones incentive. And then we're going to wrap up our discussion with a look at the implementation schedule of the CRA regulations and when we should start seeing the effects of the new rule. I mentioned in the intro here thatthis new rule takes effect over time. So, we'll discuss what that time period is. As you can hear from me, there's a lot to get to, and it is a very complex topic.

So, if you're ready, let's get started.

Peter, welcome back to Tax Credit Tuesday for the 12th time.

[00:06:37] **Peter Lawrence:** Thank you, Mike. I don't take that for granted. I greatly appreciate the trust you have in having me back for the 12th time. So, thank you.

Peter Lawrence Role at Novogradac

[00:06:44] **Michael Novogradac, CPA:** Well, thank you as well, and I'm sure in the not-too-distant future, there'll be a baker's dozen of appearances. But before we dive into the CRA regulations, please share with our listeners a little bit more about your role at Novogradac.

[00:06:58] **Peter Lawrence:** Sure. I'm the director of public policy and government relations, so it's sort of my role to have a little bit of knowledge of all of Novogradac's practice areas and how the federal government in particular may impact those practice areas. So, I focus a lot of attention working on various federal agencies, particularly Treasury and HUD and others, as well as Congress and the key committees that oversee the various practice areas that we work in. So, that is a large part of the work.

We also work in coalition with a lot of policy coalition partners, are also interested in the same policies that Novogradac's clients are, so and one of the main ways we operate a lot of the work is through working groups like the Low-Income Housing Tax Credit Working Group, the New Markets Tax Credit Working Group, the Opportunity Zones Working Group and the Renewable Energy Working Group.

And each of these groups, by the way, all commented on the CRA proposed regulations as they were going through the rulemaking process to make sure that whatever the federal banking regulators came up with didn't harm the various activities that we all worked on. So, I think we were all very committed toward participating in that rulemaking process, given the importance of CRA.

[00:08:28] **Michael Novogradac, CPA:** So, thank you for that, and thank you for all your contributions that you've made so far in all these different efforts, and thank you in advance for the contributions you'll be making in the future. During my introduction, I shared an overview of the current regulations as well as the proposed regulations that were announced 18 months ago, and now those proposed regulations came out with changes as a final rule.

So if you could share an overview of the final rule and with a focus on the provisions in the final rule that you think will have the greatest impact on the desire of banks to make equity investments in community development tax credits and other tax incentives.

CRA Final Rule Provisions

[00:09:13] **Peter Lawrence:** Perfect. There's a lot in the final rules. It's almost 1,500 pages, so we're not going to even come close to going through all 1,500 pages on this podcast. You'd have to, I'd have to break a lot of records to be able to have to do that, but I'd like to just give a quick overview of some of the highlights of those and I guess I'll start with the overall evaluation framework.

As you mentioned before, the framework in the proposed regs were more heavily weighted toward retail activities as opposed to community development. It was 60% for retail activities and 40% for community development and as part of that, the actual standards for getting outstanding ratings were increased considerably. I mean, at a time it was estimated at only 2% of all covered financial institutions would get an outstanding rating under the proposed regulations. And that's really hard, and so given all that, if it was going to be really hard to get an outstanding, and it was so heavily toward retail banks, could just say forget it, I'm not going to even try on community development, I'm just going to focus everything I can on retail and that would have been really problematic, so the final regulations change it to being an equal weighting, 50% for retail, 50% for community development. So, they're given equal weighting, so both matter equally in the overall score for banks and therefore banks are incented to do as much as possible in each in order to get as high as possible rating.

They did also lower the thresholds to get outstanding ratings so that banks think they have a shot at getting it and I'm not sure exactly what the percentages are, but it's going to be higher than 2%, let's put it that way. And they also streamlined the retail side of the test, making it simpler, more straightforward, more transparent for banks. And while we're not going to focus on that side too much, that was a big concern about the proposed regulations and I think there will be some impacts on the community development side with more clarity over there. Then I think banks are going to turn toward getting some more clarity on the community development side as those the next stage in the implementation process moves forward.

