

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC-2009-0010]

RIN 1557-AD24

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-1360]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AD45

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS-2009-0010]

[RIN 1550-AC35]

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 notice of proposed rulemaking.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (collectively, “the Agencies”) are issuing this notice of proposed rulemaking that would revise our rules implementing the Community Reinvestment Act (CRA). The proposed rule would incorporate into our rules recently adopted statutory language that requires the Agencies, when assessing an institution’s record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the financial institution to low-income borrowers. The proposal also would incorporate into our rules statutory language that allows the Agencies, when assessing an institution’s record, to consider as a factor capital investment, loan participation, and other ventures undertaken by nonminority-owned and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions.

DATES: Comments must be received by: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Community Reinvestment Act Regulation” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal – “Regulations.gov”:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2009-0010” to submit or view public comments and to view supporting and related materials for this joint notice of proposed rulemaking. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- **Fax:** (202) 874-5274.
- **Hand Delivery/Courier:** 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket Number OCC-2009-0010” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this joint notice proposed rulemaking by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2009-0010” to view public comments for this rulemaking action.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-1360, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- **FAX:** 202/452-3819 or 202/452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board’s Web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board’s Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064-AD45 by any of the following methods:

- **Agency Web Site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comments on the Agency Web site.
- **E-mail:** Comments@FDIC.gov. Include the RIN number in the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand Delivery/Courier:** 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.

Instructions: All submissions received must include the agency name and RIN number.

All comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided.

OTS: You may submit comments identified by OTS-2009-0010, by any of the following methods:

- **Federal eRulemaking Portal-“Regulations.gov”:** Go to <http://www.regulations.gov>, under the “more Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Office of Thrift Supervision” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OTS-2009-0010” to submit or view public comments and to view supporting and related materials for this proposed rule. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **Mail:** Regulation Comments, Chief Counsel’s Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2009-0010.
- **Fax:** (202) 906-6518.
- **Hand Delivery/Courier:** Guard’s Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel’s Office, Attention: OTS-2009-0010.
- **Instructions:** All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, under the More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “Office of Thrift Supervision” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OTS-2009-0010” to view public comments for this rulemaking action.
- **Viewing Comments On-Site:** You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a

facsimile transmission to (202) 906-5618. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

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FOR FURTHER INFORMATION CONTACT:

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

Board: Rebecca Lassman, Supervisory Consumer Financial Services Analyst, (202) 452-2080; or Brent Lattin, Senior Attorney, (202) 452-3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Stephanie Caputo, Senior Compliance Program Analyst, Consumer Regulations Section, (202) 906-6549; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The Community Reinvestment Act (CRA) requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution (hereinafter, “institution”) in meeting 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

Discussion of the Proposal on Low-Cost Education Loans

Under the existing CRA regulations, education loans are evaluated as consumer loans.³ An institution’s consumer lending must be evaluated if consumer lending makes up a substantial majority of an institution’s business. Institutions that do not meet this criterion may choose to have consumer loans evaluated when the institution’s CRA record is being examined. Institutions must collect and maintain data about consumer

¹ 12 U.S.C. 2903.

² See 12 CFR parts 25 (OCC), 228 (Board), 345 (FDIC), and 563e (OTS).

³ “Consumer loan” is defined in the CRA regulations as a loan to one or more individuals for household, family, or other personal expenditures. Consumer loans include the following categories of loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. 12 CFR 25.12(j), 228.12(j), 345.12(j), and 563e.12(j).

loans if they choose to have those loans evaluated.⁴ Like other consumer loans, institutions' education loans are generally evaluated by total number and amount; borrower characteristics (i.e., distribution among borrowers of different income levels); geographic distribution (i.e., distribution among borrowers in geographies with different income levels and whether the loans are made to borrowers in the institution's assessment areas); and, for large retail institutions, whether the education loan program is innovative or flexible in addressing the credit needs of low- or moderate-income individuals or geographies.⁵

Section 1031 of the Higher Education Opportunity Act, Pub. Law 110-315, 122 Stat. 3078 (August 14, 2008) (the "HEOA"), revised the CRA to require the Agencies, when evaluating an institution's record of meeting community credit needs, to consider, as a factor, low-cost education loans provided by the institution to low-income borrowers. 12 U.S.C. 2903(d). The revisions being proposed today would implement this statutory provision.

