Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AC50

Community Reinvestment

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC), is proposing revisions to 12 CFR 345 implementing the Community Reinvestment Act (CRA) that would change the definition of ''small bank'' to raise the asset size threshold to $1 billion regardless of holding company affiliation; add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and expand the definition of ''community development'' to encompass a broader range of activities in rural areas. In addition to seeking comment on this proposal, the FDIC is also seeking comments on these and any other options.

DATES: Comments must be received on or before September 20, 2004.

ADDRESSES: You may submit comments, identified by RIN number 3064–AC50 by any of the following methods:

• Agency Web site: *http://www.FDIC.gov/regulations/laws/federal/propose.html.*

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivered/Courier: The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

• E-mail: *comments@FDIC.gov.* Include RIN number 3064–AC50 in the subject line of the message.

• Public Inspection: Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Instructions: Submissions received must include the agency name and RIN for this rulemaking. Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707; Robert W. Mooney, Chief, CRA and Fair Lending Policy Section, Division of Supervision and Consumer Protection; Deirdre Ann Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6612; or Pamela Freeman, Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–6568 , Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Executive Summary

The Federal Deposit Insurance Corporation (FDIC), is proposing revisions to 12 CFR 345 implementing the Community Reinvestment Act (CRA) that would: (a) change the definition of ''small bank'' to raise the asset size threshold to $1 billion regardless of holding company affiliation; (b) add a community development activity criterion to the streamlined evaluation method for small banks with assets greater than $250 million and up to $1 billion; and (c) expand the definition of ''community development'' to encompass a broader range of activities in rural areas.

In making this proposal, the FDIC also considered other options such as raising the threshold for small banks to $1 billion with no community development criterion, and raising the threshold for small banks to $500 million with no community development criterion. As a result, in addition to seeking comment on this proposal, the FDIC is also seeking comments on these and any other options.

In 1995, the FDIC, along with the other Federal banking agencies (the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Office of Thrift Supervision (OTS)) (collectively, ''the agencies''), adopted major amendments to the CRA regulations. In connection with those amendments, the agencies committed to reviewing the effectiveness of the CRA regulations. Thus, on July 19, 2001, the agencies published an advance notice of proposed rulemaking (ANPR), seeking public comment on a wide range of questions concerning the CRA regulations. 66 FR 37602 (July 19, 2001). The agencies received about four hundred comments on the ANPR.

On February 6, 2004, the agencies issued a Notice of Proposed Rulemaking (NPR), developed following the agencies' review of the CRA regulations and the comments received on the ANPR.[1] 69 FR 5729 (Feb. 6, 2004). In the February 2004 NPR, the agencies stated that the CRA regulations were essentially sound, but were in need of some updating to keep pace with changes in the financial services industry. Notably, to reflect economic change in the industry and reduce unwarranted burden consistent with ongoing efforts to identify and reduce regulatory burden where appropriate and feasible, the agencies proposed to amend the definition of ''small bank'' to mean an institution with total assets of less than $500 million, without regard to any holding company affiliation. This change would take into account substantial institutional asset growth and consolidation in the banking and thrift industries since the $250 million definition was adopted in 1995.

In light of certain responses found in the comment letters responding to the February 2004 NPR, the FDIC has decided to publish for comment this NPR with respect to how ''small banks'' are defined and evaluated and other matters. The FDIC, in keeping with its commitment to review its regulations implementing the CRA, seeks comments on whether this proposal presented here would: enhance the effectiveness of the CRA regulations and CRA evaluations by addressing concerns about community development needs, including those of rural communities; and reduce regulatory burden by updating the regulation in light of changes in the banking industry over the past ten years. The FDIC seeks

[1] This NPR is referred to throughout this document as ''the February 2004 NPR.''

further comment on the impact of the new proposal on banks regulated by the FDIC and on how such a change would impact those banks' activities in their local communities. This proposal does not address predatory lending or other aspects of the February 2004 NPR. It is anticipated that the February 2004, proposal will not be acted upon until a final decision is made regarding the small bank definition issue and other matters raised in this notice.

