

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

Docket ID OCC-2015-0025

RIN 1557-AE01

FEDERAL RESERVE SYSTEM

12 CFR Part 228

Regulation BB; Docket No. R-1526

RIN 7100-AE40

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AD90

Community Reinvestment Act Regulations

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to

define “small bank” or “small savings association” and “intermediate small bank” or “intermediate small savings association.” As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The Agencies also propose to make technical edits to remove obsolete references to the Office of Thrift Supervision (OTS) and update cross-references to regulations implementing certain Federal consumer financial laws in their CRA regulations.

EFFECTIVE DATE: January 1, 2016.

FOR FURTHER INFORMATION CONTACT:

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Board: Amal S. Patel, Senior Supervisory Consumer Financial Services Analyst, (202) 912-7879; or Nikita Pastor, Counsel, (202) 452-3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898-7424, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The CRA regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, the Board, and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). The Agencies noted that the CPI-W is also used in connection with other federal laws, such as the Home Mortgage Disclosure Act. See 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former OTS, the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹ and effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR 195, the CRA regulations applicable to those institutions.² In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² See OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

their non-depository subsidiaries from the OTS to the Board and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.³

The threshold for small banks and small savings associations was revised most recently in December 2014, and became effective January 1, 2015 (79 FR 77852 (Dec. 29, 2014)). The current CRA regulations provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.221 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least \$305 million as of December 31 of both of the prior two calendar years and less than \$1.221 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule revises these thresholds.

During the period ending November 2015, the CPI-W decreased by 0.42 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2016, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least \$304 million as of December 31 of both of the prior two calendar years and less than \$1.216 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. The Agencies also publish current and historical asset-size thresholds on the Web site of the Federal Financial Institutions Examination Council at <http://www.ffiec.gov/cra/>.

In addition, the Agencies are making technical edits to 12 CFR 25.42, 228.42, and 345.42 to remove obsolete references to the “Office of Thrift Supervision” and to 12 CFR 563e in the

³ See Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

CRA rules. As explained above, Title III of the Dodd-Frank Act transferred the powers, authorities, rights, and duties of the OTS to the Agencies. Specifically, among other changes, Title III abolished the OTS; transferred rulemaking and supervisory authority over savings and loan holding companies and supervisory authority over their non-depository subsidiaries to the Board; transferred rulemaking authority over federal savings associations and state savings associations, and supervisory authority over federal savings associations, to the OCC; and transferred supervisory authority over state savings associations to the FDIC.⁴

Further, the Agencies are updating references to certain regulations implementing Federal consumer financial laws in the CRA regulations, as Title X of the Dodd-Frank Act transferred rulemaking authority for a number of Federal consumer financial laws, including the Home Mortgage Disclosure Act (HMDA) and the Truth in Lending Act (TILA), to the Consumer Financial Protection Bureau (CFPB), effective July 21, 2011. The CFPB subsequently published an interim final rule to establish its own Regulation C to implement HMDA,⁵ and also published an interim final rule to establish its own Regulation Z to implement TILA.⁶ Accordingly, the Agencies are updating the citations in the CRA regulations⁷ to reference the CFPB's Regulation C and Regulation Z, located at 12 CFR 1003 and 12 CFR 1026, respectively.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the

⁴ See 12 U.S.C. 5412-5413.

⁵ 12 CFR part 1003. See 76 FR 78465 (Dec. 19, 2011).

⁶ 12 CFR part 1026. See 76 FR 79768 (Dec. 22, 2011).

⁷ See 12 CFR §§ 25.12(h)(2)(i), 25.12(j)(2), 25.12(l), 25.42(b)(3), 25.42(d), 25.43(b)(2), 195.12(h)(2)(i), 195.12(j)(2), 195.12(l), 195.42(b)(3), 195.42(d), 195.43(b)(2), 228.12(h)(2)(i), 228.12(j)(2), 228.12(l), 228.42(b)(3), 228.42(d), 228.43(b)(2), 345.12(h)(2)(i), 345.12(j)(2), 345.12(l), 345.42(b)(3), 345.42(d), and 345.43(b)(2).

rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. See 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). Sections 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. Furthermore, deleting the obsolete references to the "Office of Thrift Supervision" and its CRA regulation and updating cross-references to reflect the transfer of rulemaking authority for many Federal consumer financial laws to the CFPB are technical and non-substantive revisions. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2016. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date

requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on twelve-month data as of the end of November each year. In addition, the technical edits to remove obsolete references to the “Office of Thrift Supervision” and its CRA rule in the Agencies’ CRA rules and update citations to certain regulations are not substantive within the meaning of the APA’s delayed effective date provision.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

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

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

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

12 CFR Part 195

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

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.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the **Supplementary Information** section, 12 CFR parts 25 and 195 are amended as follows:

PART 25 – COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

2. Section 25.12 is amended:

- a. In paragraph (h)(2)(i), by removing “part 203” and adding “part 1003” in its place;
- b. In paragraph (j)(2), by removing “§ 226.2” and adding “§ 1026.2” in its place;
- c. In paragraph (l), by removing “§ 203.2” and adding “§ 1003.2” in its place; and
- d. By revising paragraph § 25.12(u)(1).

