DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

Docket ID OCC-2010-0020

RIN 1557-AD32

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R-1403]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AD68

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Part 563e

Docket ID OTS-2010-0032

RIN: 1550-AC45

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, 2011.

FOR FURTHER INFORMATION CONTACT:

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

Board: Rebecca Lassman, Supervisory Consumer Financial Services Analyst, (202) 452-3946; or Brent Lattin, Counsel, (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: Janet R. Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-3850; or Susan van den Toorn, Counsel, Legal

Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie M. Caputo, Senior Compliance Program Analyst, Compliance and Consumer Protection, (202) 906-6549; 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). This adjustment formula was first adopted for CRA purposes by the OCC, Board, and FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256. As explained in the preamble to these agencies' proposed rule, this particular index is used in other federal lending regulations such as the Home Mortgage Disclosure Act (HMDA). See 12 U.S.C. 2808; 12 C.F.R. 203.2(e)(1).

OTS adopted an annual adjustment to the asset thresholds in its CRA rule on March 22, 2007, effective July 1, 2007. 72 FR 13429. As OTS explained in the preamble, OTS decided to index the asset thresholds in the same way as the other federal banking agencies to ensure

consistency between the standards used to evaluate savings associations and the standards used to evaluate banks. 72 FR at 13432. OTS also noted that the particular adjustment formula adopted is also used under HMDA. Id. Thus, it is an indexing method already familiar to both the agencies and regulated financial institutions. By adopting an adjustment formula consistent with that of the other federal banking agencies, OTS acted consistently with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803), which OTS interpreted as encouraging the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

The threshold for small banks and small savings associations was revised most recently effective January 1, 2010 (74 FR 68662 (Dec. 29, 2009)). The CRA regulations, as revised on December 29, 2009, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.098 billion are "small banks" or "small savings associations." Small banks and small savings associations with assets of at least $274 million as of December 31 of both of the prior two calendar years and less than $1.098 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), and 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2010, the CPIW increased by 2.21 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, 2011, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.122 billion are "small banks" or "small savings associations." Small banks or small savings associations with assets of at least $280 million as of December 31 of both of the prior

two calendar years and less than $1.122 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-size thresholds 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, 2011. 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 procedural 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 general 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

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agencies reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Executive Order 12866

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs has designated this final rule to be significant but not to have an annual effect on the economy of $100 million or more.

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.

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 $1.122 billion. Intermediate small bank means a small bank with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 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 $1.122 billion. Intermediate small bank means a small bank with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 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 $1.122 billion. Intermediate small bank means a small bank with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 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.

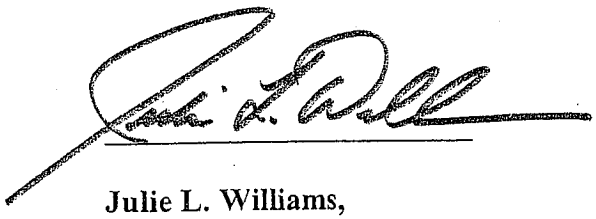
* * * * *

(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 $1.122 billion. Intermediate small savings association means a small savings association with assets of at least $280 million as of December 31 of both of the prior two calendar years and less than $1.122 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 7, 2010.



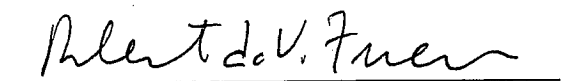
Julie L. Williams,

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,

acting through the Secretary of the Board under delegated authority, December 15, 2010.



Robert deV. Frierson
Deputy Secretary of the Board.

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

Dated at Washington, D.C., this 14th day of December, 2010.

FEDERAL DEPOSIT INSURANCE CORPORATION

Valerie J. Best

Valerie J. Best

Assistant Executive Secretary

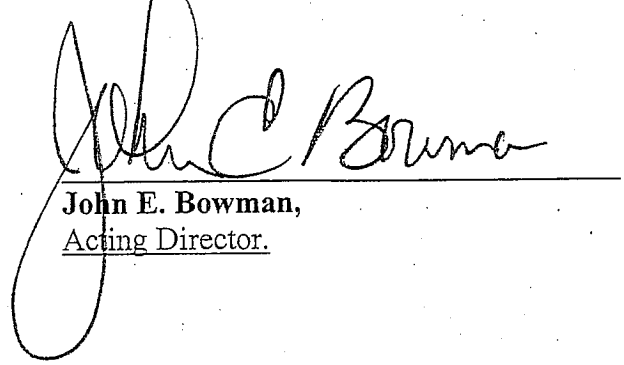
(SEAL)

078360

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

Dated: DEC 9 2010

By the Office of Thrift Supervision,



John E. Bowman,
Acting Director.

BILLING CODES:

OCC:	4810-33-P (25%)
Board:	6210-01-P (25%)
FDIC:	6714-01-P (25%)
OTS:	6720-01-P (25%)