One key thing, of course, as you mentioned, the elimination of the investment test in the proposed regs. Well, it hasn't popped back in the final regs. We didn't expect that to happen, however, they have established two things. In the community development financing test, they established an impact factor as well as a metric, and both of those pieces are really going to be very important for the low-income housing tax credit and the new markets tax credit. So, I will stop there for the moment.

[00:12:10] **Michael Novogradac, CPA:** Well, you might want to stop there, but I'm not going to let you stop there. So, as you mentioned, the shift from 60-40 to 50-50, basically 60% retail lending, 40% community development financing, shifting that to be balanced 50-50 was a notable change, obviously puts a little bit more at risk impact or influence or importance, I should say, of community development financing. As I noticed in the, as I mentioned in the introduction, community development financing is debt and equity. And there was a concern that there might be a bias toward debt as opposed to equity as compared to under the current rule.

However, as you mentioned, there is now this community development investment impact factor and there's a metric. So, if you could discuss what, because it's community development investment, not community development financing and investment. So, it is focused on investments as opposed to financing.

So, some are calling it like a sub-investment test or something, but if you could discuss that new creation that's in the final regs, it definitely directionally is a signal to banks that, that the level of their equity investments will be assessed.

[00:13:24] **Peter Lawrence:** Yeah, and you mentioned it being a self-investment test. Some people are even calling it the new investment test. I heard that from LISC's new CEO this week at an event focused on CRA. So, but it is a very important change, in the final regulations and one which should be very important for the low-income housing tax credit, new markets.

I'll start with a metric first, because actually that's probably the simplest. The metric is going to be a new ratio, OK. It's going to divide the amount of community development investments, equity investments, with the amount of deposits in the bank, both on, in a facility-based assessment area, that's the old, it's the new term for the, where a bank takes its deposits, as well as nationwide.

So banks are going to be evaluated. What is this ratio here of how much you're doing in community development and you're going to be compared with your peers on how well you're doing. And so, depending on how the bank examiners weigh that in the overall CD financing test, that could be very influential and essentially drive, incentivize banks to continue and perhaps even increase community development equity investments. So that's one.

Next one is impact factor. Now, as opposed to being very quantitative, like that metric is, this is going to be more qualitative. It's going to the bank examiners are going to then take a look at the community development activities the bank does and what is the community impact of those investments. How are they responsive to the community's needs? That's, by nature, very qualitative. And there's not much in the final rule to go upon exactly how the bank examiners are going to make those evaluations. That is clearly going to be something that needs further guidance, sub-regulatory guidance, so to speak, bank examiner guidance going forward.

So I think that is, but I think we all were very happy to see these additions because of the point you make, all things being equal, a bank probably might be more willing to do loans as opposed to equity investments. It's less costly to originate. You'd have to retain less capital and the loans are often shorter duration than equity investments. It's a 15- to 17-year commitment for LIHTC. So, for all these reasons, many in the affordable housing community were worried that absent having something like the impact factor and the metric as part of the CRA final regulations that we might see that shift. And so now I think that's one reason why we may not because there will be that continued attention to equity investments.

[00:16:09] **Michael Novogradac, CPA:** And in addressing the impact factor, impact and responsiveness, there is a list of activities that are considered impactful that specially lists low-income housing tax credits and new market tax credits. Isn't that right?

[00:16:22] **Peter Lawrence:** That's right. Absolutely.

[00:16:23] **Michael Novogradac, CPA:** So, having that be carved out specifically in the regulations is notable.

[00:16:28] **Peter Lawrence:** And at the various events where the agency principals are talking about the final, about the final regulations, they all mention, they say the importance. They made that change because they recognize how impactful low-income housing tax cut credit, new markets tax credit equity investments are, and they wanted to incentivize that in the final regulations.

