

complies with paragraph (a) of this section.

#### **PART 434—ENERGY CODE FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY HIGH-RISE RESIDENTIAL BUILDINGS**

■ 4. The authority citation for part 434 continues to read as follows:

**Authority:** 42 U.S.C. 6831–6832, 6834–6836; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 5. In § 434.101, paragraph 101.1.1, paragraphs (a)(2) and (3) are revised to read as follows:

##### **§ 434.101 Scope.**

\* \* \* \* \*

101.1.1 (a) \* \* \*

(2) An addition for which design for construction began before January 3, 2007, that adds new space with provision for a heating or cooling system, or both, or for a hot water system; or

(3) A substantial renovation of a building for which design for construction began before January 3, 2007, involving replacement of a heating or cooling system, or both, or hot water system, that is either in service or has been in service.

\* \* \* \* \*

#### **PART 435—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL LOW-RISE RESIDENTIAL BUILDINGS**

■ 6. The authority citation for part 435 continues to read as follows:

**Authority:** 42 U.S.C. 6831–6832, 6834–6835; 42 U.S.C. 8253–54; 42 U.S.C. 7101 *et seq.*

■ 6a. Amend part 435 by revising the part heading to read as set forth above.

■ 7. Amend § 435.2 by adding in alphabetical order a definition of “Design for construction” and revise the definition of “New Federal building” to read as follows:

##### **§ 435.2 Definitions.**

\* \* \* \* \*

*Design for construction* means the stage when the energy efficiency and sustainability details (such as insulation levels, HVAC systems, water-using systems, etc.) are either explicitly determined or implicitly included in a project cost specification.

\* \* \* \* \*

*New Federal building* means any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. A new building is a building constructed on a

site that previously did not have a building or a complete replacement of an existing building from the foundation up.

\* \* \* \* \*

■ 8. Revise paragraph (c) of § 435.4 to read as follows:

##### **§ 435.4 Energy efficiency performance standard.**

\* \* \* \* \*

(c) If a 30 percent reduction is not life-cycle cost-effective, the design of the proposed building shall be modified so as to achieve an energy consumption level at or better than the maximum level of energy efficiency that is life-cycle cost-effective, but at a minimum complies with paragraph (a) of this section.

[FR Doc. E7–24615 Filed 12–20–07; 8:45 am]

**BILLING CODE 6450–01–P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 25**

[Docket ID OCC–2007–0021]

RIN 1557–AD05

## **FEDERAL RESERVE SYSTEM**

#### **12 CFR Part 228**

[Regulation BB; Docket No. R–1302]

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

#### **12 CFR Part 345**

RIN 3064–AD24

## **DEPARTMENT OF TREASURY**

### **Office of Thrift Supervision**

#### **12 CFR Part 563e**

[Docket ID OTS–2007–0024]

RIN 1550–AC18

### **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 (OTS).

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

**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. The agencies are also correcting a paragraph heading that is inaccurate as a result of annual revisions to the small institution threshold.

**DATE:** Effective January 1, 2008.

#### **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 Brett 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, Compliance Policy Section, (202) 898–6612, and Faye Murphy, Review Examiner, Compliance Examination Support, (202) 898–6613, Division of Supervision and Consumer Protection; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th 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 was revised most recently for the OCC, the Board, and the FDIC effective January 1, 2007 (71 FR 78335 (Dec. 29, 2006)). These agencies' CRA regulations, as revised on December 29, 2006, provide that banks that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.033 billion are "small banks." Small banks with assets of at least \$258 million as of December 31 of both of the prior two calendar years and less than \$1.033 billion as of December 31 of either of the prior two calendar years are "intermediate small banks." 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1). The threshold for small savings associations was revised in the same way and the same threshold for intermediate small savings associations was established by OTS effective July 1, 2007 (72 FR 13435 (Mar. 22, 2007)). 12 CFR 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2007, the CPIW increased by 2.7 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, 2008, 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 or 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." The agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at <http://www.ffiec.gov/cra/>.

The agencies also are amending their CRA regulations to make a technical correction to revise a paragraph heading that is inaccurate as a result of annual small institution threshold adjustments. The technical correction revises the paragraph headings found at 12 CFR 25.26(a)(1), 228.26(a)(1), and 345.26(a)(1) ("Small banks with assets of less than \$250 million") and 12 CFR

563e.26(a)(1) ("Small savings associations with assets of less than \$250 million"). As a result of the agencies' annual adjustments to the dollar amount threshold for small institutions, the threshold of \$250 million described in the paragraph heading is inaccurate. The agencies are revising the headings so that they do not reference the dollar amount of the small bank or small savings association asset threshold.

#### **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.

With regard to the revision amending the paragraph heading, as a result of the annual adjustment required by the regulations, the heading describing "small banks" or "small savings associations" as those with assets of less than \$250 million is inaccurate. The revision merely amends the heading to correct this inaccuracy and prevent further inaccuracies when annual adjustments are made in the future. For this reason, the agencies, for good cause, find that the notice and comment procedures prescribed by the APA are unnecessary because the joint final rule is making a technical correction without substantive change to the provisions of parts 25, 228, 345, and 563e.

This joint final rule takes effect January 1, 2008. 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. The agencies find that there is good cause for shortened notice 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. Moreover, the revisions to the headings in the agencies' rules are minor, nonsubstantive, and technical.

#### **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 rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have each determined that its portion of this joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. 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 \$1.061 billion. Intermediate small bank means a small bank 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.