The Agencies are proposing to define "low-cost education loans" to mean (1) education loans originated by an institution through a U.S. Department of Education loan program or (2) any private education loan as defined in the Truth in Lending Act, including loans under a state or local education loan program, originated by an institution for a student at an "institution of higher education," with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

Under the first prong of the definition, loans that institutions make through a Department of Education loan program would be considered "low-cost education loans." Institutions currently make those loans through the Federal Family Education Loan (FFEL) Program. However, since Department of Education loan programs may change over time, the proposed definition does not specifically refer to any particular program by name.⁶

Under the second prong of the definition, "private education loans" that institutions make would be considered "low-cost education loans," provided that the interest rates and fees are no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education. The proposal would adopt the terms "private education loan," "private educational lender," and "postsecondary educational expenses," each of which is defined in the HEOA for purposes of the Truth in Lending Act. Section 1011 of the HEOA added section 140 of the Truth in Lending Act to provide the following definition:

[T]he term "private education loan" –

(A) means a loan provided by a private educational lender that—

(i) is not made, insured, or guaranteed under title IV of the Higher

Education Act of 1965 (20 U.S.C. 1070 et seq.); and

⁴ See 12 CFR 25.22(a)(1) and 25.42(c); 12 CFR 228.22(a)(1) and 228.42(c); 12 CFR 345.12(a)(1) and 345.42(c); and 12 CFR 563e.22(a)(1) and 563e.42(c).

⁵ See, e.g., 12 CFR 25.22 and 25.26; 228.22 and 228.26, 345.22 and 345.26, and 563e.22 and 563.26.

⁶ The Agencies note that other Department of Education loan programs currently exist, such as the William D. Ford Direct Loan Program and the Federal Perkins Loan Program, in which loans are made directly by the Department of Education or a school rather than by a financial institution. As these programs do not involve lending by an institution, they are not relevant to the evaluation of CRA performance.

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.⁷

In turn, HEOA defines a “private educational lender” to include, among others, any financial institution that solicits, makes, or extends private education loans.⁸

Although section 1031 of the HEOA is not expressly limited to loans for higher education, the Agencies have included this limitation in the definition of low-cost education loans. The proposal, thus, would provide for consideration of low-cost education loans to attend “institutions of higher education,” including accredited colleges, universities, and vocational schools, as discussed more fully below. The new statutory requirement to consider education loans was adopted as a part of the HEOA, which specifically addresses higher education reform. The HEOA defines “postsecondary educational expenses” to mean any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711). That definition includes tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student’s attendance.⁹

The Agencies are proposing to define “low-cost education loan” consistent with HEOA. The purpose of H.R. 4137, which introduced the incentive of CRA consideration for low-cost education loans, as stated in H.R. Report No. 500, was “to make college more affordable and accessible”; to “expand college access and support for low-income and minority students”; and to provide incentives for lenders to provide “low-cost private student loans to low-income borrowers.”¹⁰ Although the HEOA does not define “private student loan,” it does define the similar term, “private education loan,” as discussed above.

Further, the HEOA defines the term “education loan” in other contexts. In Section 120 of the HEOA, “education loan” is defined as any loan made, insured, or guaranteed under the FFEL Program, any loan made under the William D. Ford Direct Loan Program, or a private education loan.¹¹ As discussed above, institutions’ FFEL loans would be covered by the first prong of the definition, while private education loans would be covered by the second prong of the definition.¹²

⁷ Section 140(a)(7) of the Truth in Lending Act, as added by section 1011 of the HEOA.

⁸ Section 140(a)(6)(A) of the Truth in Lending Act, as added by section 1011 of the HEOA.

⁹ See 20 U.S.C. 108711 (definition of “cost of attendance”).

¹⁰ H.R. Rep. No. 110-500 at 203, 297 (2007) (emphasis added).

¹¹ Section 120 of Pub. Law 110-315, 122 Stat. 3118 (Aug. 14, 2008). Sections 432 and 493 use the same definition.

¹² As noted above, the William D. Ford Direct Loan Program is a direct loan program where the loans are made by the Department of Education rather than a financial institution. Thus, this loan program is not relevant for purposes of CRA consideration for an institution.