[00:16:51] **Michael Novogradac, CPA:** So, thank you for that. And I'll just maybe sort of further note that under the existing rule where the investment test is one of three tests of a 25% weighting, there is a large qualitative aspect in terms of how bank examiners evaluate banks and the rest. And under these final rules, as they get implemented over time, there will also be this qualitative aspect to it.

So, at some levels, we're very focused on a, the letter of the rule, the metrics and the rest, but also the qualitative aspect of how these rules roll out. That's just a word toward what we have to be working on in the future, but maybe to get more to maybe what a lot of listeners are wondering.

Implications for LIHTC, NMTC Stakeholders

So, a lot of our listeners are low-income housing tax credit developers, low-income housing tax credit syndicators or investors, and obviously in other credits as well, which we can talk about in a bit. But if I am involved in the low-income housing tax credit, what do you see as the final rules implications or impact on me as I look into the future?

[00:17:57] **Peter Lawrence:** So, I think there's going to be a lot we have, we'll learn as this, these regulations are implemented, but some of the first initial observations I would make is and this was, we did see this at first hinted at in the proposed regulations and it's continued on in the final regulations, that giving banks more flexibility on where to do their community development activity.

Before this, there was this very strong focus on the branch network where the banks took deposits. They had to focus on those areas and you saw banks really spend a lot of time making sure that they got investments in their branch network geography, very much so to perhaps to a detriment of various community development possibilities outside those networks.

And with the final regulations, they have the, there's clearly I mean, certainly they want banks to continue to work in there, but you can get credit much more clearly, much with greater certainty, outside of those deposit-taking, geographies, and across the nation. And we believe, I believe, I should say I guess, that the LIHTC equity pricing in rural areas and small cities too, which also tended to be overlooked to some degree, because maybe they didn't have that many bank branches, if any at all, those pricing in those areas should increase.

And I wouldn't say this is necessarily a zero-sum game, because it's not like there's this fixed amount of CRA investment to be made. It's driven to large part on bank capital and bank capital can grow. So I think it was the fact that there just wasn't certainty that banks were going to get credit for it, so they didn't focus on it as much. And now, with the final regulations, they have a lot more certainty, so I do think there will be more demand in those former CRA deserts, as a lot of people refer to them. And I'll just also say there is a lot more clarity on affordable housing in general throughout the through the final regulations, a lot of uncertainty about various other affordable housing activities and whether you would get credit for CRA. It's much, much clearer, in that respect, and it's there's a lot of the bank regulators clearly wanted, for example, to incentivize more owner-occupied and rental housing in native areas and getting CRA credit for that. So, I do think that there are a lot of positive things to see for affordable housing in these final regs.

[00:20:35] **Michael Novogradac, CPA:** So, I will just add or expand on some of the comments that you made and I think you'll agree with me. In terms of the greater attraction to investing outside of deposit-taking areas. And it's not just deposit-taking areas with internet banking and all the rest, sometimes it's hard to know where the deposit came from, which led to some real weird outcomes that now there's a greater ability of a bank to make an investment outside of the deposit-taking areas and get and receive CRA credit.

And I would just say, rather than say pricing's going to go up, I would say that creates upward pressure on pricing.

[00:21:14] **Peter Lawrence:** OK. Fair enough. You're more careful than I am.

[00:21:16] **Michael Novogradac, CPA:** And this all rolls out over time as we'll talk about later in the podcast, but there are a number of other factors, global minimum tax, as you're working in all these areas, the Basel III discussions, what's happening with interest rates, what's happening, is it going to be a recession?

There's so many other factors going into tax credit equity pricing that this is one piece of a broader impact on equity pricing such that it's not like you can go out and see changes. So I always try to think of things as upward pressure or downward pressure on pricing such a multitude. And those of you that have heard me speak on our Washington Wires that are other conferences, I always go through a slide where we walk through equity pricing and I'll just discuss a host of regulatory ,economic, prior legislation that has an impact on the equity pricing market, and maybe someday I'll have some master model that can decide what the equity, that will project what the equity pricing is, but usually you can identify the direction it's going to have.

