

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC-2010-0021]

[RIN 1557-AD34]

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-1387]

[RIN 7100-AD50]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

[RIN 3064-AD60]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS-2010-0031]

[RIN 1550-AC42]

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.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, “the agencies”) are adopting revisions to our rules implementing the Community Reinvestment Act (CRA). The agencies are revising the term “community development” to include loans, investments, and services by financial institutions that support, enable, or facilitate projects or activities that meet the “eligible uses” criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program (NSP). The final rule provides favorable CRA consideration of such activities that, pursuant to the requirements of the program, benefit low-, moderate-, and middle-income individuals and geographies in NSP target areas designated as “areas of greatest need.” Covered activities are considered both within an institution’s assessment area(s) and outside of its assessment area(s), as long as the institution has adequately addressed the community development needs of its assessment area(s). Favorable consideration under the revised rule will be available until no later than two years after the last date appropriated funds for the program are required to be spent by the grantees. The agencies will provide reasonable advance notice to institutions in the Federal Register regarding termination of the rule once a date certain has been identified.

EFFECTIVE DATE: This joint final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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Board: Paul J. Robin, Manager, Reserve Bank Oversight and Policy, (202) 452-3140; or Jamie Z. Goodson, 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.

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SUPPLEMENTARY INFORMATION:

Background

The Community Reinvestment Act (CRA) requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take that record into account when the agency evaluates an application by the institution for a deposit facility.¹ The agencies have promulgated substantially similar regulations to implement the requirements of the CRA.²

There is a pressing need to provide housing-related assistance to stabilize communities affected by high levels of foreclosures. High levels of foreclosures have devastated communities and are projected to continue into 2012 and beyond with damaging spillover effects for low- and moderate-income census tracts, as well as middle-income census tracts, affected by high levels of loan delinquencies and foreclosures. Among the many consequences of high levels of foreclosures are growing inventories of vacant foreclosed properties and institution “other real estate owned” (OREO) properties, depreciating home values, declining property tax bases, and destabilization of communities directly affected by high levels of foreclosures and of adjacent and surrounding neighborhoods.

Neighborhood Stabilization Program (NSP)

Congress recognized the need to provide emergency assistance to address these problems with the establishment of the Neighborhood Stabilization Program (NSP) through Division B, Title III, of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. No. 110-289 (2008). Under HERA, emergency funds (“NSP1”)

¹ 12 U.S.C. 2903.

² See 12 CFR parts 25, 228, 345, and 563e.

totaling nearly \$4 billion for the redevelopment of abandoned and foreclosed properties were distributed to States and localities with the greatest need for such funds according to a formula based on the number and percentage of home foreclosures, the number and percentage of homes financed by a subprime mortgage-related loan, and the number and percentage of homes in default or delinquency in each State or unit of general local government. Under NSP1, each of the 50 states and Puerto Rico received a minimum award of \$19.6 million and 254 local areas received grants totaling \$1.86 billion ranging from \$2.0 million to \$62.2 million.³

Using similar criteria, the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (2009), provided supplementary NSP funding (“NSP2”) to be awarded as grants, through a competitive bidding process, to State and local governments, as well as to non-profit organizations and consortia of non-profit entities. On January 14, 2010, HUD awarded a combined total of nearly \$2 billion in NSP2 grants.⁴ To receive NSP funding, each grantee was required to submit an action plan or application, including any amendments thereto, to HUD according to specific alternative requirements set out by HUD in 2008 and 2009.⁵

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), Pub. L. No. 111-203, enacted July 21, 2010, provided \$1 billion in additional NSP funding to be allocated by a funding formula to be established by HUD within 30 days after enactment. Under the Dodd-Frank Act, HUD’s funding formula will continue to consider the same criteria regarding foreclosure rates, subprime mortgages, and home

³ See “Neighborhood Stabilization Grants,”

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp1.cfm>.

⁴ See “Neighborhood Stabilization Program 2,”

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm>.

⁵ 74 FR 21377 (May 7, 2009); 73 FR 58330 (Oct. 6, 2008).

mortgage defaults and delinquencies and each state will receive not less than 0.5 percent of the new funds. Each state or local government grantee must establish procedures to create preferences for the development of affordable rental housing for properties assisted with the funds made available under the Dodd-Frank Act.⁶ On September 8, 2010, HUD announced the allocation of \$970 million in NSP3 funding to 283 grantees nationwide and has issued guidance to grantees on the preparation and submission of action plans.