Introduction

After considering the comments on the NPR (69 FR 5729), the FDIC is proposing revisions to 12 CFR 345, implementing the CRA (12 U.S.C. 2901 *et seq.*). This proposal would revise the definitions of ''community development'' in 12 CFR 345.12(g), and of ''small bank'' in 12 CFR 345.12(u). In addition, this proposal would amend the ''small bank performance standards'' in 12 CFR 345.26, and the CRA ratings guidance set out for ''small banks'' in 12 CFR 345, Appendix A, subpart (d).

Background

In 1977, Congress enacted the CRA to encourage insured banks and thrifts to help meet the credit needs of their entire communities, including low- and moderate-income communities, consistent with safe and sound lending practices. In the CRA, Congress provided that regulated financial institutions are required to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business, and that the convenience and needs of communities include the need for credit as well as deposit services.

In 1995, when the agencies adopted major amendments to regulations implementing the CRA, the agencies committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156 (May 4, 1995). The review was initiated in July 2001 with the publication in the **Federal Register** of an ANPR 66 FR 37602 (July 19, 2001). We indicated that we would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under CRA, consistent with the Act's authority, mandate, and intent. We solicited comment on the fundamental issue of whether any change to the regulations would be beneficial or warranted, and on other aspects of the regulations. About 400 comment letters were received, most from banks and thrifts of varying sizes and their trade associations (''financial institutions'') and local and national nonprofit community advocacy and community development organizations (''community organizations'').

The comments reflected a consensus that fundamental elements of the regulations are sound, but demonstrated a disagreement over the need and reasons for change. Based on those comments, in February 2004, the agencies proposed limited amendments in two major areas. First, to reduce unwarranted burden, we proposed to amend the definition of ''small institution'' to mean an institution with total assets of less than $500 million, regardless of the size of its holding company. Second, to better address abusive lending practices in CRA evaluations, we proposed specific amendments to provide that the agencies will take into account, in assessing an institution's overall CRA performance, evidence that the institution, or any affiliate whose loans have been included in the institution's CRA performance evaluation, has engaged in illegal credit practices, including unfair or deceptive practices, or a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to be able to make the payments required under the terms of the loan.

The FDIC received nearly 1,000 comment letters in response to the February 2004 NPR. As described below, the FDIC has decided to provide notice and seek further comment on the ''small bank'' definition issue and other matters. The current proposal adjusts the ''small bank'' definition to include all banks that, as of December 31 of either of the prior two calendar years, had total assets of up to $1 billion, without regard to holding company affiliation. This proposal does not address or rescind any other aspect of the February 2004 NPR.

The following data is intended to provide additional context for the discussion of this issue. When the $250 million definition was adopted in the 1994/1995 time period, 19.6% of insured depository institutions were classified as large institutions, and they held 86.2% of total bank and thrift assets. As of March 31, 2004, 24.6% of insured depository institutions were classified as large institutions, and they held 93.3% of total bank and thrift assets. As of that same date, 12.1% of insured depository institutions, holding 89% of assets, were larger than $500 million. And, 6.3% of insured depository institutions, holding 85.1% of assets, were larger than $1 billion. In sum, on an industry-wide basis, while increasing the small institution size to $1 billion would result in a decrease in the percentage of institutions considered ''large,'' the percentage of industry assets held by large institutions would decrease to 85.1%—down from 86.2% when the $250 million level was adopted in 1995.

This proposal, however, would only cover state nonmember banks. Because these banks tend to be smaller than the industry average, the impact on banks directly supervised by FDIC is different from the impact on the overall industry.

In 1995, 10.6% of the banks supervised by the FDIC were classified as large banks, and those banks held 66.7% of the assets of banks supervised by FDIC. As of March 31, 2004, 20.9% of the banks supervised by the FDIC held over $250 million in assets, and they had 79.8% of the assets of the banks supervised by the FDIC . Increasing the small bank definition to $500 million would, in 2004, result in 9.3% of the banks supervised by the FDIC, with 67.9% of assets, being large banks. Increasing the small bank definition to $1 billion would result in 4.3% of the banks supervised by the FDIC, with 57.9% of assets, being large banks. In sum, increasing the definition of small banks to $1 billion would result in a decline in the percentage of state nonmember banks classified as large banks from 10.6% to 4.3%, and a decline in the percentage of assets of state nonmember banks being held by large banks declining from 66.7% in 1995 to 57.9%

Comment Letters on the ''Small Bank'' Definition

As noted above, the FDIC received almost 1,000 comments on the February 2004 NPR, including a letter from 31 United States Senators and rejoinders to that letter, all of which we have accepted as comment letters. The commenters were distributed among industry entities, community organizations, and individuals. As stated above, we also received comments from Federal legislators and one state regulator. All together, the FDIC received nearly 900 comment letters that specifically addressed the ''small bank'' proposal. Of those comment letters, FDIC received 534 letters clearly in favor of increasing the size limit in the definition of small banks, and 334 letters against the proposal. Of the letters in favor of the proposal, 475 of the commenters favored a higher asset threshold than the amount proposed in the NPR. The most common amount mentioned in those letters was a threshold of $1 billion.