It's just how they all play together is why the markets are left to sort themselves out. But let's switch to a--

[00:22:24] **Peter Lawrence:** Can I just say one more thing before you get there? I just want to emphasize that one point, though, is maybe that directional pressure, I think, is going to be more positive in the rural areas than, it's not, again, I want to just emphasize it's not a zero-sum game, like New York and San Francisco has to go down for rural America to go up. I do think that, directionally, we'll see more upward pressure on those rural areas, not much change, at least for CRA reasons, in New York and the New Yorks and San Franciscos of the of the nation. And that is, I think, largely net positive development.

[00:23:00] **Michael Novogradac, CPA:** Agreed. In some way, the demand was, is quite high and the supply is quite limited so in those CRA "hot" areas, so you may not see as much of it as an adverse effect, but in other areas, a more positive effect. I'm glad that you pointed that out.

CRA Final Rule and HTCs, RETCs, OZs

So another area that the final rule makes a shift is from a focus on banks providing capital and services in low- and moderate-income areas, a shift from that to a focus on providing capital and services to low- and moderate-income individuals, as well as to businesses that serve low- and moderate-income individuals, regardless of where they live. So maybe you could discuss how that shift will affect incentives like the historic tax credit, renewable energy tax credits or the opportunity zones incentive. And I mentioned those three because new markets tax credits and low-income housing tax credits are deemed in the regulations to be serving low- and moderate-income individuals, so they're just statutory or regulatorily included as eligible activities. Whereas because of this shift, the other three incentives I just mentioned aren't by definition, regulatory included.

[00:24:15] **Peter Lawrence:** Indeed, and the regulations specifically call out the low-income housing tax credit and new markets in several circumstances, so it's clear that regulators had a focus on those and they wanted to keep a lot of incentives toward those tax credits in the regulations. So, I'll start off by just noting it never was easy for historic credits, opportunity zones or renewable energy to get CRA positive considerations, even under the I guess I would call the current regulations that will be replaced by these final regulations, but it may be even harder going forward, and that's because as you noted, there are various place-based activities that the regulations call out and there are still place-based strategies like community revitalization as an eligible activity for CRA, but what the regulations have done is shift toward making sure that even in those place-based strategies, that there's some benefit for low- and moderate-income individuals, and that could be hard to establish. I mean, we believe that there are positive catalytic effects in the historic tax credit. In fact, we've documented, for example, that 51% of historic tax credit properties are in low- and moderate-income census tracts, which was a key part of the geography consideration under the, I'll call it the old CRA regulations, to note that we are

shifting away from them, and also 75% of the historic tax credit properties were in economically distressed communities as the outlined in National Park Service research.

So, there was clearly a positive community development impact of those properties in those areas, but can you document the benefit for low- and moderate- income individuals? It's a little harder and I'm not sure banks will be able to, especially when you need certainty before you make investments, it's going to be hard to establish that and those type of barriers might lead a bank to think, well, I can get credit elsewhere. Maybe I could do something else. Then simply, opportunity zones, by definition, the vast majority of opportunity zones census tracts are new market census tracts, right? There are a few small exceptions out there, but the vast majority are there. And there's plenty of research documenting that they are more economically disadvantaged and therefore deserving of place-based strategy investment and private investment that CRA has been famous for. However, it's not been easy and to get credit positive consideration in opportunity zones and while banks may not necessarily make equity investments since they have episodic capital gains, they do a lot of lending and having the incentive for opportunity zones would have been really helpful.