Section 2301(c) of HERA, as amended, establishes five activities that are “eligible uses” of NSP funds (for purposes of this rule, designated as “NSP-eligible activities”). NSP-eligible activities are projects or activities that use the NSP funds to: (1) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared equity loans for low- and moderate-income homebuyers; (2) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties; (3) establish and operate land banks for homes and residential properties that have been foreclosed upon; (4) demolish blighted structures; and (5) redevelop demolished or vacant properties.⁷ In addition, Section 2301(f)(3)(A) of HERA, as amended, provides that all NSP funds must be used with respect to individuals and families whose income does not exceed 120 percent of the area median income, and not less than 25 percent of

⁶ HUD published formula allocations and program requirements for NSP3 grants on October 19, 2010. See 75 FR 64322 (Oct. 19, 2010).

⁷ NSP2 and NSP3 funds for redevelopment of demolished or vacant properties may be used only for housing.

funds must be used to house individuals and families whose incomes do not exceed 50 percent of area median income.⁸

HUD approves NSP action plans and applications, including amendments thereto (hereinafter referred to as “NSP plans” or “plans”), for all NSP grantees. These public documents must designate “areas of greatest need” for targeting NSP-eligible activities, consistent with statutory criteria. The vast majority of NSP-targeted areas are listed on a map database located on HUD’s website at: <http://www.hud.gov/nspmmaps>. However, there may be a few NSP-targeted geographies in HUD-approved State NSP1 plans that are not identified in the HUD census tract database. Information about these targeted areas may be found in the individual plans. NSP3 targeting data will periodically be added to these maps in a timely manner following approval of grantee action plans.

HUD has allocated NSP funds in a way that assists communities with the greatest need to address the adverse consequences of elevated foreclosure levels, consistent with Congressional intent. Allowing institutions to receive CRA consideration for NSP-eligible activities in NSP-targeted areas creates an opportunity to leverage government funding targeted to areas with high foreclosure or vacancy rates.

Proposed Rule

The definition of “community development” is a key definition in the agencies’ CRA regulations. Financial institutions receive positive consideration in their CRA examinations for community development loans, qualified investments, and community development services which have a primary purpose of “community development.”

⁸ Section 1497 of the Dodd-Frank Act amended Section 2301(f)(3)(A) of HERA. Prior to this amendment, applicable to NSP1 and NSP2, not less than 25 percent of funds had to be used “for the purchase and redevelopment of abandoned or foreclosed homes and residential properties that will be used” to house individuals and families whose incomes do not exceed 50 percent of area median income.

The agencies proposed to revise the interagency CRA regulations by adding to the definition of “community development” loans, investments, and services that support, enable, or facilitate NSP-eligible activities in designated target areas identified in plans approved by HUD under the NSP.⁹ For example, under the proposed revised definition of “community development,” a financial institution would receive favorable CRA consideration for a donation of OREO properties to non-profit housing organizations in eligible middle-income, as well as low- and moderate-income, geographies. In addition, under the proposal, institutions would receive favorable CRA consideration if they provided financing for the purchase and rehabilitation of foreclosed, abandoned, or vacant properties in targeted areas. Other examples of activities that would receive favorable CRA consideration under the proposal are loans, investments, and services that support the redevelopment of demolished or vacant properties in such areas, consistent with eligible uses for NSP funds.

Although the CRA rules expressly encourage activities that benefit low- or moderate-income individuals or geographies, the agencies have created limited exceptions to address certain adverse circumstances that may affect middle-income individuals and geographies.¹⁰ The agencies believe that the purposes of CRA can be served by providing CRA incentives to institutions to engage in community development loans, investments and services that meet the narrowly tailored requirements of the NSP. First, HUD has stated that its funding of these programs was designed to satisfy Congressional intent that the funds have maximum impact and be targeted to States and

⁹ 75 FR 36016 (Jun. 24, 2010).

¹⁰ 70 FR 44256 (Aug. 2, 2005), and 71 FR 18614 (Apr. 12, 2006).

local communities with the greatest needs.¹¹ In addition, while, by its statutory terms, the NSP may benefit middle-income individuals, grantees must use at least 25 percent of their funds to house low-income individuals and families.

Under the current CRA rules, an institution is evaluated primarily on how well it helps meet the credit and community development needs of its CRA assessment area(s). However, the agencies note that many foreclosed residential properties owned by an institution may be located in areas that are outside of the institution's CRA assessment area(s). Restricting CRA consideration of NSP-eligible activities to an institution's assessment area(s) may not fully help to promote Congress's objectives for the NSP. Therefore, the proposed rule provided that an institution that has adequately addressed the community development needs of its assessment area(s) may receive favorable consideration for NSP-eligible activities under this provision that are outside of its assessment area(s).

