



DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 25 and 195
[Docket ID OCC-2019-0025]
RIN 1557-AE72

FEDERAL RESERVE SYSTEM
12 CFR Part 228
[Regulation BB; Docket No. R-1690]
RIN 7100-AF 68

FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 345
RIN 3064-AF20

Community Reinvestment Act Regulations

AGENCY: 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).

DATES: *Effective Date:* January 1, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Frances C. Augello, Special Counsel, Emily Boyes, Counsel, or Maria Riegger, Counsel, Chief Counsel's Office, (202) 649-5490; for persons who are deaf or hearing impaired, TTY, (202) 649-5597; or Vonda Eanes, Director for CRA and Fair Lending Policy, Compliance Risk Policy Division, (202) 649-5470, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

Board: Amal S. Patel, Counsel, (202) 912-7879, or Cathy Gates, Senior Project Manager, (202) 452-2099, Division of Consumer and Community Affairs; or Gavin L. Smith, Senior Counsel, (202) 452-3474, Legal Division, 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 12-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). At that time, 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 Office of Thrift Supervision (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 part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),¹ 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 part 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 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 2018 and became effective January 1, 2019. 83 FR 66601 (Dec. 27, 2018). 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 \$1.284 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least \$321 million as of December 31 of both of the prior two calendar years and less than \$1.284

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

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

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

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 12-month period ending November 2019, the CPI-W increased by 1.62 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, 2020, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.305 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 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 website of the Federal Financial Institutions Examination Council at <http://www.ffiec.gov/cra/>.

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 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). As a result, §§ 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) of the Agencies' respective CRA regulations 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. For this reason, 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, 2020. 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 12-month data as of the end of November each year.

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

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2U.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.

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) (12 U.S.C. 4802) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of

such regulations.⁴ In addition, new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁵

Because the final rule does not impose additional reporting, disclosure, or other requirements on IDIs, section 302 of RCDRIA does not apply. Nevertheless, the requirements of section 302 of RCDRIA, and the administrative burdens and benefits of the final rule, were considered as part of the overall rulemaking process.

Congressional Review Act

FDIC

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a “major” rule.⁶ If a rule is deemed a “major rule” by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁷

The Congressional Review Act defines a “major rule” as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in – (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with

⁴ 12 U.S.C 4802(a).

⁵ 12 U.S.C 4802(b).

⁶ 5 U.S.C. 801 *et seq.*

⁷ 5 U.S.C. 801(a)(3).

foreign-based enterprises in domestic and export markets.⁸ As required by the Congressional Review Act, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

OCC

Pursuant to the Congressional Review Act, OMB's Office of Information and Regulatory Affairs designated this rule as not a "major rule," as defined at 5 U.S.C. 804(2). As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

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:

⁸ 5 U.S.C. 804(2).

**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 by revising paragraph (u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) * * *

(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 \$1.305 billion. Intermediate small bank means a small bank with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

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PART 195 – COMMUNITY REINVESTMENT

3. 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).

4. Section 195.12 is amended by revising paragraph (u)(1) to read as follows:

§ 195.12 Definitions.

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(u) * * *

(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 \$1.305 billion.

Intermediate small savings association means a small savings association with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

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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)

5. 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.

6. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) * * *

(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 \$1.305 billion. Intermediate small bank means a small bank with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

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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

7. 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).

8. Section 345.12 is amended by revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) * * *

(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 \$1.305 billion. Intermediate small bank means a small bank with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

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Dated: 12/11/19

Jonathan V. Gould,

Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, December 11, 2019.

Ann E. Misback,
Secretary of the Board.

Dated at Washington, D.C., December 11, 2019.

FEDERAL DEPOSIT INSURANCE CORPORATION

Annmarie H. Boyd,

Assistant Executive Secretary.

BILLING CODES:

OCC: 4810-33-P (34%)

Board: 6210-01-P (33%)

FDIC: 6714-01-P (33%)

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