The comment letters in favor of raising the small bank threshold beyond the proposed $500 million threshold to $1 billion, or more, generally stated that higher amount would be appropriate for two primary reasons. First, the commenters stated that keeping the focus of small institutions on lending, which the small institution examination does, would be entirely consistent with the purpose of CRA, which is to ensure that the Agencies evaluate how institutions help to meet the credit needs of the communities they serve. Those commenters also suggested that the large bank test requirements were proving to be unworkable because multi-billion dollar banks were regularly outbidding smaller banks for qualified investments. Second, the commenters stated that raising the limit to $1 billion would have only a small effect on the amount of total industry assets covered under the large bank tests, yet, the additional burden relief provided for the institutions with assets under $1 billion would be substantial.

In contrast, community organizations generally expressed concern about the likely effects of the proposed change on residents of rural communities and residents of states with smaller financial institutions. These commenters stated that the large bank CRA examination does a better job of encouraging investment in the community than the small bank examination does. For example, these banks, according to these commenters, would no longer be held accountable under CRA exams for investing in products such as Low Income Housing Tax Credits, which, they contend, have been a major source of affordable rental housing. The commenters also either questioned the amount of burden relief that would be afforded to financial institutions, or stated that under CRA value to the community was paramount to the incremental burden relief to the banks.

With respect to comments on the part of the proposal concerning smaller banks under a holding company with assets of $1 billion of more, the comment letters again split along industry/community group lines. The industry groups stated that a community bank does not cease to be a community bank—with the same concerns about serving its community and about reducing regulatory burden—by becoming part of a larger holding company. Community groups expressed concern that by removing the holding company threshold from the definition of small bank, regulators will not only reduce the number of institutions subject to the large bank test, but also create a potential loophole for large holding companies to exploit when trying to evade CRA compliance. That is, this change raises the possibility, in the view of community groups, that large holding companies will reform their banking subsidiaries as a series of local ''small banks'' to avoid the investment and service tests. Industry commenters stated, in response, that they were unaware of any institutions that choose their form of corporate organization in order to minimize their CRA compliance burden.

Discussion

Small Bank Definition

Under the current CRA regulations, an institution is deemed ''large'' in a given year if, at the end of both of the previous two years, it had assets of $250 million or more, or if it is affiliated with a holding company with total bank or thrift assets of $1 billion or more.

The large retail institution test is comprised of the lending, investment, and service tests. The most heavily weighted part of that test is the lending test, under which the agencies consider the number and amount of loans originated or purchased by the institution in its assessment area; the geographic distribution of its lending; characteristics, such as income level of its borrowers; its community development lending; and its use of innovative or flexible lending practices to address the credit needs of low- or moderate-income individuals or geographies in a safe and sound manner. Large institutions must collect and report data on small business loans, small farm loans, and community development loans, and may, on an optional basis, collect data on consumer loans.

Under the investment test, the agencies consider the dollar amount of qualified investments, their innovativeness or complexity, their responsiveness to credit and community development needs, and the degree to which they are not routinely provided by private investors.

Under the service test, the agencies consider an institution's branch distribution among geographies of different income levels; its record of opening and closing branches, particularly in low- and moderate-income geographies; the availability and effectiveness of alternative systems for delivering retail banking services in low- and moderate-income geographies and to low- and moderate-income individuals; and the range of services provided in geographies of different income levels, as well as the extent to which those services are tailored to meet the needs of those geographies. The agencies also consider the extent to which the institution provides community development services and the innovativeness and responsiveness of those services.