There is precedent for allowing greater flexibility concerning the CRA focus on assessment area(s) in certain temporary and exigent circumstances. For example, in 2006, the agencies issued a supervisory policy statement providing that an institution would receive favorable CRA consideration for engaging in activities that helped revitalize or stabilize areas affected by Hurricanes Katrina and Rita, even if such areas were not in the institution's assessment area(s), provided the institution had adequately met the CRA-related needs of its assessment area(s).

¹¹ See HUD, NSP Frequently Asked Questions, http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp_faq_formula_allocation.pdf.

Finally, the agencies stated their intention that the proposed rule be generally tied to the duration of the NSP. As described more fully below, the NSP does not have a “sunset” date. Therefore, a specific termination date for the regulatory provision was not proposed. Instead, the proposed rule provided that NSP-eligible activities would receive favorable consideration under the new rule if conducted no later than two years after the last date appropriated funds for the program are required to be spent by the grantees. The proposal indicated that the agencies will provide reasonable advance notice to institutions in the Federal Register regarding termination of the rule once a date certain has been identified.

The proposed rule would have imposed no new requirements on institutions. It simply would have expanded the categories of activities that qualify for CRA consideration as “community development.” No institution would be required to provide loans, investments, or services pursuant to the proposed expanded definition. In addition, any community development loans that may be made by large institutions under the proposed new provision would be covered under existing loan reporting requirements. As such, no new reporting requirements and negligible, if any, administrative costs would result from the proposed rule if adopted. The agencies anticipated that the proposal, if finalized, would provide an incentive for institutions to engage in activities that stabilize foreclosure affected communities approved for NSP projects. Thus, the proposed rule would create an opportunity to leverage government funded projects with complementary private financing in areas targeted for assistance with minimal, if any, regulatory burden or costs.

Review of Comments on the Proposed Rule and Agencies’ Final Rule

Together, the agencies received 34 comments addressing the proposed revision that would expand the definition of “community development.”¹² The commenters represented a variety of industry, consumer, community development, and governmental entities. The commenters generally supported expanding the definition of “community development” to encourage housing-related assistance to stabilize communities affected by high levels of foreclosures and delinquencies.

In addition to a request for comments generally, the agencies asked for and received comment on five specific issues in connection with the proposal.

Activities Eligible for CRA Consideration: Virtually all of the commenters supported the intent of the proposed rule to permit CRA consideration, as a component of the regulatory “community development” definition, of loans, investments, and services that support activities that are NSP-eligible and are conducted in NSP-targeted areas. In particular, the agencies requested comment on whether favorable CRA consideration should be limited to support of those activities specified in a HUD-approved NSP plan for the relevant area or support of specific activities that have been funded by the NSP. The commenters that specifically addressed the question opposed limiting CRA consideration to such activities. For example, a community development organization stated that so limiting covered activities would unduly burden banks and examiners by requiring them to verify that an activity was covered by a plan.

¹² The Board also received over 650 other comments that stated that banks should not receive an “outstanding” rating if they contributed to economic decline and should assist their communities, should not be allowed to pick the geographic area or affiliates considered, and should get a “failing” rating if they discriminate against African-American and Latino communities.

A few industry and government commenters suggested that the agencies adopt a broader rule that provides express CRA consideration for activities that are not NSP-eligible and/or are outside of geographies covered in NSP-targeted areas. Several other commenters stated that the agencies should provide consideration for activities that are NSP-eligible, but are not specifically covered in the underlying NSP plans. By contrast, six community development organizations that target low- and moderate-income communities stated that donations of OREO in poor condition can carry associated costs and liability for a receiving organization. These organizations recommended providing favorable CRA consideration for such donations only if they are consistent with local and/or regional government or nonprofit plans and the donor institutions fund associated costs, such as demolition and environmental remediation costs. The agencies will consider the credit given to donations of OREO as part of their general regulatory review of CRA regulations.

The agencies have considered the comments on the scope of the “community development” definition and are adopting the revision to the definition as proposed, with only minor changes to statutory references. This revision to the definition of “community development” is narrowly tailored to encourage financial institutions to support stabilization efforts in targeted areas identified by the Federal government as having greater need for assistance as a result of the foreclosure crisis. Commenters opposed limiting favorable CRA consideration to those NSP-eligible activities expressly described in NSP plans or to those funded by NSP programs, as discussed above. The agencies note that the final rule allows institutions to receive CRA consideration for supporting,

enabling, or facilitating NSP-eligible activities in the geographic areas targeted in NSP program plans.