The second prong of the definition would encompass any “institution of higher education” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1001 and 1002. Such institutions generally include accredited public or non-profit colleges and vocational schools, accredited private colleges and vocational schools, and certain foreign institutions offering postsecondary education that are comparable to institutions of higher education in the United States based on standards approved by the U.S. Department of Education. The Agencies are not proposing to cover unaccredited colleges, universities, or vocational schools because we lack sufficient information regarding these institutions, but are soliciting comment on this issue.

The term “low-income” will have the same meaning as that term is defined in the existing CRA rule with respect to individuals.¹³ Consequently, it will mean an individual income that is less than 50 percent of the area median income. If an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are “low-income.”¹⁴

Consistent with the statutory focus on the community in which an institution is chartered to do business and the regulatory emphasis on an institution’s activities in its assessment area(s), the Agencies have clarified in the proposed revision that low-cost education loans will be considered as a factor if they are made to low-income borrowers in an institution’s assessment area(s). This clarification also appears consistent with the legislative history of the Act, which indicates that the Agencies are to consider “low-cost education loans provided by a financial institution to low-income borrowers in assessing and taking into account the record of a financial institution in meeting the credit needs of its local community.”¹⁵

The Agencies propose to add the new provision addressing favorable CRA consideration for low-cost education loans to low-income borrowers to sections 25.21, 228.21, 345.21, and 563e.21 of title 12 of the Code of Federal Regulations. These sections are entitled, “Performance tests, standards, and ratings, in general.” They apply to all types and sizes of institutions, without regard to the performance test under which an institution is evaluated. The new provision also is applicable to all institutions.

The Agencies also are proposing a conforming amendment to Appendix A of the regulations to include consideration of low-cost education loans to low-income borrowers as a factor when assigning a rating to a financial institution.

Description of the Proposal on Activities Undertaken in Cooperation with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

When the Agencies assess and take into account the community reinvestment record of a nonminority- or nonwomen-owned financial institution, the CRA allows the Agencies to consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that these activities help meet the

¹³ 12 CFR 25.12(m)(1), 228.12(m)(1), 345.12(m)(1), and 563e.12(m)(1).

¹⁴ See “Interagency Questions and Answers Regarding Community Reinvestment,” 74 FR 498, 533 (Jan. 6, 2009) (Q&A § __.42(c)(1)(iv) – 4).

¹⁵ H. Rep. No. 110-500, at 366 (2007) (emphasis added).

credit needs of local communities in which such institutions and credit unions are chartered.¹⁶ The Agencies propose to incorporate this statutory language into their regulations and to clarify, consistent with the statutory language, that, in order to receive favorable CRA consideration, such activities need not also benefit the assessment area(s) or the broader statewide or regional area that includes the assessment area(s) of the nonminority- and nonwomen-owned institution. Activities undertaken to assist minority- and women-owned financial institutions and low-income credit unions will be considered as part of the overall assessment of the nonminority- and nonwomen-owned institution's CRA performance.

This proposed revision to the rule would reinforce to examiners, financial institutions, and the public that the Agencies may consider and take into account nonminority- and nonwomen-owned financial institutions' activities in connection with minority- and women-owned financial institutions and low-income credit unions. The Agencies note their recent revisions to the "Interagency Questions and Answers Regarding Community Reinvestment" that clarify this point.¹⁷ The proposed rule is intended to codify this clarification in the rule.

The Agencies propose to add the new provision addressing favorable CRA consideration for activities in cooperation with minority- and women-owned financial institutions and low-income credit unions to §§ 25.21, 228.21, 345.21, and 563e.21 of title 12 of the Code of Federal Regulations. As discussed above, these sections apply to all types and sizes of institutions, without regard to the performance test under which an institution is evaluated. The new provision also is applicable to all financial institutions.

The Agencies also are proposing a conforming amendment to Appendix A of the regulations to include consideration of a financial institution's activities in cooperation with minority- and women-owned financial institutions as a factor when assigning a rating to the institution.

Request for Comments

General Request for Comments

The Agencies request comments on the proposed revisions. Smaller financial institutions are invited to comment on whether the proposed regulations should be modified to address any implementation issues unique to their lines of business or to provide additional flexibility.

Request for Comments on "Education Loans."

The new statutory provision specifies that the Agencies must consider low-cost "education loans" to low-income borrowers. The Agencies specifically request comment on how to define "education loans."

