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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

Docket ID OCC-2012-0015

RIN 1557-AD60

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R-1454]

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.

DATES: Effective January 1, 2013.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 649-6350; or Bobbie K. Kennedy, Bank Examiner, Compliance Policy Division, (202) 649-5470, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Catherine M. J. Gates, Senior Project Manager, (202) 452-2099; 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: Pamela A. Freeman, Senior Examination Specialist, Division of Depositor and Consumer Protection, Compliance & CRA Examinations Branch, (202) 898-3656; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, 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 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 Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), 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, Board, and FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). As explained in the **SUPPLEMENTARY INFORMATION** section of these agencies' proposed rule, this particular index is used in other federal lending regulations such as the Home Mortgage Disclosure Act (HMDA). 70 FR 12148 (Mar. 11, 2005). See 12 U.S.C. 2808; 12 C.F.R. 203.2(e)(1). On March 22, 2007, and effective July 1, 2007, the Office of Thrift Supervision (OTS), the agency responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule 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, 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 their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervision authority.[3]

The threshold for small banks and small savings associations was revised most recently effective January 1, 2012 (76 FR 79529 (Dec. 22, 2011)). The CRA regulations, effective January 1, 2012, provided that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.160 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $290

[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).

million as of December 31 of both of the prior two calendar years and less than $1.160 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 further revises these thresholds.

During the period ending November 2012, the CPIW increased by 2.23 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, 2013, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.186 billion are small banks or small savings associations. Small banks or small savings associations with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 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/.

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). 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, since the agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria, 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, 2013. 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where 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, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency must prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the agencies have 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 preamble, 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. Revise § 25.12(u)(1) to read as follows:

§ 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 $1.186 billion. Intermediate small bank means a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 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. Revise § 195.12(u)(1) to read as follows:

§ 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 $1.186 billion. Intermediate small savings association means a small savings association with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 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 preamble, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228 – COMMUNITY REINVESTMENT (REGULATION BB)

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. Revise § 228.12(u)(1) to read as follows:

§ 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 $1.186 billion. Intermediate small bank means a small bank with assets of at least $296 million as of December 31 of both of the prior two calendar years and less than $1.186 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 preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations 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 2901-2907, 3103-3104, and 3108(a).

8. Revise § 345.12(u)(1) to read as follows:

§ 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 $1.186 billion. Intermediate small bank means a small bank with assets of at least $296 million as of December 31 of both of the

prior two calendar years and less than $1.186 billion as of December 31 of either of the prior two calendar years.

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Dated: December 13, 2012.

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Daniel P. Stipano,

Acting 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 17, 2012.

Robert deV. Frierson
Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, D.C., this 6th day of December, 2012.

FEDERAL DEPOSIT INSURANCE CORPORATION

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Valerie J. Best,

Assistant Executive Secretary.

BILLING CODES:

OCC:	4810-33-P (34%)
Board:	6210-01-P (33%)
FDIC:	6714-01-P (33%)

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