In contrast, the performance of a small bank—an institution currently with assets under $250 million and not part of a holding company with bank and thrift assets over $1 billion—is evaluated under a streamlined test that focuses primarily on lending. The test considers the institution's loan-to-deposit ratio; the percentage of loans in its assessment areas; its record of lending to borrowers of different income levels and businesses and farms of different sizes; the geographic distribution of its loans; and its record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment areas.

As we stated in the February 2004 NPR:

> The [CRA] regulations distinguish between small and large institutions for several important reasons. Institutions' capacities to undertake certain activities, and the burdens of those activities, vary by asset size, sometimes disproportionately. Examples of such activities include identifying, underwriting, and funding qualified equity investments, and collecting and reporting loan data. The case for imposing certain burdens is sometimes more compelling with larger institutions than with smaller ones. For instance, the number and volume of loans and services generally tend to increase with asset size, as do the number of people and areas served, although the amount and quality of an institution's service to its community certainly is not always directly related to its size. Furthermore, evaluation methods appropriately differ depending on institution size. Commenters from various viewpoints tended to agree that the regulations should draw a line between small and large institutions for at least some purposes. They differed, however, on where the line should be drawn. 69 FR 5729.

We have carefully reviewed the comment letters. The FDIC considered a range of options raised by the comments. For example, we considered raising the small bank threshold to banks with assets up to $500 million with no community development test. We also considered raising the small bank threshold to $1 billion, with no additional changes. We also considered making no changes to the small bank definition. We further considered various approaches to address concerns raised about the needs of rural and other underserved communities. After this analysis, the FDIC has decided to issue a new proposal, rather than issue a final rule at this time. We now propose amending the ''small bank'' definition to $1 billion.

In addition, we are proposing to add a mandatory community development criterion for those small banks with assets over $250 million and we are proposing to amend the community development definition to emphasize the importance of investments and services in rural communities. We seek comment on whether the proposal, as further modified below, would better enable those banks to focus their resources—both time and financial—on community-based lending activities and on more selective investment and service activities. We also invite public comment on whether other approaches would be more appropriate. For example, is there another appropriate threshold to use when defining small banks?

Community Development Criterion

The consideration of community development activities has always been part of the CRA evaluation process, regardless of size of the institution. Appendix A, section (d)(2), to 12 CFR part 345 now states that if a small bank requests consideration for an ''Outstanding'' rating, the FDIC will consider, in addition to determining whether the small bank exceeds each of the standards required to obtain a ''satisfactory'' rating, the extent to which it makes qualified investments and provides branches and other services that enhance credit availability in its assessment area(s). This is further explained in the Interagency Questions and Answers Regarding Community Reinvestment (''Interagency Questions and Answers''). 66 FR 36620 (July 12, 2001). We are, however, concerned that smaller institutions that are presently covered by the large bank tests have noted difficulties with making qualified investments including the ability to compete with larger banks for investment opportunities and maintaining staff and resources to do so.

In light of these considerations, we propose to add a mandatory community development performance criterion for banks with assets greater than $250 million and up to $1 billion as an additional component of the streamlined small bank standards. This community development criterion would be evaluated along with the current streamlined criterion applicable to all small banks.

For those banks covered by this community development criterion, the FDIC will assess a bank's record of helping to meet the needs of its assessment area(s) through a combination of its community development lending, qualified investments, or community development services. Such banks will be required to engage in activities that meet credit needs in their assessment area(s), but may balance their community development lending, investing and service activities based on the opportunities in the market and the banks' own strategic strengths. For example, a bank with assets greater than $250 million and up to $1 billion may perform well under the community development criterion by engaging in one or more as opposed to all of the activities.

We request comment on whether instead of adding a community development criterion for small banks between $250 million and $1 billion as the proposal would do, should the FDIC instead apply a separate community development test in addition to existing streamlined performance criteria applicable to small banks to evaluate community development activities of such banks? If such a test were to be imposed, how should these activities be weighted in assigning a performance rating? How should the ratings of both the existing streamlined performance criteria and the community development test be weighted in assigning an overall performance rating?

Community development activities for banks with assets greater than $250 million and up to $1 billion will be evaluated by the FDIC when assigning a CRA rating. Appendix A to the CRA regulations will continue to reflect that for a small bank to receive an ''Outstanding'' CRA rating, the FDIC will consider the extent to which that bank exceeds each of the ''Satisfactory'' performance standards, now including an explicit community development criterion applicable to banks with assets greater than $250 million and up to $1 billion.

