

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

**Docket ID OCC-2008-0024**

**RIN 1557-AD19**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 228**

**[Regulation BB; Docket No. R-1342]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 345**

**RIN 3064-AD39**

**DEPARTMENT OF TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 563e**

**Docket ID OTS-2008-0021**

**RIN: 1550-A29**

**Community Reinvestment Act Regulations**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

**ACTION:** Joint final rule; technical amendment.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (collectively, the “agencies”) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define “small bank” or “small savings association” and “intermediate small bank” or “intermediate small savings association.” As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index.

**EFFECTIVE DATE:** January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785-6054; or Brent Lattin, Attorney, (202) 452-3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906-7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

**Background and Description of the Joint Final Rule**

The agencies’ CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The regulations define small and intermediate small institutions by reference to asset-size criteria expressed in dollar amounts, and they further require the agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2008 (72 FR 72571 (Dec. 21, 2007)). The CRA regulations, as revised on December 21, 2007, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.061 billion are “small banks” or

“small savings associations.” Small banks and small savings associations with assets of at least \$265 million as of December 31 of both of the prior two calendar years and less than \$1.061 billion as of December 31 of either of the prior two calendar years are “intermediate small banks” or “intermediate small savings associations.” 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2008, the CPIW increased by 4.49 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2009, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion are “small banks” or “small savings associations.” Small banks or small savings associations with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years are “intermediate small banks” or “intermediate small savings associations.” The agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at <http://www.ffiec.gov/cra/>.

### **Administrative Procedure Act and Effective Date**

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the CRA regulations that the agencies previously published for comment. See 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) are amended by adjusting the asset threshold as provided for in §§ 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

Accordingly, since the agencies’ rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, the agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2009. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the requirements of the CRA rules, the agencies conclude that it is not substantive within the meaning of the APA’s delayed effective date provision. Moreover, the agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a notice of proposed rulemaking for

this joint final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

### **Paperwork Reduction Act of 1995**

There are no collection of information requirements in this joint final rule.

### **Executive Order 12866**

The OCC and OTS have each determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

### **Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the agencies have determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

### **Executive Order 13132**

The OCC and OTS have each determined that its portion of this joint final rule does not have any Federalism implications as required by Executive Order 13132.

### **List of Subjects**

#### 12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

#### 12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

#### 12 CFR Part 345

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

#### 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

### **Department of the Treasury**

#### Office of the Comptroller of the Currency

### **12 CFR Chapter I**

For the reasons discussed in the joint preamble, 12 CFR part 25 is amended as follows:

### **PART 25 – COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS**

1. The authority citation for part 25 continues to read as follows:

**Authority:** 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

2. Revise § 25.12(u)(1) to read as follows:

**§ 25.12 Definitions.**

\* \* \* \* \*

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

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**Federal Reserve System**

**12 CFR Chapter II**

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

**PART 228 – COMMUNITY REINVESTMENT (REGULATION BB)**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 et seq.

2. Revise § 228.12(u)(1) to read as follows:

**§ 228.12 Definitions.**

\* \* \* \* \*

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

\* \* \* \* \*

**Federal Deposit Insurance Corporation**

**12 CFR Chapter III**

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

**PART 345 – COMMUNITY REINVESTMENT**

1. The authority citation for part 345 continues to read as follows:

**Authority:** 12 U.S.C. 1814-1817, 1819-1820, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

2. Revise § 345.12(u)(1) to read as follows:

**§ 345.12 Definitions.**

\* \* \* \* \*

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

\* \* \* \* \*

**Department of the Treasury**  
**Office of Thrift Supervision**

**12 CFR Chapter V**

For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

**PART 563e – COMMUNITY REINVESTMENT**

1. The authority citation for part 563e continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

2. Revise § 563e.12(u)(1) to read as follows:

**§ 563e.12 Definitions.**

\* \* \* \* \*

(u) Small savings association – (1) Definition. Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion. Intermediate small savings association means a small savings association with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

\* \* \* \* \*

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED  
“COMMUNITY REINVESTMENT ACT REGULATIONS.”]**

Dated: December 16, 2008.

Julie L. Williams (signed)

**Julie L. Williams,**

First Senior Deputy Comptroller and Chief Counsel.

[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED  
“COMMUNITY REINVESTMENT ACT REGULATIONS.”]

By order of the Board of Governors of the Federal Reserve System,

December 16, 2008.

Robert deV. Frierson (signed)

**Robert deV. Frierson**

Deputy Secretary of the Board



**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED  
“COMMUNITY REINVESTMENT ACT REGULATIONS.”]**

By order of the Board of Directors.

Dated at Washington, D.C., this 16<sup>th</sup> day of December, 2008.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman (signed)

**Robert E. Feldman,**

Executive Secretary.

(SEAL)

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT FINAL RULE ENTITLED  
“COMMUNITY REINVESTMENT ACT REGULATIONS.”]**

Dated: December 11, 2008

By the Office of Thrift Supervision,

John M. Reich (signed)  
**John M. Reich,**  
*Director.*