As noted above, the agencies believe that allowing institutions to receive CRA consideration for supporting, enabling, or facilitating NSP-eligible activities in NSP-targeted areas will help to leverage scarce government funding to those designated areas with the greatest need for such activities. Finalization of this rule will provide an immediate incentive for institutions to undertake activities that will support the stabilization of areas targeted for NSP-initiatives.

In addition, the agencies note that, under the current CRA rules and interagency guidance, CRA consideration is already available for some neighborhood stabilization activities. First, revitalization and stabilization activities in low- and moderate-income geographies or in distressed or underserved nonmetropolitan middle-income geographies receive positive consideration under the existing CRA rules, regardless of whether these areas are targeted areas under the NSP.¹³ Similarly, foreclosure prevention programs may also receive positive CRA consideration, for example, if they are part of a loan program that is designed to provide sustainable relief to homeowners facing foreclosure on their primary residences or if they help to revitalize or stabilize low- or moderate-income geographies.¹⁴ In addition, below-market sales and donations of OREO properties to nonprofit organizations, consistent with safe and sound banking operations, also may receive positive consideration under the existing CRA rules. The CRA rules provide favorable consideration for grants, which would include an in-kind donation of

¹³ 12 CFR 25.12(g)(4), 228.12(g)(4), 345.12(g)(4), and 563e.12(g)(4).

¹⁴ Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers), 75 FR 11642, 11647, 11650-51, 11654-55 (Mar. 11, 2010)(Q&As § __.12(g)(4)(i) – 1, § __.12(i) – 3, and § __.22(a) – 1).

property. If these grants have a primary purpose of community development, such as to provide affordable housing to low- and moderate-income individuals, they also would already receive positive CRA consideration as a qualified investment.¹⁵ Further, favorable CRA consideration is given for technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms.¹⁶

Favorable CRA consideration also is available for certain activities involving multifamily housing.¹⁷ In addition, economic development activities not directly related to housing may qualify for favorable CRA consideration. For example, “qualified investments” for which favorable CRA consideration may be given include investments, grants, deposits, or shares in or to organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development.¹⁸

Finally, the agencies note that they have begun a regulatory review of the CRA rules generally, and as part of that regulatory review, the agencies will carefully consider

¹⁵ Questions and Answers, 75 FR at 11652-53 (Q&A § __.12(t) – 5).

¹⁶ Questions and Answers, 75 FR at 11650-51, 11657 (Q&As § __.12(i) – 1, § __.12(i) – 3, and § __.22(b)(5) – 1).

¹⁷ Under the agencies’ current CRA regulations, “community development” includes activities related to affordable multifamily housing, and a “community development loan” includes construction and permanent financing of multifamily rental property serving low- and moderate-income persons. 12 CFR 25.12(g)(1), 228.12(g)(1), 345.12(g)(1), and 563e.12(g)(1); Questions and Answers, 75 FR at 11648 (Q&A § __.12(h) – 1). Further, a “home mortgage loan” includes a multifamily dwelling loan, and a “qualified investment” includes an investment, grant, deposit, or share in organizations engaged in rehabilitating or constructing affordable multifamily rental housing. Questions and Answers, 75 FR at 11651-52 (Q&As § __.12(l) – 1 and § __.12(t) – 4).

¹⁸ Questions and Answers, 75 FR at 11652 (Q&A § __.12(t) – 4)

any comments received through this rulemaking that may recommend further changes to the definition of “community development.”¹⁹

Reference to Statutes Appropriating Funds to NSP: In the proposal, the regulatory text specifically referred to the two statutes that authorized funds under NSP1 and NSP2, the HERA and the American Recovery and Reinvestment Act of 2009, respectively. As stated above, since the agencies issued their proposal, Congress provided an additional \$1 billion to the NSP under the Dodd-Frank Act. Based on this additional authorization and the fact that the rule’s reference to the NSP now covers any of that program’s iterations (thus far NSP1, NSP2, and NSP3), the agencies need to amend the final regulatory language to account for these funds. Rather than add a reference to the Dodd-Frank Act, and thereafter amend the rule whenever a statute provides additional funds, the agencies have revised § __.12(g)(5)(i) to refer solely to HERA.²⁰

Sunset: The duration of the agencies’ proposed rule was generally linked to the duration of the NSP. Under NSP1, grantees must expend NSP funds within four years of the date the grant is awarded. Under NSP2, grantees have three years from that date to fully spend the grant, and HUD was required to obligate all funds appropriated for NSP2 in February 2010. The funds appropriated in the Dodd-Frank Act also must be fully expended by grantees within three years after they receive their grants, and HUD is required to obligate all funds appropriated by the Dodd-Frank Act by July 2011. Since the NSP does not have a termination date, Congress could appropriate additional funds

¹⁹ See 75 FR 35686 (Jun. 23, 2010).