And it's going to be still a bit of a challenge unless you can establish that nexus with low- and moderate-income households. That will be a challenge. And then, renewable energy. The final regulations do talk about weather resilience and there's various other hints about trying to promote community development activities that help that you think renewable energy would be a key focus for, but if they're going to require banks to say how are low- and moderate-income, individuals benefiting from a solar or wind farm, whatever, it's not necessarily going to be straightforward and easy. Certainly there will be in some cases, and I will say the low-income communities bonus for ITC, that those, a lot of those categories might be able to demonstrate that, but it's not going to be necessarily across the board.

And again, when you want, you need to have certainty ahead of time before you make your investment. If there's any uncertainty on whether you get CRA consideration, that's not necessarily going to be particularly helpful. So, the one thing for hope, I would say, for the historic, opportunity zone and renewable energy communities I want to make is that the agencies have to make a list, illustrative list, a nonexhaustive illustrative list of types of investments that are deemed to be worthy of community development positive consideration. And I think we'll try to do as much as we can to get as many of these types of historic investments, opportunity zone investments, renewable energy investments listed in that illustrative list to help provide some of that certainty and hopefully we'll get a fair amount of them to enable those types of investments.

[00:29:01] **Michael Novogradac, CPA:** And I would just add that, as Peter and many of our listeners might know, I did speak at an event sponsored by the National Housing Conference on the CRA regulations last Friday. And it is available on the C-SPAN website, and it's on my LinkedIn page as well, if you want to watch it and we'll include a link to today's show notes. But I wanted to note as part of that, Vice Chair Barr, vice chair of the Federal Reserve spoke. And one of the things he did say is one of

the reasons why that implementation sort of gets delayed and we'll talk about that in a moment, is so that there can be a lot of training going on with examiners, as well as on issues like this that we're discussing, developing maybe a more effective and efficient preapproval process, because in these sort of areas where banks will want some degree of certainty that they're going to get positive CRA credit, they'll want to know that before they make the investments. They'll want to be able to reach out to the regulator and get confirmation of that, and that's something that has to, they need to get the approval in time to make the investment. So that is something that we'll be focused on. But as we think about implementation and it is kind of hard, and probably my intro, I should have done a better job of coming up with the verbiage. So, I'll think of old regulations or current regulations as those that are in effect now, old or current, and then the final regulations are the ones that are coming into effect over time. And there's one area where it talks about the regulations speak to the implementation date of April 1, 2024. But the actual implementation is obviously a lot more complicated as it gets rolled in over time. There's various dates.

Timeline for Implementation

So, without getting too arcane, Peter, if you could just give some broad strokes as to when the new CRA regulations, quote, go into effect, and obviously they go into effect in different ways over different periods of time, but if you could speak briefly to that and when we might start to see changes in the ways in which banks invest and lend as a consequence of the new rules going into effect. Just to emphasize that point for listeners, as it stands today, banks are still being evaluated under the old or the current rule and they won't be evaluated under the new, under the final rule until sometime in the future. With that, Peter, take it away.

[00:31:37] **Peter Lawrence:** Sure, absolutely. So, yeah, we certainly did expect an implementation date to start sometime after those final regulations were released. And basically what April 1st, 2024, means, that's when banks are going to start collecting the data, the various agencies are going to start developing all of the new examination guidance and all the various other things they got to do to implement so that we, I think, when you'll start to see the impact, at least a little bit, is starting Jan. 1, 2026, all, when a bank comes out of their next examination cycle, then typically in the past, it's been a three-year cycle, where banks get evaluated for their activity during a three-year time span. So if the bank started their three-year cycle, say, January 1st of next year, 2024, then they could be expected to continue under the old/current regs up until Jan. 1, 2027. And then similarly, if you're starting in 2025, then go until 2028, and under the old/current regs. and only if you would say finished your three-year cycle and you were due to start your new three-year cycle in January 2026, or later that year, then you would come under this new regime.

And I would even say, I think that we would certainly see some impacts on that, but it may be even later then, banks will still be learning how the examiners look at things, and it will be perhaps after the first exam cycle is done and you'll get to see how these qualitative factors are really truly implemented in

their CRA tests, you see the first CRA scores under the new regime, maybe that will really start giving a sense of where investment flows and loans and etc. and so forth are impacted, because, there's always some time it takes to sort of, for that new equilibrium as you point out to establish and the very first CRA examination, may not be the same as the later ones.