Banks with assets under $250 million can attain an ''Outstanding'' rating in two ways. First, when the bank's performance materially exceeds satisfactory standards for each of the five lending criteria. (This proposal does not change the existing regulation, *see:* Interagency Questions and Answers § .26(b)-1.) Or second, when the bank has satisfactory performance standards for each of the five lending criteria and, in addition, requests consideration of community development loans, qualified investments or services and those are found to warrant an Outstanding rating. (This provision reflects a conforming change to parallel the new community development criterion for banks over $250 million to $1 billion which permits a bank to choose among community development activities.)

Community Development in Rural Communities

As stated above, many community organization commenters expressed concern about investments and service to rural communities. To address this concern, we propose amending the definition of ''community development,'' which now focuses on activities that benefit low- and moderate-income individuals. As proposed, ''community development'' activity could benefit either low- and moderate-income individuals or individuals who reside in rural areas.[2] We seek comment on whether our proposed change to the community development definition encompasses the full range of community development activity that benefits rural areas. We also ask for comment on whether a definition of ''rural'' would be helpful, and if so, how that term should be defined.

Conclusion

In sum, the proposed changes would not diminish in any way the obligation of all insured depository institutions subject to CRA to help meet the credit needs of their communities. Rather, the proposal is intended to improve the effectiveness of CRA evaluations by permitting banks to focus on community development activities based on the opportunities in the market and the needs of the community, including low- and moderate-income areas; address particular concerns relating to investments and services provided to rural communities; and update the regulation to take account of economic changes in the industry.

The FDIC seeks comment on all aspects of the proposal. The FDIC solicits comments on whether the small bank definition threshold of less than $1 billion is appropriate. Should a community development criterion be included that offers choices to banks or not? The FDIC also seeks comment on whether other approaches would better improve the effectiveness of CRA evaluations for small institutions, while reducing unwarranted burden.

[2] This change will impact the community development test currently in the regulation for wholesale or limited purpose banks. We seek comment on whether this impact is significant.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposal would result in a change in the paperwork burden under OMB-approved information collection 3064–0092. The change in the collection of information contained in this proposal has, therefore, been submitted to OMB for review.

Written comments on the collection of information should be sent to Mark Menchik, FDIC desk officer: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, D.C. 20503. Copies of comments should also be addressed to: Leneta G. Gregorie, Legal Division, Room MB–3082, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposed collection. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments/Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For further information on the Paperwork Reduction Act aspect of this proposal, contact Leneta Gregorie at the above address.

Comment is solicited on:

1. Whether the collection of information is necessary for the proper performance of FDIC functions, including whether the information will have practical utility;

2. The accuracy of our estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: Community Reinvestment—12 CFR 345.

Frequency of Response: Annual.

Affected Public: State nonmember banks.

Abstract: This Paperwork Reduction Act section estimates the burden that would be associated with the regulations if the agency were to change the definition of ‘‘small bank as proposed, that is, increase the asset threshold from $250 million to $1 billion and eliminate any consideration of holding-company size. The proposed change, if adopted, would make ‘‘small’’ approximately 875 FDIC-regulated institutions that do not now have that status. That estimate is based on data for FDIC-regulated institutions that filed Call or Thrift Financial Reports on June 30, 2004. Those data also underlie the estimated paperwork burden that would be associated with the regulations if the proposals were adopted by the FDIC. The proposed change to amend the small bank performance standards to incorporate a community development test would have no impact on paperwork burden because the evaluation is based on information prepared by examiners.

Estimated Paperwork Burden under the Proposal:

Number of Respondents: 5,296.

Estimated Time Per Response: Small business and small farm loan register, 219 hours; Consumer loan data, 326 hours; Other loan data, 25 hours; Assessment area delineation, 2 hours; Small business and small farm loan data, 8 hours; Community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; Data on lending by a consortium or third party, 17 hours; Affiliated lending data, 38 hours; Request for designation as a wholesale or limited purpose bank, 4 hours; and Public file, 10 hours.

Total Estimated Annual Burden: 193,975 hours. (The estimated burden hours under the current proposal represents a decrease in burden from the February 2004 proposal of 137,383 hours.)