²⁰ In the proposed rule text, the agencies referred to Section 2301(c)(3) of the HERA with regard to that provision’s NSP “eligible uses” definition. Section 2301(c)(3) was changed to 2301(c)(4) in the Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, § 105(a) (2009). Rather than change the reference in the regulatory text, and risk having to change that reference in the future, the agencies are using the term “eligible uses” and referring to Section 2301(c) generally.

for the program in future years. Therefore, a specific termination date for the regulatory provision was not proposed. Instead, the proposed rule provided that NSP-eligible activities would receive favorable consideration under the new rule if conducted no later than two years after the last date appropriated funds for the program are required to be spent by the grantees.

Most commenters supported the proposal to allow CRA consideration of qualifying loans, investments, and services that are provided no later than two years after the last date appropriated funds for the program are required to be spent by grantees. A few commenters stated that there should be no “sunset” date. These commenters asserted that need for NSP-eligible activities will remain even after Federal funding is no longer available; continuing CRA consideration would encourage financial institutions to help to meet those needs.

The agencies carefully considered these comments and are adopting the revision as proposed. The agencies believe that two years after the last date appropriated funds for the program are required to be spent by grantees generally allows sufficient time for institutions to engage in meaningful community development activities in NSP-targeted areas. As indicated in the proposal, the agencies will provide reasonable advance notice to institutions in the Federal Register regarding termination of the rule once a date certain has been identified.

Benefit to Low-, Moderate-, and Middle-Income Communities: As noted above, the CRA rules expressly encourage activities that benefit low- or moderate-income individuals or geographies. Nevertheless, to address certain adverse circumstances, the agencies have created limited exceptions to permit favorable consideration of activities

that benefit middle-income individuals and geographies in addition to low- and moderate-income individuals and geographies.²¹

Most commenters supported the expansion to permit CRA consideration of activities that may benefit middle-income individuals and communities, consistent with the NSP program. Although a few of these commenters emphasized that the focus of CRA should continue to be on low- and moderate-income households and neighborhoods, the commenters supported the proposal to redefine “community development” to align with NSP-eligible activities in designated areas identified in plans approved by HUD.

After careful review of these comments and as proposed, the agencies are including activities that benefit middle-income individuals and geographies among the activities for which the agencies may provide favorable CRA consideration under the final rule.

Recognition of NSP-Eligible Activities Outside of Assessment Area(s): Under the current CRA rules, an institution is evaluated primarily on how it helps meet the credit and community development needs of its CRA assessment area(s). However, many foreclosed properties owned by an institution may be located in areas that are outside of the institution’s CRA assessment area(s). As noted in the proposal, restricting CRA consideration of NSP-eligible activities to an institution’s assessment area(s) may not fully help to promote Congress’s objectives for the NSP. Therefore, the proposed rule provided that an institution that has adequately addressed the community development needs of its assessment area(s) may receive favorable consideration for NSP-eligible

²¹ 70 FR 44256 (Aug. 2, 2005) and 71 FR 18614 (Apr. 12, 2006).

activities under this provision that are outside of its assessment area(s). The agencies also specifically asked for comment on this aspect of the proposal.

The commenters that addressed this issue unanimously supported allowing CRA consideration for NSP projects outside of an institution's assessment area(s), provided the institution has met the community development needs within its assessment area(s). Several commenters suggested that the agencies should issue additional guidance on, for example, how financial institutions may demonstrate that they have adequately met the needs in their assessment area(s) and how outside-the-assessment area activities will be allocated toward an institution's state-wide and overall CRA ratings. One financial institution trade association suggested that community banks receive favorable CRA consideration for NSP-eligible activities in the banks' assessment areas whether or not the area is in an NSP-targeted area.

The agencies carefully considered these comments and are adopting the rule as proposed. The final rule, like the proposal, allows institutions to receive favorable consideration for activities that benefit low-, moderate-, and middle-income individuals and geographies in the institution's assessment area(s) or areas outside the bank's assessment area(s) provided the institution has adequately addressed the community development needs of its assessment area(s). To the extent additional guidance may be needed on this provision, the agencies will consider it in connection with a future revision of the Interagency Questions and Answers Regarding Community Reinvestment or examination procedures.

Potential Costs and Benefits: Only five commenters directly responded to the agencies' request for comment on the potential costs and benefits of the proposed rule, if

adopted. Most of these commenters predicted there would be only negligible costs associated with the proposed revision, typically in the form of additional administrative costs, including capturing loan data, and training. These commenters generally thought that the rule would result in some benefit to communities affected by the foreclosure crisis. A trade association of community banks and a financial institution stated that they anticipate additional administrative costs for loan documentation and reporting and for staff training if the proposed rule is adopted but did not estimate those costs.