So, it's going to take some time to see the real full impact, but I will say, don't expect the federal banking regulators to write the rules again anytime soon, since it took them really, practically about 15 years almost to do this. I think we're not, we're kind of stuck with these, I think, regulations for a while now.

Definitely it'll take, I would imagine they wouldn't take a serious stab at rewriting them for at least another decade or so. So, I think that, again, but as we've talked, there's plenty of other things, plenty of other guidance that is going to be important, that we'll need to engage the agencies on to, to make sure it continues to incentivize the various community development activities that we work in.

[00:34:44] **Michael Novogradac, CPA:** I'm glad you made the comment about the stickiness, if you will, of these regulations. I didn't mention the intro, but as you and I discussed before, Peter, that, we did have this brief period of time where the one of the three regulatory agencies, the OCC, did adopt a set of regulations that were dramatically different that ended up getting repealed when President Biden took office. So, there was some concern that are we going to start to see banking regulations shifting based upon whose, which party's in control or in power? And I would just note for listeners that while the three regulators–each of the three regulating institutions or agencies–did approve the rule and the approvals were not unanimous across all three, but they were notably bipartisan in support for the final regulations and the fact that they were bipartisan in support it does give a lot of staying power for these rules for all the reasons that Peter just mentioned, but I wanted to emphasize that. And then the other areas, now that we've talked about these various dates and all the rest, everyone always asks me the question, so, when will we start to see the effect these rules are going to have? And when I look at that question, i it's obviously not knowable from the standpoint of how the rule gets rolled out, how it gets interpreted, kind of a consensus we'll be developing over the next few years in terms of how the rules work. Various banking institutions will be evaluating, how they're acting now under the current or old rules, how they think they might change their behavior on the new rules, to what extent do certain investments score well under both rules such that they become a little bit more attractive now and how all that works, it's going to be sort of each institution working through that themselves as well as in concert in terms of seeing what others are doing. In the midst of all of that, you'll have the banking regulators having their training, their guidance, as you mentioned, the sub-regulatory guidance coming out. So there is going to be this give and take, this iterative process that's sort of going up going along. And, as one who gets paid to worry, I always worry about in the 1,466 pages of regulations and explanations and discussion, the rest is there something in there that no one really noticed before that will have some notable effect that hasn't been discovered yet? And so there's going to be a lot of this interaction. I will note that, in the discussion section, there's a specific reference that from the

regulators that to the extent that this new rule leads to diminished activity in terms of community development lending or community development investments then they would take whatever steps they deem necessary for that not to be the result. I'm paraphrasing, of course, but it was, specifically sort of called out that to the extent that there was less equity investment or nevertheless community development lending that they would reconsider aspects of the rule. So that's, it's important to see that because that just says at least directionally which way the regulators might go if we start to notice a more adverse effect on equity investments.

But with that, maybe share your thoughts on how you go out and evaluate what impact this is going to have over time or maybe when the next equilibrium will be reached.

[00:38:18] **Peter Lawrence:** Yeah, and I think it's always going to be important to engage the agencies to help inform that conversation, because sometimes they're not, they don't necessarily appreciate how things really work from a practitioner's perspective.

So, I think it is helpful that they have that conversation. There's a lot of flexibility in that final regs. There's a lot of qualitative aspects that will need further definition. So they're not going to be necessarily hedged in and have no flexibility to make those types of adjustments if they need to, given what's in the final rules, so I do think it's going to take some time. I mean, you might see some impacts on certain areas which were particularly affected by the 1995 or the old/current regs, a few communities in particular that had anomalous situations impacted more quickly than others, but I think overall, it'll take time for this to play out and I think it's going to be more like 2027, 2028 when that new equilibrium will be truly set, at least for CRA purposes.