- As proposed, the definition includes only loans for post-secondary education (i.e., education at a level beyond high school). As explained above, section 1031 of the HEOA is not expressly limited to loans for higher education. Should the definition also extend to loans for elementary or secondary education?
- Should the definition include loans made for education expenses at an "institution of higher education" as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 ("HEA"), 20 U.S.C. 1001 and 1002, which

¹⁶ 12 U.S.C. 2903(b).

¹⁷ 74 FR 498, 507 (Jan. 6, 2009) (Q&A § __.12(g)—4).

would include accredited public and private colleges and universities, whether for-profit or nonprofit, as well as accredited vocational institutions that prepare students for gainful employment in a recognized occupation and certain institutions outside the United States? Should the scope be expanded or narrowed?

- Should the scope of the definition be expanded to include loans made for education expenses at any “covered educational institution” as that term is defined in section 140 of the Truth in Lending Act, 15 U.S.C. 1650, which would also encompass unaccredited institutions, consistent with the Board’s proposed approach to defining that term for purposes of Regulation Z?¹⁸ Are there reasons that weigh against including loans to attend unaccredited institutions?
- Should the scope of the definition be narrowed to encompass only loans made for education expenses at an “institution of higher education” as that term is defined for general purposes in section 101 of the HEA, 20 U.S.C. 1001, which is limited to accredited public and nonprofit colleges, universities, and employment training schools in the United States for high school graduates or the equivalent, and public or nonprofit educational institutions in the United States that admit students beyond the age of compulsory school attendance, even if they are not high school graduates or the equivalent?
- “Private education loans,” as defined in section 140(a)(7) of the Truth in Lending Act, would include education loans made by financial institutions under local and state education loan programs. Should all education loans offered to low-income borrowers under state or local education programs, regardless of whether the fees and costs are comparable to those under Department of Education programs, be eligible for CRA consideration? Should private loans not made, insured or guaranteed under a Federal, state or local education program be considered for CRA purposes?
- “Private education loans,” as defined in section 140(a)(7) of the Truth in Lending Act, include only closed-end, unsecured loans. That means, for example, that if a borrower obtained a home equity loan for a student’s education, it would not be considered a private education loan. Is it appropriate to limit CRA consideration to only closed-end, unsecured private education loans? Why or why not?
- The Agencies request comment on whether our proposal to limit education loans to those originated by the institution, rather than purchased by the lender, is appropriate. Why or why not?
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Request for Comments on “Low-Cost” Loans.

The statutory provision requires the Agencies to consider institutions’ “low-cost” education loans to low-income borrowers, but does not define “low-cost.” Guaranteed education loans provided by financial institutions through the U.S. Department of Education’s Federal Family Education Loan Program (FFEL Loans) are subject to maximum interest rates, which are calculated using statutory formulas. These rates are the same as rates charged to borrowers under the William D. Ford Direct Loan Program. Currently, the interest rate in effect for unsubsidized fixed-rate loans under the FFEL

¹⁸ See 75 FR 12464 (Mar. 24, 2009).

Stafford loan program or the William D. Ford Direct Loan program, which are made to undergraduate and graduate students, is 6.8 percent. The current interest rate for FFEL Plus loans, which are made to parents of dependent undergraduate students and to graduate or professional degree students, is 8.5 percent.

Although variable-rate loans are no longer available under the Department of Education programs, the Department of Education publishes rates annually for those variable rate student loans that remain outstanding. The rate effective July 1, 2008 through June 30, 2009, for variable-rate loans in repayment is 4.21 percent under both the FFEL Stafford loan program and the William D. Ford Direct Loan program. Fees that may be charged by lenders on FFEL Stafford and Plus loans are also comparable to fees charged on loans made directly by the U.S. Department of Education. The loan fee/origination fee on a Direct Stafford loan is 2.5 percent of the loan amount; the loan fee/origination fee on a Direct Plus loan is 4 percent.

The Agencies are proposing to define “low-cost education loans” as education loans that are originated by financial institutions through a program of the U.S. Department of Education or any private education loans, including loans under state or local education loan programs, originated by financial institutions with interest rates and fees no greater than those of comparable education loan programs offered by the U.S. Department of Education. The Agencies note that currently the rates and fees allowed under the FFEL Stafford loan program and the FFEL Plus loan program would typically be used to evaluate whether an institution’s education loan is low cost.