Effect on an Institution's Decisions about Community Development Activities:

The agencies also asked for specific comment about whether and the extent to which the proposed rule, if adopted, would affect an institution's decisions about the amount, type, and location of community development loans, investments, and services it will provide. Four of the five commenters that addressed this request for comment believed that the rule would affect positively an institution's decisions about the types and amount of community development activities it will provide. The other commenter stated that the rule would provide an incentive for institutions to engage in NSP-eligible activities, but might not substantially alter institutions' general CRA decision-making.

Effective Date

The final rule becomes effective 30 days after publication in the Federal Register. That effective date is consistent with section 553 of the Administrative Procedure Act, which provides that a substantive rule may not be made effective until 30 days after publication in the Federal Register, with specified exceptions. 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) provides that regulations prescribed by a federal banking agency that contain

additional reporting, disclosure, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions. 12 U.S.C. 4802(b). Section 302 of the CDFR does not apply to this final rule because the final rule does not prescribe additional reporting, disclosures, or other new requirements on insured depository institutions. As discussed in detail above in the **Supplementary Information**, the final rule instead expands the types of activities for which such institutions may receive favorable CRA consideration.

Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), each agency reviewed its final rule and determined that there are no collections of information. The final rule would expand the types of activities that qualify for CRA consideration, if an institution chooses to engage in them, but it would not impose any new requirements, including paperwork requirements. The overall cost of this final rule is expected to be negligible, at most. The amendments could have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for community development loans.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires agencies that are issuing a final rule to prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the final rule on small entities.²² The RFA provides that agencies are not required to prepare and publish a regulatory flexibility act analysis if

²² See 5 U.S.C. 603(a).

the agencies certify that the final rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.²³ The Small Business Administration (SBA) has defined “small entities” for banking purposes as a bank or savings association with \$175 million or less in assets.²⁴ 13 CFR 121.201. Each agency has reviewed the impact of this final rule on the small entities subject to its regulation and supervision and addresses the RFA requirements, as appropriate, below.

OCC: The OCC has reviewed the final amendments to Part 25. The final rule would expand the definition of the term “community development,” which is applied in the CRA regulations’ performance tests. However, the final rule does not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not require community development activities. Rather, the final rule reduces burden by expanding the types of community development activities for which institutions may receive CRA consideration. Only 605 national banks are small entities based on the SBA’s general principles of affiliation (13 CFR 121.103(a)) and the size threshold for commercial banks and trust companies. The OCC reviewed national banks with assets of less than \$175 million that are evaluated under the lending, investment, and service tests, which are normally applicable to large banks, the community development test, which is applicable to wholesale and limited purpose banks, and the community development performance factor applicable to intermediate small banks. As of June 30, 2010, only 13 of the 605 national banks that are small entities would be evaluated on their community development activities under these examination types. The rest would be evaluated under the small bank examination procedures, which do not require

²³ See 5 U.S.C. 605(b).

²⁴ A financial institution’s assets are determined by averaging the assets reported on its four immediately preceding full quarterly financial statements.

consideration of community development activities. The OCC has determined and therefore certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

OTS: The OTS has reviewed the final amendments to Part 563e. The final rule would expand the definition of the term “community development,” which is applied in the CRA regulations’ performance tests. However, the final rule does not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not require community development activities. Rather, the final rule reduces burden by expanding the types of community development activities for which institutions may receive CRA consideration. The Small Business Administration (SBA) has defined “small entities” for banking purposes as a savings association with \$175 million or less in assets. See 13 CFR 121.201. As of September 23, 2010, only 361 OTS-regulated thrifts are small entities with assets of \$175 million or less. However, also as of that date, only three of those small savings associations are wholesale or limited purpose savings associations whose community development activities would be evaluated as an automatic part of the CRA examination process. Another three are special purpose savings associations not subject to CRA. The OTS has determined and therefore certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

FDIC: The FDIC has reviewed the proposed amendments to Part 345. The proposal does not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not require community development activities. Rather, the proposed rule reduces burden by expanding the types

of community development activities for which institutions may receive CRA consideration. As of June 30, 2010, FDIC regulated entities under the SBA's size criteria, with assets of less than \$175 million, totaled 2840. However, also as of that date, only 5 of those banks that are small entities would be required to engage in community development activities under the examination types that include such consideration. The FDIC has determined and therefore certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

