

# Rules and Regulations

Federal Register

Vol. 76, No. 246

Thursday, December 22, 2011

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 25 and 195

[Docket ID OCC–2011–0027]

RIN 1557–AD60

### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 228

[Regulation BB; Docket No. R–1437]

### 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 Date:* January 1, 2012.

#### FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Brian Borkowicz, National Bank Examiner,

Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

Board: Celeste Anderson, Senior Supervisory Consumer Financial Services Analyst, (202) 452–2677; 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: Janet R. Gordon, Senior Policy Analyst, Division of Depositor and Consumer Protection, Supervisory Policy Branch, (202) 898–3850; 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 institutions 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. 22, 2007). See 12 U.S.C. 2808; 12 CFR 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. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),<sup>1</sup> and effective July 21, 2011, rulemaking authority for federal and state savings associations was transferred from the OTS to OCC, and the OCC subsequently republished, at 12 CFR 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 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.<sup>3</sup>

The threshold for small banks and small savings associations was revised most recently effective January 1, 2011 (75 FR 82217 (Dec. 30, 2010)). The CRA regulations, effective January 1, 2011, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.122 billion are “small banks” or “small savings associations.” Small banks and small savings associations with assets of at least \$280 million as of December 31 of both of the prior two calendar years and less than \$1.122 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 2011, the CPIW increased by 3.43 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, 2012, 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 or small savings associations with assets of at least \$290 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

<sup>1</sup> Public Law 111–203, 124 Stat. 1376 (2010).

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

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

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 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, 2012. 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 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 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. 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 \$1.160 billion. *Intermediate small bank* means a small bank with assets of at least \$290 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.

\* \* \* \* \*

**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 \$1.160 billion. *Intermediate small savings association* means a small savings association with assets of at least \$290 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.

\* \* \* \* \*

**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)**

■ 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. 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 \$1.160 billion. *Intermediate small bank* means a small bank with assets of at least \$290 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.

\* \* \* \* \*

**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**

■ 1. 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).

2. 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 \$1.160 billion. *Intermediate small bank* means a small bank with assets of at least \$290 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.

\* \* \* \* \*

Dated: December 13, 2011.

**Julie L. Williams,**

*First 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 16, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of December, 2011.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 2011–32727 Filed 12–21–11; 8:45 am]

**BILLING CODE 4810–33–6210–01–6714–01–P**

**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 704**

**RIN 3133–AD95**

**Corporate Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is issuing final amendments to its rule governing corporate credit unions (corporates). The final amendments make technical corrections to and clarify certain provisions of the rule. The amendments: delete the definition of “daily average net risk-weighted assets”; revise the definition of “net assets” to exclude Central Liquidity Facility (CLF) stock subscriptions; clarify certain requirements regarding investment action plans; clarify the weighted average life (WAL) tests; revise the consequences of WAL violations; substitute the term “core capital” for the phrase “the sum of retained earnings and paid-in capital”; correct a section heading; and correct a model form instruction.

**DATES:** This rule is effective January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at (703) 518–6540; or David Shetler, Deputy Director, Office of Corporate Credit Unions, at (703) 518–6640. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

**SUPPLEMENTARY INFORMATION:**

A. Background and Specific Amendments  
 B. Regulatory Procedures

**A. Background and Specific Amendments**

*Why is NCUA adopting this rule?*

On August 29, 2011, the NCUA Board (Board) issued a Notice of Proposed Rulemaking (NPRM) containing several amendments to its corporate rule at 12 CFR part 704. 76 FR 54991 (Sept. 6, 2011). NCUA received seven comments on the NPRM, most of which favored the proposed changes. For the reasons discussed below, the NCUA Board is adopting the amendments almost exactly as proposed.

*Section 704.2 Definition of “daily average net risk-weighted assets”*

The term “daily average net risk-weighted assets” was used in a 2009 proposal to revise part 704, 74 FR 65210, 65261 (Dec. 9, 2009), but not in the 2010 final rule, 75 FR 64786, 64831 (Oct. 20, 2010). The term was mistakenly left in the part 704 definitions section, and the Board proposed deleting it in the NPRM. All of the commenters who addressed the proposed change supported it. Accordingly, the Board is deleting the definition of “daily average net risk-weighted assets” from § 704.2.

*Section 704.2 Definition of “net assets”*

Section 704.2 defines “net assets,” in relevant part, as “total assets less loans guaranteed by the NCUSIF and member reverse repurchase transactions.” The NPRM amended the definition to also exclude CLF stock subscriptions, based on the asset’s negligible credit risk and to facilitate corporate support of the CLF. Corporate support is essential to the CLF remaining a back-up liquidity provider for natural person credit unions.

One commenter objected to the proposed change, arguing that it would artificially inflate the leverage ratio for corporates. The Board disagrees. CLF stock is in the nature of a pass-through account, and including it in net assets incorrectly overstates a corporate’s balance sheet. The commenter also argued that credit unions do not need to obtain liquidity through the CLF, as they can become members of the Federal Home Loan Bank (FHLB) system or access the Federal Reserve System’s Discount Window (Discount Window). The Board believes that the CLF provides a critical dimension of additional liquidity coverage for credit unions. Presently, only 4.5 percent of federally insured credit unions report having filed an application to borrow