The revision is set forth below:

§ 25.12 Definitions.

* * * * *

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion. Intermediate small bank means a small bank with assets of at least \$304 million as of December 31 of both of the prior two calendar years and less than \$1.216 billion as of December 31 of either of the prior two calendar years.

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§ 25.42 [Amended]

3. Section 25.42 is amended:

- a. In paragraphs (b)(3) and (d), by removing “part 203” and adding “part 1003” in its place, wherever it appears; and
- b. In paragraph (i), by removing “, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision,” and adding “and the Federal Deposit Insurance Corporation,” in its place, and by removing “parts 228, 345, or 563e” and adding “parts 195, 228, or 345” in its place.

§ 25.43 [Amended]

4. Section 25.43 is amended in paragraph (b)(2), by removing “part 203” and adding “part 1003” in its place.

PART 195 – COMMUNITY REINVESTMENT

5. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

6. Section 195.12 is amended:

- a. In paragraph (h)(2)(i), by removing “part 203” and adding “part 1003” in its place;
- b. In paragraph (j)(2), by removing “§ 226.2” and adding “§ 1026.2” in its place;
- c. In paragraph (l), by removing “§ 203.2” and adding “§ 1003.2” in its place; and
- d. By revising paragraph § 195.12(u)(1).

The revision is set forth below:

§ 195.12 Definitions.

* * * * *

(u) Small savings association – (1) Definition. Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion. Intermediate small savings association means a small savings association with assets of at least \$304 million as of December 31 of both of the prior two calendar years and less than \$1.216 billion as of December 31 of either of the prior two calendar years.

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§ 195.42 [Amended]

7. Section 195.42 is amended in paragraphs (b)(3) and (d), by removing “part 203” and adding “part 1003” in its place, wherever it appears.

§ 195.43 [Amended]

8. Section 195.43 is amended in paragraph (b)(2), by removing “part 203” and adding “part 1003” in its place.

Federal Reserve System

12 CFR Chapter II

For the reasons set forth in the **Supplementary Information** section, 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)

9. 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.

10. Section 228.12 is amended:

- a. In paragraph (h)(2)(i), by removing “part 203” and adding “part 1003” in its place;
- b. In paragraph (j)(2), by removing “§ 226.2” and adding “§ 1026.2” in its place;
- c. In paragraph (l), by removing “§ 203.2” and adding “§ 1003.2” in its place; and
- d. Revising paragraph § 228.12(u)(1).

The revision is set forth below:

§ 228.12 Definitions.

* * * * *

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion. Intermediate small bank means a small bank with assets of at least \$304 million as of December 31 of both of the prior two calendar years and less than \$1.216 billion as of December 31 of either of the prior two calendar years.

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§ 228.42 [Amended]

11. Section 228.42 is amended:

a. In paragraphs (b)(3) and (d), by removing “part 203” and adding “part 1003” in its place, wherever it appears; and

b. In paragraph (i), by removing “, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision,” and adding “and the Federal Deposit Insurance Corporation,” in its place, and by removing “parts 25, 345, or 563e” and adding “parts 25, 195, or 345” in its place.

§ 228.43 [Amended]

12. Section 228.43 is amended in paragraph (b)(2), by removing “part 203” and adding “part 1003” in its place.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the **Supplementary Information** section, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345 – COMMUNITY REINVESTMENT

13. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814-1817, 1819-1820, 1828, 1831u and 2901-2908, 3103-3104, and 3108(a).

14. Section 345.12 is amended:

- a. In paragraph (h)(2)(i), by removing “part 203” and adding “part 1003” in its place;
- b. In paragraph (j)(2), by removing “§ 226.2” and adding “§ 1026.2” in its place;
- c. In paragraph (l), by removing “§ 203.2” and adding “§ 1003.2” in its place; and
- d. Revising paragraph § 345.12(u)(1).

The revision is set forth below:

§ 345.12 Definitions.

* * * * *

(u) Small bank – (1) Definition. Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.216 billion. Intermediate small bank means a small bank with assets of at least \$304 million as of December 31 of both of the prior two calendar years and less than \$1.216 billion as of December 31 of either of the prior two calendar years.

* * * * *

§ 345.42 [Amended]

15. Section 345.42 is amended:

- a. In paragraphs (b)(3) and (d), by removing “part 203” and adding “part 1003” in its place, wherever it appears; and

b. In paragraph (i), by removing “, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision,” and adding “and the Office of the Comptroller of the Currency,” in its place, and by removing “parts 25, 228, or 563e” and adding “parts 25, 195, or 228” in its place.

§ 345.43 [Amended]

16. Section 345.43 is amended in paragraph (b)(2), by removing “part 203” and adding “part 1003” in its place.

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

Dated: 12/16/2015

Amy S. Friend (signed)

Amy S. Friend,

Senior Deputy Comptroller and Chief Counsel.

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

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary
of the Board under delegated authority, December 16, 2015.

Robert deV. Frierson (signed)

Robert deV. Frierson,
Secretary of the Board.

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

By order of the Board of Directors.

Dated at Washington, D.C., this 15th day of December, 2015.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman (signed)

Robert E. Feldman,

Executive Secretary.

(SEAL)