Board: The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) requires an agency to perform an initial and final regulatory flexibility analysis on the impact a rule is expected to have on small entities. The Small Business Administration has defined "small entities" for banking purposes as a banking organization with \$175 million or less in assets. *See* 13 CFR 121.201. The Board received no comments directly addressing the initial regulatory flexibility analysis. The Board has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

1. Statement of the need for, and objectives of, the final rule. As explained above in the supplementary information, the Board believes that it is desirable to expand eligibility for favorable CRA consideration to NSP-eligible activities and areas, in order to provide financial institutions incentives to leverage NSP funding by providing loans, investments, and services in areas with high foreclosure or vacancy rates. The final rule expands the definition of the term "community development," which is applied in the CRA regulations' performance tests. However, it does not impose new requirements on small entities because the CRA

performance test for small entities does not require community development activities. Rather, the final rule expands the types of community development activities for which institutions may receive CRA consideration.

2. Summary of the significant issues raised by public comment in response to the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments. The Board published an initial regulatory flexibility analysis in connection with the proposed rule and requested comment on the effect of the proposed rule on small entities. See 75 FR 36016, 36020 (Jun. 24, 2010). The Board received no comments specifically addressing the Board's initial regulatory flexibility analysis. A financial institution trade association and a bank stated that institutions that seek CRA consideration for covered activities under a final rule would incur administrative costs, such as costs for documentation of activities and training. Those commenters did not estimate those costs or indicate that they especially affect small entities. The Board made no changes to the proposed rule based on public comment regarding costs associated with the final rule, because entities are not required to seek CRA consideration for covered activities under the final rule. Rather, entities may continue to seek CRA consideration for activities included in the definition of "community development" prior to the expansion of that definition by this final rule.
3. Small entities affected by the final rule. As of June 2010, the Board supervised 392 banking organizations that meet the definition of small entities, all of which are subject to the final rule.

4. Recordkeeping, reporting, and compliance requirements. The final rule does not impose any new recordkeeping or reporting requirements, as the final rule does not require supervised banking organizations to engage in community development activities. Institutions that elect to seek credit for community development activities under the expanded “community development” definition under the final rule will need to maintain documentation regarding those activities.
5. Significant alternatives to the final revisions. Given that the final rule does not require institutions to fund NSP-eligible activities and reduces burdens and restrictions on CRA funding in general, the Board does not believe any other alternatives would accomplish the stated objectives while minimizing burden of the final rule. The legal basis of the final rule is in CRA Section 806, 12 U.S.C. 2905. The final rule expands the definition of the term “community development,” which is applied in the CRA regulations’ performance tests. However, it does not impose new requirements on small entities because the CRA performance test for small entities does not require community development activities. Rather, the final rule expands the types of community development activities for which institutions may receive CRA consideration.

OTS Executive Order 12866 Consideration

Pursuant to Executive Order 12866, OMB’s Office of Information and Regulatory Affairs (OIRA) designated the proposed rule to be significant but did not determine whether the proposal would have an annual effect on the economy of \$100 million or more. OTS solicited comment on the costs and benefits of the proposed rule, if adopted.

As summarized elsewhere in the SUPPLEMENTARY INFORMATION, five commenters directly addressed the issue. In general, these commenters predicted there would be only negligible costs associated with the proposed revision, typically in the form of additional administrative costs, including capturing loan data and training. A trade association of community banks and a financial institution stated that they anticipate additional administrative costs for loan documentation and reporting and for staff training if the proposed rule is adopted but did not estimate those costs. Another financial institution indicated that since no new reporting requirements would be imposed, it did not foresee any incremental costs beyond the cost of doing business. Similarly, a trade association for home builders indicated the costs would be negligible since the rule would not place any new requirements on financial institutions. A state banking department said there appears to be few, if any, costs.

Even the potential negligible costs would only apply to those savings associations that choose to seek CRA consideration for engaging in NSP-eligible activities under the new provision promulgated in today's final rule. As discussed elsewhere in the SUPPLEMENTARY INFORMATION, including the Regulatory Flexibility Act Analysis, many savings associations are not evaluated for community development activities. Small savings associations (currently defined as those with under \$274 million in assets, 12 CFR 563e.12(u)(1)) are only evaluated for community development under the small institution test "as appropriate," in other words, when it is necessary to determine if they meet or exceed the standards for a satisfactory rating or at their request. 12 CFR 563e; Questions and Answers, 75 FR at 11662 (Q&A § __.26(b) – 2). Currently, 471 of the 741 savings associations are small.