- Is the Agencies’ definition of the term “low-cost education loans” appropriate? If not, how should the Agencies define low-cost education loans?
- How should the Agencies determine whether a private education loan (including a loan made by an institution under a state or local education loan program) is “comparable” to a Department of Education loan?
- Should the Agencies use the lowest or highest rate and fees available under the comparable Department of Education program?
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Request for Comments on “Low-Income Borrower.”

The CRA regulations currently define “low-income” to mean an individual income that is less than 50 percent of the area median income. The Agencies propose to use that definition to define “low-income borrower.”

However, various education programs offered by the U.S. Department of Education are targeted to individuals who have financial needs; and the criteria for the programs vary. Most relevant, for example, are the Federal Student Aid programs available to students seeking assistance for education programs beyond high school. Most Federal Student Aid programs, other than unsubsidized programs available through financial institutions, including unsubsidized Stafford and FFEL Plus loans, consider “financial need.” Financial need is determined by dividing the cost of attendance at the school by the expected family contribution (EFC). The EFC is calculated according to a formula that considers family taxable and untaxed income, assets and benefits, e.g., unemployment, family size, and the number of family members who will be attending college. Another example of a Department of Education program that considers income is the TRIO program, which encompasses the Upward Bound, Talent Search, and Student Support Services programs. The TRIO program is targeted to “low-income individuals,”

meaning an individual whose family's taxable income for the preceding year did not exceed 150 percent of the poverty level amount.

- The proposed rule provides that the term "low-income" will have the same meaning as that term is defined in the existing CRA rule with respect to individuals. Consistent with current guidance, if an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are "low-income." Should the Agencies consider defining "low-income" for purposes of this proposed provision differently than the term is already defined in the CRA regulation? If so, why and how? Specifically, how should the Agencies treat the income of a student's family or other expected family contributions to ensure that the CRA consideration provided is consistent with HEOA's focus on low-income borrowers?

Request for Comments Regarding Other Education Loan Issues

As proposed, institutions would receive favorable qualitative consideration for originating "low-cost education loans to low-income borrowers" as a factor in the institutions' overall CRA rating. Such loans would be considered responsive to the credit needs of the institutions' communities.

- As discussed above, under the current CRA regulations, institutions may choose to have education loans evaluated as consumer loans under the lending test applicable to the institution. If an institution opts to have education loans evaluated, the loans would be evaluated quantitatively, based on the data the institution provides. Should the agencies also allow an institution to receive separate quantitative consideration for the number and amount of low-cost education loans to low-income borrowers as part of its CRA evaluation under the performance test applicable to that institution, without regard to other consumer loans?

Education loans, including those that do not qualify for consideration as "low-cost education loans for low-income borrowers" (e.g., purchased education loans, loans that are not low-cost, and loans that are not made to low-income borrowers) would continue to be eligible for consideration as consumer loans, at an institution's option, under existing CRA rules.

As discussed above, the Agencies propose to insert the revision regarding low-cost education loans to low-income borrowers into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of the performance test under which an institution is evaluated.

- Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement in the regulation?

Request for Comments on the Proposed Inclusion in the CRA Regulations of the Statutory Language Regarding Activities Undertaken in Cooperation with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions.

The agencies request general comment on the proposal to include in their CRA regulations the statutory language that allows the agencies to consider as a factor in a

nonminority- or nonwomen-owned financial institution's CRA evaluation capital investments, loan participations, and other ventures undertaken in cooperation with minority- and women-owned financial institutions and low-income credit unions, consistent with prior agency guidance.¹⁹

In addition, as discussed above, the Agencies propose to insert the revision regarding institutions' activities in cooperation with minority- and women-owned institutions and low-income credit unions into 12 CFR 25.21, 228.21, 345.21, and 563e.21, which apply to all institutions, regardless of which performance test under which an institution is evaluated.

- Is it readily understandable to institutions and other interested parties that the provision is applicable to all institutions through that placement?

Request for Comments Regarding the Use of "Plain Language."

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 133 Stat. 1338, 1471 (Nov. 12, 1999), requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. Therefore, the Agencies specifically invite your comments on how to make this proposal easier to understand. For example,

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulations clearly stated? If not, how could the regulations be more clearly stated?
- Do the proposed regulations contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the regulations easier to understand?