[00:39:36] **Michael Novogradac, CPA:** Is there ever really an equilibrium? Like, I want to get metaphysical here.

[00:39:42] **Peter Lawrence:** And we haven't even mentioned other things, banking-related issues like Basel III, which can also affect that equilibrium. So, there's a lot that goes into these effects.

Other Resources

[00:39:53] **Michael Novogradac, CPA:** So, before we wrap up, I wanted to give you an opportunity to share other resources or other ways in which listeners can stay engaged in this issue.

[00:40:03] **Peter Lawrence:** Absolutely. Well, first of all, if you're not a member of one of our working groups, you should be and we encourage you to do that. Again, I'll just reiterate, we have a low-income housing tax credit working group, and we have, and they're going to be actually meeting next week and, we'd love to have you join us or I guess I should say this week, sorry, this podcast is being recorded a week before it actually posts. And, we also have a new markets tax credit working group and opportunity zones working group and a renewable energy working group. And each of those working groups, I think, will be focused on ways we can affect that future guidance on how the CRA is going to

be implemented to try to make sure it continues to be a good incentive for affordable housing, community development and historic preservation and renewable energy. So, I encourage you to join those. Please, contact us and I believe maybe you'll have links to that in the show notes.

[00:41:09] **Michael Novogradac, CPA:** Maybe I will.

[00:41:12] **Peter Lawrence:** So encourage you to go there, to learn how to join and be a member. And then of course, we also have our upcoming Housing Tax Credit Financing Conference, Nov. 30th-Dec. 1st, the week after Thanksgiving in Las Vegas. We're going to talk about CRA and all the other Important aspects of what's happening in affordable housing at that conference. I want to encourage you, of course, to attend to learn more.

[00:41:39] **Michael Novogradac, CPA:** Great. Thank you very much, Peter. To our listeners, I will include Peter's email address in today's show notes, if you want to reach out to him. Peter, please stick around. Don't go away just yet.

To our listeners and viewers, we do encourage you to tune in again next week. And as I say every week, please, listen to us in whatever podcast distribution channel you like. And you can, in most, if not all, you can follow or subscribe to us within that channel. So, I encourage you to do that as well. And, as always, if you have ideas or suggestions for future episodes. Please email us at CPAs at Novoco.com.

Off-Mike Section

So now we're going to turn to our Off-Mike Section, where I get to ask guests off-topic questions, unrelated, or at least not directly related to tax credit or community development finance. So, Peter, I've asked guests before about how they stay on tasks for projects, but I do have a twist on that question. So how do you stay focused when something takes a long time to accomplish? And the CRA regulations are a good example. They obviously took decades and many of the legislative issues that are part of your work are also very long term. So how do you manage staying focused on such long-term projects?

[00:43:03] **Peter Lawrence:** It's a great question, Mike. And CRA was a marathon, we knew it was going to be changed at some point. They needed to be changed. I mean, so many things have changed since 1995, online banking, fintechs, etc. I mean, there's so much changed. It needed to be changed, so we, that was clearly, we knew it was coming. It just took a very long time to do that and we just need to persistently engage there. But legislation, tax legislation, it's all, it takes a lot of time. We haven't seen a bipartisan, bicameral piece of tax legislation since 2020. It's, we're now getting toward the end of 2023. It takes a long time for these opportunities to develop, but you need to be prepared because when that opportunity does pop up, you need to be ready to take advantage of them. And so, I know it can be really frustrating and when, Congress spent the month of October fruitlessly trying to find a speaker, and that–

[00:44:02] **Michael Novogradac, CPA:** Not fruitlessly. It was successful.

