

**DRAFT**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 25 and 195**

**[Docket ID OCC-2018-0033]**

**RIN 1557-AE54**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 228**

**[Regulation BB; Docket No. R-1642]**

**RIN 7100-AF32**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 345**

**RIN 3064-AE97**

**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, 2019.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Emily Boyes, Senior Attorney or Daniel Sufranski, Attorney, 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 Clinton N. Chen, Senior Attorney, (202) 452-3952, 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),<sup>1</sup> 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.<sup>2</sup> In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 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.<sup>3</sup>

The threshold for small banks and small savings associations was revised most recently in December 2017 and became effective January 1, 2018. 82 FR 61143 (Dec. 27, 2017). 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 \$1.252 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least \$313 million as of December 31 of both of the prior two calendar years and less than \$1.252 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 2018, the CPI-W increased by 2.59 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, 2019, 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 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**

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

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, 2019. 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), 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 by revising paragraph (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 \$1.284 billion. Intermediate small bank means a small bank with assets of at least \$321 million as of December 31 of both of the prior two calendar years and less than \$1.284 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.**

\* \* \* \* \*

(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 \$1.284 billion. Intermediate small savings association means a small savings association with assets of at least \$321 million as of December 31 of both of the prior two calendar years and less than \$1.284 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 is revised 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) 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 \$1.284 billion. Intermediate small bank means a small bank with assets of at least \$321 million as of December 31 of both of the prior two calendar years and less than \$1.284 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) 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 \$1.284 billion. Intermediate small bank means a small bank with assets of at least \$321 million as of December 31 of both of the prior two calendar years and less than \$1.284 billion as of December 31 of either of the prior two calendar years.

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

Dated: December 18, 2018

Bao Nguyen (signed)

**Bao Nguyen,**

Acting Senior Deputy Comptroller and Chief Counsel.

[THIS SIGNATURE PAGE RELATES TO THE JOINT FINAL RULE TITLED  
“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 17, 2018.

Ann E Misback (signed)

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**Ann E. Misback,**

*Secretary of the Board.*

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

By order of the Board of Directors.

Dated at Washington, D.C., this 13th day of December, 2018.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman (signed)

**Robert E. Feldman,**

Executive Secretary.