\* \* \* \* \*

■ 3. Revise the paragraph heading to § 25.26(a)(1) to read as follows:

**§ 25.26 Small bank performance standards.**

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* \* \* \*

\* \* \* \* \*

**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 \$1.061 billion. Intermediate small bank means a small bank 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.

\* \* \* \* \*

■ 3. Revise the paragraph heading to § 228.26(a)(1) to read as follows:

**§ 228.26 Small bank performance standards.**

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* \* \* \*

\* \* \* \* \*

**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 \$1.061 billion. Intermediate small bank means a small bank 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.

\* \* \* \* \*

■ 3. Revise the paragraph heading to § 345.26(a)(1) to read as follows:

**§ 345.26 Small bank performance standards.**

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* \* \* \*

\* \* \* \* \*

**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 \$1.061 billion. *Intermediate small savings association* means a small savings association 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.

\* \* \* \* \*

■ 3. Revise the paragraph heading to § 563e.26(a)(1) to read as follows:

**§ 563e.26 Small savings association performance standards.**

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.*

\* \* \*

\* \* \* \* \*

Dated: December 5, 2007.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel.*

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

Dated: December 14, 2007.

**Jennifer J. Johnson,**

*Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of December, 2007.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: December 14, 2007.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. E7-24719 Filed 12-20-07; 8:45 am]

**BILLING CODE** 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P

---

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 655**

[FHWA Docket No. FHWA-2003-15149]

RIN 2125-AE98

**National Standards for Traffic Control Devices; the Manual on Uniform Traffic Control Devices for Streets and Highways; Maintaining Traffic Sign Retroreflectivity**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this final rule is to revise standards, guidance, options, and supporting information relating to maintaining minimum levels of retroreflectivity for traffic signs on all roads open to public travel.

**EFFECTIVE DATE:** This final rule is effective January 22, 2008. The incorporation by reference of the publication listed in this regulation is

approved by the Director of the Office of the Federal Register as of January 22, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary McDonough, Office of Safety Design, (202) 366-2175, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, (202) 366-0791, U.S. Department of Transportation, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This document, the notice of proposed amendments (NPA), the supplemental notice of proposed amendments (SNPA), and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register's** home page at: <http://www.archives.gov> and the Government Printing Office's Web page at: <http://www.access.gpo.gov/nara>.

**Background**

On July 30, 2004, at 69 FR 45623, the FHWA published in the **Federal Register** a NPA proposing to amend the MUTCD to include methods to maintain traffic sign retroreflectivity. The NPA was issued in response to section 406 of the Department of Transportation and Related Agencies Appropriations Act, 1993 (Pub. L. 102-388; October 6, 1992). Section 406 of this Act directed the Secretary of Transportation to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained for traffic signs and pavement markings, which apply to all roads open to public travel. The FHWA is currently conducting research to develop a standard for minimum levels of pavement marking retroreflectivity. The FHWA expects to initiate the pavement marking retroreflectivity rulemaking process once the research is concluded and the results are analyzed and considered.

The FHWA has led a significant effort toward establishing minimum-maintained levels of sign retroreflectivity since the statute was issued in 1993. Three national workshops were held in 1995 to educate State and local highway agency personnel and solicit their input regarding an initial set of minimum

maintained sign retroreflectivity levels. In 1998, FHWA published revisions to initial research recommendations on minimum sign retroreflectivity levels<sup>1</sup> noting that additional work would be needed because the National Highway Traffic Safety Administration was also revising the Federal Motor Vehicle Safety Standard Number 108 Lamps, Reflective Devices, and Associated Equipment (FMVSS 108). The additional research was completed in 2003, at which time FHWA began preparing the NPA for traffic sign retroreflectivity for the MUTCD, which was published in 2004.

After considering and analyzing the comments on the NPA for minimum levels of retroreflectivity for traffic signs, FHWA decided to publish a supplemental notice of proposed amendments (SNPA). In particular, the SNPA was developed to address comments to the docket that: (1) Expressed concern that the NPA proposal did not meet the intent of the 1993 statute, (2) suggested that the table of minimum retroreflectivity levels should be placed in the MUTCD, (3) requested clarification of the compliance period, and (4) expressed concern about the resource requirements for complying with the rulemaking. The proposed MUTCD text in the SNPA included a STANDARD statement that required that a method be used to manage and maintain retroreflectivity and required that sign retroreflectivity be maintained at minimum levels. It also included the table of minimum retroreflectivity levels in the MUTCD. These changes were significant enough to warrant an SNPA to allow FHWA to obtain and assess additional public comments. The SNPA was published on May 8, 2006, at 71 FR 26711. The comment period for the SNPA ended on November 6, 2006.

Based on the comments received and its own experience, FHWA is issuing this final rule establishing the minimum levels of retroreflectivity that must be maintained for traffic signs. The FHWA is designating the MUTCD, with these changes incorporated, as Revision 2 of the 2003 Edition of the MUTCD.

The text of this Revision No. 2 and the text of the 2003 Edition of the MUTCD with Revision No. 2 final text incorporated are available for inspection and copying as prescribed in 49 CFR

<sup>1</sup> A copy of "An Implementation Guide For Minimum Retroreflectivity Requirements for Traffic Signs," dated April 1, 1998, can be found on the Docket Management System (FHWA-2003-15149-229) for this ruling at the following Web address: <http://dms.dot.gov/search/document.cfm?documentid=467771&docketid=15149>.