[00:44:10] **Peter Lawrence:** You wonder sometimes, like, what are we doing? How can you engage in an environment like that? An these things happen, unfortunately, but you just got to keep at it because when that opportunity does pop up, if you're not prepared to take advantage of it, you may miss that opportunity for another long time. So, and, but then they pay off. I mean, when we got the 4% floor enacted, then that last bipartisan, bicameral tax bill, that had a huge impact. It made financing private-activity bond financed properties that much easier and we've gotten countless number of more affordable housing, more affordable homes as a result. So, you just, and it took a while to get that thing enacted, but we were ready for it when we, our opportunity came, when we took advantage. So we hopefully will have another opportunity of that coming up and we have, we've been doing a lot of work, and we're going to continue a lot of work and be able to take advantage so that we can continue to do all the great work that we're doing.

[00:45:13] **Michael Novogradac, CPA:** Yeah, it's an interesting way in which I frame the question. It probably would have been better to frame it not so much as how do you keep long-term projects a priority, it's more how do you stay optimistic and not get discouraged? Because if you think about like opportunity zones as well, they ended up being a vehicle, Inflation Reduction Act, ended up having a lot of the renewable extensions that were needed. So, it's more about keeping optimistic and engaged when it's looking bleak and it's just because, like you say, you never know when the time's going to arrive. And you've got to be ready.

[00:45:46] **Peter Lawrence:** I mean, the PTC was going to be gone, right? We were in a situation where it was going to entirely go away and who knows whether it would ever come back. And now, after the IRA, we've got an incredible runway and establishment. And that took a long time in the running. The Inflation Reduction Act was many years' worth of advocacy there, too, as well. Yeah, another great example, Mike.

[00:46:10] **Michael Novogradac, CPA:** And I'm even going to give another example as a San Francisco 49ers fan and a Brock Purdy fan. When you think about you're the third-string quarterback or started off with like the sixth- or seventh-string in a camp and you're the last pick of the draft, Mr. Irrelevant. And you just prepare, prepare, prepare. It's going to take two injuries to the starting quarterbacks by the time you get to number three to get to play and then it all happens and it happens against Tom Brady. But you prepare, you prepare, you prepare. And then you end up winning the game and ending up with a long win streak. So, preparation, you never know when the time's going to come and you got to be ready.

But let's turn to something lighter. Thanksgiving's a couple weeks away and I thought I'd just ask you if there's a favorite or one of your favorite Thanksgiving foods.

[00:47:00] **Peter Lawrence:** Well, that's always challenging because Thanksgiving is that one iconic meal of the year. So many different favorites in it. I guess I won't necessarily tell you my favorite, but I

will notice, I'll tell you about a recent tradition we've had in our family on Thanksgiving after many years of having a turkey as a traditional, we've sort of turned that tradition a little bit on its head and had a capon essentially a rooster, so bigger than a regular chicken, but not as big as a turkey as our, signature part of the Thanksgiving meal and so that sort of become a new tradition, a new way to, spice things up for Thanksgiving. And, looking forward to that again, in a little while in the coming weeks.

[00:47:46] **Michael Novogradac, CPA:** Very good. And I'll say for myself, I'll say cranberries, just because that's the one time a year that I'll eat cranberries and a lot of the other Thanksgiving foods I'll eat different times of the year. But for some reason, cranberries don't usually make it in. And I might also say leftovers the day after.

[00:48:05] **Peter Lawrence:** Yeah, absolutely. We definitely have and we of course have to have cranberries as well as part of the overall.

[00:48:10] **Michael Novogradac, CPA:** Yes, sure you do.

[00:48:12] **Peter Lawrence:** Must have. Absolutely.

[00:48:14] **Michael Novogradac, CPA:** So thank you, Peter. And to our listeners, I'm Mike Novogradac, thanks for listening.

Additional Resources

Email

Peter Lawrence

Regulations

Final Rule on Community Reinvestment Act

Working Groups

Low-Income Housing Tax Credit Working Group

New Markets Tax Credit Working Group

Renewable Energy Working Group

Opportunity Zones Working Group

C-Span Coverage of CRA

Housing Finance Industry Leaders on the Community Reinvestment Act