Further, as discussed elsewhere in the SUPPLEMENTARY INFORMATION, even without the new provision in today's final rule, CRA consideration has already been available for some neighborhood stabilization activities under the pre-existing CRA rules and interagency guidance. Revitalization and stabilization activities in low- and moderate-income geographies or in distressed or underserved nonmetropolitan middle-income geographies receive positive consideration under the existing CRA rules, regardless of whether these areas are targeted areas under the NSP. Foreclosure prevention programs may also receive positive CRA consideration, for example, if they are part of a loan program that is designed to provide sustainable relief to homeowners facing foreclosure on their primary residences or if they help to revitalize or stabilize low- or moderate-income geographies. Below-market sales and donations of OREO properties to nonprofit organizations, consistent with safe and sound banking operations, also may receive positive consideration under the existing CRA rules. The CRA rules provide favorable consideration for grants, which would include an in-kind donation of property; if these grants have a primary purpose of community development, such as to provide affordable housing to low- and moderate-income individuals, they also would already receive positive CRA consideration as a qualified investment. Favorable CRA consideration is given for technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms. Favorable CRA consideration is available for certain activities involving multifamily housing. Economic development activities not directly related to housing may qualify for favorable CRA consideration.

These commenters generally thought that the rule would result in some benefit to communities affected by the foreclosure crisis. Four of the five commenters that addressed the issue believed that the rule would affect positively an institution's decisions about the types and amount of community development activities it will provide. These comments were from a trade association for state banking supervisors, a state banking department, a trade association for home builders, and a financial institution. The other commenter, another financial institution, indicated that the rule would provide an incentive for institutions to engage in NSP-eligible activities, but might not substantially alter institutions' general CRA decision-making.

As discussed elsewhere in the SUPPLEMENTARY INFORMATION, the duration of the final rule is generally linked to the duration of the NSP. Under NSP1, grantees must expend NSP funds within four years of the date the grant is awarded. Under NSP2, grantees have three years from that date to fully spend the grant, and HUD was required to obligate all funds appropriated for NSP2 in February 2010. The funds appropriated in the Dodd-Frank Act also must be fully expended by grantees within three years after they receive their grants, and HUD is required to obligate all funds appropriated by the Dodd-Frank Act by July 2011. The final rule provides that NSP-eligible activities will receive favorable consideration under the new rule if conducted no later than two years after the last date appropriated funds for the program are required to be spent by the grantees. After that date, the rule will cease to apply.

In light of the foregoing, OIRA has designated the final rule to be significant but not to have an annual effect on the economy of \$100 million or more.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any 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 covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS have determined that this 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, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277 (5 U.S.C. 601 note).

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

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency amends part 25 of chapter I of title 12 of the Code of Federal Regulations 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. In § 25.12:

a. Remove the word “or” at the end of paragraph (g)(3);

b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”;

c. Add a new paragraph (g)(5).

The revision reads as follows:

§ 25.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(5) Loans, investments, and services that –

(i) Support, enable or facilitate projects or activities that meet the “eligible uses” criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank’s assessment area(s) or areas outside the bank’s assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

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. In § 228.12:

- a. Remove the word “or” at the end of paragraph (g)(3);
- b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and
- c. Add a new paragraph (g)(5).

The revision and addition read as follows:

§ 228.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(5) Loans, investments, and services that –

- (i) Support, enable or facilitate projects or activities that meet the “eligible uses” criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the

United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or areas outside the bank's assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

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 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, 1819-1920, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

2. In § 345.12:

- a. Remove the word “or” at the end of paragraph (g)(3);
- b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and

c. Add a new paragraph (g)(5).

The revision and addition read as follows:

§ 345.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

(5) Loans, investments, and services that –

(i) Support, enable or facilitate projects or activities that meet the

“eligible uses” criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank’s assessment area(s) or areas outside the bank’s assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends part 563e of chapter V of title 12 of the Code of Federal Regulations 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. In § 563e.12:

- a. Remove the word “or” at the end of paragraph (g)(3);
- b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and
- c. Add a new paragraph (g)(5).

The revision and addition read as follows:

§ 563e.12 Definitions.

* * * * *

(g) Community development means:

* * * * *

- (5) Loans, investments, and services that –
 - (i) Support, enable or facilitate projects or activities that meet the “eligible uses” criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the savings association's assessment area(s) or areas outside the savings association's assessment area(s) provided the savings association has adequately addressed the community development needs of its assessment area(s).

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

Dated: December 8, 2010.

John Walsh,

Acting Comptroller of the Currency.

**[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 13,
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,

Assistant Executive Secretary.

(SEAL)

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

Dated: December 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%)