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that since the proposal would reduce burden and would not raise costs for small institutions, this proposal will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any additional paperwork or regulatory reporting requirements. The proposal would increase the overall number of small banks that are permitted to avoid data collection requirements in 12 CFR part 345. Accordingly, a regulatory flexibility analysis is not required.

The Treasury and General Government Appropriations Act, 1999—Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposal will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681.

FDIC Solicitation of Comments Regarding the Use of ‘‘Plain Language’’

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the FDIC to use ‘‘plain language’’ in all proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposed text easier to understand.

List of Subjects in 12 CFR Part 345

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

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 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 to read as follows:

a. Revise paragraphs (g)(1), (g)(2), and (g)(4); and

b. Revise paragraph (u) to read as follows:

§ 345.12 Definitions.

* * * * *

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low-or moderate-income individuals or for individuals in rural areas;

(2) Community services targeted to low-or moderate-income individuals or to individuals in rural areas;

* * * * *

(4) Activities that revitalize or stabilize low-or moderate-income geographies or rural areas.

* * * * *

(u) *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had total assets up to $1 billion.

* * * * *

3. Revise § 345.26 to read as follows:

a. Section 345.26(a)(4) is amended to remove the word ''and'' at the end;

b. Section 345.26(a)(5) is amended by removing the period and by adding ''; and'' at the end of the paragraph;

c. A new § 345.26(a)(6) is added;

d. Redesignate paragraph (b) as paragraph (c); and

e. Add new paragraph (b) to read as follows:

§ 345.26. Small bank performance standards.

(a) * * *

(6) For small banks with assets greater than $250 million and up to $1 billion, the bank's record of community development activities, as discussed in subpart (b) of this part, through its community development lending, qualified investments, or community development services.

(b) *Community development criterion for certain small banks.* The FDIC also evaluates the community development performance of a small bank with assets greater than $250 million and up to $1 billion pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(4) *Indirect activities.* At a bank's option, the FDIC will consider in its community development performance assessment:

(i) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(ii) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 345.22(c) and (d).

* * * * *

4. Appendix A to Part 345 is amended to read as follows:

a. (d)(1)(iv) is amended to remove the word ''and'' at the end;

b. (d)(1)(v) is amended to remove the period and add ''; and'' at the end;

c. A new (d)(1)(vi) is added; and

d. Revise paragraph (d)(2) to read as follows:

Appendix A to Part 345—Ratings

* * * * *

(d) * * *

(1) * * *

(vi) For banks with assets greater than $250 million and up to $1 billion, adequate responsiveness to community development needs through community development lending qualified investments or community development services in its assessment area(s) or that benefit a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Eligibility for an outstanding rating.* (i) A bank that meets each of the standards for a ''satisfactory'' rating under this paragraph (including the community development criterion for a bank with assets greater than $250 million and up to $1 billion), and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the FDIC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating.

(ii) A bank with assets up to $250 million that meets performance standards for a satisfactory rating also may request consideration for an ''outstanding rating'' based on consideration of community development lending, qualified investments, or services that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

* * * * *

Dated at Washington, DC, this 16th day of August, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–19021 Filed 8–19–04; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18579; Directorate Identifier 2004–CE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–7 airplanes with any Lear Romec RR53710B type or Lear Romec RR53710K fuel booster pump (Pilatus part number 968.84.11.401; 968.84.11.403; or 968.84.11.404) installed. This proposed AD would require you to check the airplane logbook to determine whether any installed fuel booster pump has been modified with spiral wrap to protect the wire leads and has the suffix letter ''B'' added to the serial number of the fuel booster pump identification plate. If any installed fuel booster pump has not been modified, you are required to inspect any installed fuel booster pump wire lead for defects; if defects are found, replace the fuel booster pump with a modified fuel booster pump with spiral wrap that protects the wire leads; or if no defects are found, install spiral wrap to protect any wire leads and adding the suffix letter ''B'' to the serial number of the fuel booster pump identification plate. The pilot is allowed to do the logbook check. If the pilot can positively determine that the fuel booster pump wire leads with spiral wrap are installed following the service information and that the suffix letter ''B'' is included in the serial number of the fuel booster pump identification plate, no further action is required. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this proposed AD to detect and correct any defects in the leads of any fuel booster pump, which could result in electrical arcing. This failure could lead to a fire or explosion in the fuel tank.

DATES: We must receive any comments on this proposed AD by September 22, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD: