

Federal Reserve

Wednesday
December 20, 1995

Part VII

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 25

Federal Reserve System

12 CFR Part 228

Federal Deposit Insurance Corporation

12 CFR Part 345

Department of the Treasury

Office of Thrift Supervision
12 CFR Part 563e

Community Reinvestment Act
Regulations; Joint Final Rule

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 25**

[Docket No. 95-07]

RIN 1557-AB32

FEDERAL RESERVE SYSTEM**12 CFR Part 228**

[Regulation BB; Docket No. R-0822]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 345**

RIN 3064-AB27

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Part 563e**

[Docket No. 95-203]

RIN 1550-AA93

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, Board, FDIC, and OTS, (collectively, the Federal financial supervisory agencies or agencies) are issuing this final rule to make technical corrections and clarifications to their regulations concerning the Community Reinvestment Act (CRA). Since the publication of the agencies' joint CRA regulations, financial institutions and others have alerted the agencies that two errors exist and that the transition rules are confusing. This final rule is intended to correct the errors and clarify the transition rules.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT:

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Board: Glenn E. Loney, Associate Director, Division of Consumer and Community Affairs, (202) 452-3585; Robert deV. Frierson, Assistant General

Counsel, Legal Division, (202) 452-3711; or Leonard N. Chanin, Managing Counsel, Division of Consumer and Community Affairs, (202) 452-3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

FDIC: Bobbie Jean Norris, Chief, Fair Lending Section, Division of Compliance and Consumer Affairs, (202) 942-3090; Robert W. Mooney, Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942-3092; or Ann Hume Loikow, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3796, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

OTS: Timothy R. Burniston, Assistant Director for Compliance Policy, (202) 906-5629; Theresa A. Stark, Program Analyst, Compliance Policy, (202) 906-7054; or John Flannery, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906-7293, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:**Introduction**

The Federal financial supervisory agencies jointly are amending their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This final rule makes technical corrections and clarifications to the agencies' joint CRA regulations, 12 CFR parts 25, 228, 345, and 563e. Those regulations establish the framework and criteria by which the agencies assess an institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations, and provide that the agencies will take those assessments into account in reviewing certain applications.

Background

The agencies published a joint notice of proposed rulemaking to amend their CRA regulations on December 21, 1993 (58 FR 67466). In response to over 6,700 comments received, the agencies published a second joint notice of proposed rulemaking on October 7, 1994 (59 FR 51232). After considering over 7,200 comments received in response to the second joint proposed rule, the agencies adopted a joint final rule on May 4, 1995 (60 FR 22156) (1995 Rule).

Need for Final Rule

The agencies are amending their recently adopted CRA regulations to

correct two technical errors and to clarify the transition rules. Since the publication of the 1995 Rule, a number of financial institutions have expressed confusion about the transition rules.

The agencies find that notice and public procedure concerning this joint final rule are impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. § 553(b)(B). The agencies make this finding because: (1) This joint final rule involves only technical corrections and clarifications to the recently adopted 1995 Rule, which was subject to public notice and comment; (2) some institutions will be subject to the performance tests and standards of the 1995 Rule beginning on January 1, 1996, so it is in the public interest that the joint final rule be effective at that time; and (3) this joint final rule makes no substantive change to the 1995 Rule, rather it makes corrections and eliminates ambiguities associated with the transition requirements.

Furthermore, under 5 U.S.C. § 553(d)(3), the agencies have determined to make this joint final rule effective with less than 30 days prior publication. The agencies find that there is good cause for shortened notice due to the minor nature of the changes, the fact that some institutions will be subject to the performance tests and standards of the 1995 Rule beginning January 1, 1996, and for other reasons previously discussed.

Corrections

The agencies' 1995 Rule contains two errors. First, an internal cross reference is incorrect. The cross reference is found in the discussions about how an institution may amend its strategic plan, found at 12 CFR 25.27(h), 228.27(h), 345.27(h), and 563e.27(h). These identical sections incorrectly state that the amendment process must be done in accordance with the public participation requirements of "paragraph (c) of this section." The correct cross reference is "paragraph (d) of this section." The agencies are amending their respective regulations to reflect the correct cross reference.

Second, an external cross reference is incorrect. In their joint preamble to the final rule, the agencies discussed the definition of "community development" contained in the regulations. In the preamble, the agencies stated that "[t]he section of the definition that discusses activities that promote economic development by financing small business and farms refers to 13 CFR 121.802(a)(2), the size limitations for the Small Business Administration's (SBA's) Small Business Investment

Company and Development Company programs" (60 FR 22159). The agencies' final regulations do, indeed, reference 13 CFR 121.802(a)(2). However, because of an amendment to the SBA regulation (59 FR 16953) made during the agencies' CRA rulemaking process, this citation refers to only the SBA's Development Company Programs. The correct reference should be 13 CFR 121.802(a)(2) and (3), which include both the Development Company and Small Business Investment Company Programs, as intended. Therefore, the agencies are amending the cross references in 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3), and 563e.12(g)(3). The citations are changed from "13 CFR 121.802(a)(2)" to "13 CFR 121.802(a)(2) and (3)."

Clarification

The agencies are amending their transition rules, found at 12 CFR 25.51, 228.51, 345.51, and 563e.51. The transition rules are correct for purposes of incorporation into and expiration from the Code of Federal Regulations. However, the banks and thrifts that must comply with them have expressed confusion regarding how the rules apply.

The transition rules state the final date of applicability to all institutions with regard to each particular provision of the CRA regulation. However, the transition rules inadequately explain the transition from the former regulation to the new regulation. The agencies are clarifying that when an institution, either mandatorily or voluntarily, becomes subject to the requirements of the performance tests and standards in the 1995 Rule (12 CFR 25.21 through 25.27, 228.21 through 228.27, 345.21 through 345.27, and 563e.21 through 563e.27, as applicable), the institution must comply with all aspects of the 1995 Rule (12 CFR 25.11 through 25.44, 228.11 through 228.44, 345.11 through 345.44, or 563e.11 through 563e.44) applicable to it.

For example, the transition rules state that the agencies will evaluate small institutions under the small institution performance standards described in 12 CFR 25.26, 228.26, 345.26, and 563e.26 on January 1, 1996. However, so that the agencies may evaluate a small institution under the small institution performance standards, the small institution must also comply with other provisions of the regulation that are pertinent. Those provisions would include delineating an assessment area (12 CFR 25.41, 228.41, 345.41, or 563e.41, as applicable), maintaining a public file (12 CFR 25.43, 228.43, 345.43, or 563e.43, as applicable), and

providing the proper public notice (12 CFR 25.44, 228.44, 345.44, or 563e.44, as applicable). The transition rules at 12 CFR 25.51(c)(4) and (5), 228.51(c)(4) and (5), 345.51(c)(4) and (5), and 563e.51(c)(4) and (5), however, state that these requirements do not become applicable until January 1 or July 1, 1997. The 1997 dates refer to the last point in time that these requirements become effective for any institution. However, the requirements become effective for small institutions as soon as the small institutions are subject to evaluation under the small institution performance standards.

In some cases, an institution may choose to comply with the performance standards and tests of the May 1995 rule before it must do so. For instance, a large institution may elect to be evaluated under the lending, investment and service tests (12 CFR 25.22 through 25.24, 228.22 through 228.24, 345.22 through 345.24, or 563e.22 through 563e.24, as applicable) before it is required to do so in July of 1997. In this case, the institution must comply with all other provisions of the 1995 Rule.

Similarly, the transition rules state that, for example, the section of the former CRA regulation (12 CFR 25.6, 228.6, 345.6 or 563e.6, as applicable) that addresses public notice requirements does not expire until January 1, 1997. However, the public notice requirements (12 CFR 25.44, 228.44, 345.44 or 563e.44, as applicable) in the 1995 Rule are different from the former requirements. Institutions would find it confusing, if not impossible, to comply completely with both provisions. Therefore, once an institution either voluntarily or mandatorily becomes subject to the performance tests and standards of the 1995 Rule, the provisions of the former CRA regulation (12 CFR 25.3 through 25.7, 228.3 through 25.7, 345.3 through 345.7, or 563e.3 through 563e.7, as applicable) no longer apply to that institution, even though they may continue to apply to other institutions.

Therefore, to clarify these provisions, the agencies are amending 12 CFR 25.51(a), 228.51(a), 345.51(a), and 563e.51(a) by adding at the end of paragraph (a), a sentence explaining that once an institution is either voluntarily or mandatorily subject to the performance tests and standards of the 1995 Rule, the institution must comply with all of the requirements of the 1995 Rule and is no longer subject to the requirements of the former CRA regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board, FDIC, and OTS hereby certify that this joint final rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this joint final rule will not have significant secondary or incidental effects on a substantial number of small entities, or create any additional burden on small entities. The joint final rule merely makes technical corrections to two cross-references and clarifies requirements of the transition rules already adopted by the agencies. These changes will not increase and may, in fact, reduce the burden on institutions because they will make the rules clearer. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995

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

Executive Order 12866

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

Unfunded Mandates Reform Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4, 109 Stat. 48 (1995) (Unfunded Mandates Act), 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. As discussed in the preamble, this joint final rule amends the agencies' CRA regulations to make two technical corrections and one clarification. Therefore, the OCC and the OTS have determined that the joint final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than \$100 million in any one year. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

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, Federal Reserve System, 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.

OFFICE OF THE COMPTROLLER OF THE CURRENCY

12 CFR CHAPTER I

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

PART 25—[AMENDED]

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), and 2901 through 2907.

§ 25.12 [Amended]

2. In § 25.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 25.27 [Amended]

3. In the last sentence of § 25.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 25.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 25.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 25.21 through 25.27, the bank must comply with all the pertinent requirements of §§ 25.11 through 25.44, and no longer must comply with the requirements of §§ 25.3 through 25.7.

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Dated: December 8, 1995.

Eugene A. Ludwig,
Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

12 CFR CHAPTER II

For the reasons discussed in the joint preamble, 12 CFR part 228 is amended as follows:

PART 228—[AMENDED]

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.

§ 228.12 [Amended]

2. In § 228.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 228.27 [Amended]

3. In the last sentence of § 228.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 228.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 228.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 228.21 through 228.27, the bank must comply with all the pertinent requirements of §§ 228.11 through 228.44, and no longer must comply with the requirements of § 228.3 through 228.7.

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By order of the Board of Governors of the Federal Reserve System, December 8, 1995.

William W. Wiles,
Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR CHAPTER III

For the reasons discussed in the joint preamble, 12 CFR part 345 is amended as follows:

PART 345—[AMENDED]

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).

§ 345.12 [Amended]

2. In § 345.12(h)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 345.27 [Amended]

3. In the last sentence of § 345.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 345.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 345.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a bank, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 345.21 through 345.27, the bank must comply with all the pertinent requirements of §§ 345.11 through 345.44, and no longer must comply with the requirements of § 345.3 through 345.7.

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By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated: December 8, 1995.

Jerry L. Langley,
Executive Secretary.

OFFICE OF THRIFT SUPERVISION

12 CFR CHAPTER V

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

PART 563e—[AMENDED]

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.

§ 563e.12 [Amended]

2. In § 563e.12(g)(3), the cross reference "13 CFR 121.802(a)(2)" is revised to read "13 CFR 121.802(a) (2) and (3)".

§ 563e.27 [Amended]

3. In the last sentence of § 563e.27(h), the internal cross reference "paragraph (c) of this section" is revised to read "paragraph (d) of this section".

4. Paragraph (a) of § 563e.51 is amended by adding a sentence at the end of the paragraph to read as follows:

§ 563e.51 Transition rules.

(a) * * * Notwithstanding paragraph (c) of this section, when a savings association, either voluntarily or mandatorily, becomes subject to the performance tests and standards of §§ 563e.21 through 563e.27, the savings association must comply with all the pertinent requirements of §§ 563e.11 through 563e.44, and no longer must comply with the requirements of § 563e.3 through 563e.7.

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Dated: December 13, 1995.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

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