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 proposed rule and determined that there are no new collections of information contained therein. However, the amendments may have a negligible affect on burden estimates for existing information collections, including recordkeeping requirements for consumer loans.

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined "small entities" for banking purposes as a bank or savings association with \$165 million or less in assets. See 13 CFR 121.201. Each agency has reviewed the impact of

¹⁹ Interagency Questions and Answers Regarding Community Reinvestment, 74 FR 498, 507 (Jan. 6, 2009).

this joint proposed rule on the small entities subject to its regulation and supervision and certifies that the proposal will not have a significant economic impact on a substantial number of the small entities that it regulates and supervises.

The proposal would incorporate into the CRA regulations statutory language that requires the Agencies to consider as a factor in evaluating an institution's CRA performance low-cost education loans provided by the financial institution to low-income borrowers. The proposal also would incorporate into the CRA regulations existing statutory language that allows the agencies to consider as a factor in evaluating CRA performance certain activities of nonminority- and nonwomen-owned financial institutions entered into in cooperation with minority- and women-owned financial institutions and low-income credit unions. However, the joint proposal would not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not specify that small institutions must engage in any particular types of lending, just that they will be evaluated on the types of lending in which they choose to engage. Accordingly, a regulatory flexibility analysis is not required.

OCC and OTS Executive Order 12866 Determination

The OCC and the OTS have each determined that its portion of this joint proposed rule is not a significant regulatory action as defined in Executive Order 12866.

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 joint proposed 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 joint proposed 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).

OCC and OTS Executive Order 13132 Determination

The OCC and the OTS have each determined that its portion of this joint proposed rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 228

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

12 CFR Part 345

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

12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend 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 is revised 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 2908, and 3101 through 3111.

2. In § 25.21, add new paragraphs (e) and (f) to read as follows:

§ 25.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-

income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 25, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 25 -- RATINGS

- (a) ... (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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 proposes to amend 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 § 228.21, add new paragraphs (e) and (f) to read as follows:

§ 228.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the Board considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, “low-cost education loans” means

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the Board considers as a factor capital investment, loan participation, and other ventures undertaken

by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 228, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 228 – RATINGS

(a) ... (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 228.21 and 228.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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 proposes to amend 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 is revised to read as follows:

Authority: 12 U.S.C. 1814-1817, 1819-1920, 1828, 1831u and 2901-2908, 3103-3104, and 3108(a).

2. In § 345.21, add new paragraphs (e) and (f) to read as follows:

§ 345.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans provided by the bank to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means

(1) Education loans originated by the bank through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the

record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 345, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 345 -- RATINGS

(a) ... (1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

Office of Thrift Supervision 12 CFR Chapter V

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend 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 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2908.

2. In § 563e.21, add new paragraphs (e) and (f) to read as follows:

§ 563e.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a savings association under this part, the OTS considers, as a factor, low-cost education loans provided by the savings association to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means

(1) Education loans originated by the savings association through a loan program of the U.S. Department of Education; or

(2) Any other private education loan, as defined in section 140(a)(7) of the Truth in Lending Act (including a loan under a state or local education loan program), originated by the savings association for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the Department of Education, with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the OTS considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that such activities help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

3. In Appendix A to Part 563e, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 563e -- RATINGS

(a) ... (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 563e.21 and 563e.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT
ACT REGULATIONS.”]**

Dated: June 19, 2009.

John C. Dugan (signed)

John C. Dugan,

Comptroller of the Currency.

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT
ACT REGULATIONS.”]**

By order of the Board of Governors of the Federal Reserve System, acting through the
Secretary of the Board under delegated authority,

June 23, 2009.

Jennifer J. Johnson (signed)

Jennifer J. Johnson

Secretary of the Board.

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT
ACT REGULATIONS.”]**

Dated at Washington, D.C., this 23rd day of June, 2009.

FEDERAL DEPOSIT INSURANCE CORPORATION

Valerie J. Best (signed)

Valerie J. Best,

Assistant Executive Secretary.

(SEAL)

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT
ACT REGULATIONS.”]**

Dated: June 17, 2009

By the Office of Thrift Supervision.

John E. Bowman (signed)
John E. Bowman,
Acting Director.