

consumers, AMS has determined that the California walnut marketing order should be continued. The order was established to help the California walnut industry work with USDA to solve marketing problems. The order's regulations on grade and size, as well as research and promotion, and collection and dissemination of information continue to be beneficial to producers, handlers, and consumers.

AMS will continue to work with the California walnut industry in maintaining an effective marketing order program.

Dated: December 16, 2008.

**James E. Link,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-30309 Filed 12-19-08; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Part 25

[Docket ID OCC-2008-0024]

RIN 1557-AD19

## FEDERAL RESERVE SYSTEM

#### 12 CFR Part 228

[Regulation BB; Docket No. R-1342]

## FEDERAL DEPOSIT INSURANCE CORPORATION

#### 12 CFR Part 345

RIN 3064-AD39

## DEPARTMENT OF TREASURY

### Office of Thrift Supervision

#### 12 CFR Part 563e

[Docket ID OTS-2008-0021]

RIN 1550-AC29

### Community Reinvestment Act Regulations

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

**ACTION:** Joint final rule; technical amendment.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (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, 2009.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785-6054; or Brent Lattin, Attorney, (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:* Deirdre Foley, Senior Policy Analyst, Division of Supervision and Consumer Protection, Compliance Policy Branch, (202) 898-6612; or Susan van den Toorn, Counsel, Legal Division, (202) 898-8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*OTS:* Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906-7990; or Richard Bennett, Senior Compliance Counsel, Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**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),

228.12(u)(2), 345.12(u)(2), and 563e.12(u)(2).

The threshold for small banks and small savings associations was revised most recently effective January 1, 2008 (72 FR 72571 (Dec. 21, 2007)). The CRA regulations, as revised on December 21, 2007, provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.061 billion are "small banks" or "small savings associations." Small banks and small savings associations with assets of at least \$265 million as of December 31 of both of the prior two calendar years and less than \$1.061 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), 228.12(u)(1), 345.12(u)(1), 563e.12(u)(1). This joint final rule further revises these thresholds.

During the period ending November 2008, the CPIW increased by 4.49 percent. As a result, the agencies are revising 12 CFR 25.12(u)(1), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) to make this annual adjustment. Beginning January 1, 2009, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.109 billion are "small banks" or "small savings associations." Small banks or small savings associations with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 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 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), 228.12(u)(1), 345.12(u)(1), and 563e.12(u)(1) are amended by adjusting the asset threshold as provided for in §§ 25.12(u)(2), 228.12(u)(2), 345.12(u)(2), and 563e.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, 2009. 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 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 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

There are no collection of information requirements in this joint final rule.

#### Executive Order 12866

The OCC and OTS have each determined that its portion of this joint final rule is not a significant regulatory action as defined in Executive Order 12866.

#### 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.

#### Executive Order 13132

The OCC and OTS have each determined that its portion of this joint final rule does not have any Federalism implications as required by Executive Order 13132.

#### List of Subjects

##### 12 CFR Part 25

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

##### 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.

##### 12 CFR Part 563e

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

#### Department of the Treasury

*Office of the Comptroller of the Currency*

#### 12 CFR Chapter I

■ For the reasons discussed in the joint preamble, 12 CFR part 25 is 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 2907, 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 \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 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 joint 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)

■ 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 \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 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 joint 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

■ 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 \$1.109 billion. Intermediate small bank means a small bank with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

\* \* \* \* \*

**Department of the Treasury**

*Office of Thrift Supervision*

**12 CFR Chapter V**

■ For the reasons discussed in the joint preamble, 12 CFR part 563e is amended as follows:

**PART 563e—COMMUNITY REINVESTMENT**

■ 1. The authority citation for part 563e continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2907.

■ 2. Revise § 563e.12(u)(1) to read as follows:

**§ 563e.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 \$1.109 billion. *Intermediate small savings association* means a small savings association with assets of at least \$277 million as of December 31 of both of the prior two calendar years and less than \$1.109 billion as of December 31 of either of the prior two calendar years.

\* \* \* \* \*

Dated: December 16, 2008.

**Julie L. Williams,**

*First Senior Deputy Comptroller and Chief Counsel.*

By order of the Board of Governors of the Federal Reserve System.

Dated: December 16, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of December, 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

Dated: December 11, 2008.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. E8-30433 Filed 12-19-08; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P; 6720-01-P**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 327**

**RIN 3064-AD35**

**Risk Based Assessments**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is amending our regulations to increase risk-based assessment rates effective for the first quarter 2009 assessment period. This is in accordance with the Restoration plan for the DIF published on October 16, 2008, in the **Federal Register**.

**DATES:** The final rule will become effective on January 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Matthew Green, Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898-3670; and Christopher Bellotto, Counsel, Legal Division, (202) 898-3801.

**SUPPLEMENTARY INFORMATION:**

**I. Background: Restoration Plan and Proposed Rule**

Recent failures of FDIC-insured institutions caused the reserve ratio of the Deposit Insurance Fund (DIF) to decline from 1.19 percent as of March 30, 2008, to 1.01 percent as of June 30 and 0.76 percent as of September 30. The FDIC expects a higher rate of institution failures in the next few years compared to recent years, leading to a further decline in the reserve ratio. Because the fund reserve ratio fell below 1.15 percent as of June 30 and was expected to remain below 1.15 percent, the Reform Act required the FDIC to establish and implement a Restoration Plan to restore the reserve ratio to at least 1.15 percent within five years.

On October 7, 2008, the FDIC established a Restoration Plan for the DIF, published on October 16 (see 73 FR 61598). In the FDIC's view, restoring the reserve ratio to at least 1.15 percent within five years requires an increase in

assessment rates. Since the current rates are already three basis points above the existing base rate schedule, a new rulemaking was required. Consequently, the FDIC Board of Directors adopted, also on October 7, 2008, a notice of proposed rulemaking with request for comments on revisions to the FDIC's assessment regulations (12 CFR part 327).<sup>1</sup> The rulemaking proposed that, effective January 1, 2009, current assessment rates would increase uniformly by 7 basis points for the first quarter 2009 assessment period. Effective April 1, 2009, the rulemaking proposed to alter the way in which the FDIC's risk-based assessment system differentiates for risk and set new deposit insurance assessment rates. Also effective on April 1, 2009, the proposal would make technical and other changes to the rules governing the risk-based assessment system. The proposed rule was published concurrently with the Restoration Plan on October 16, 2008 (see 73 FR 61560), with a comment period scheduled to end on November 17, 2008.

On November 7, 2008, the FDIC Board approved an extension of the comment period until December 17, 2008, on the parts of the proposed rulemaking that would become effective on April 1, 2009. The comment period for the proposed 7 basis point rate increase for the first quarter of 2009, with its separate proposed effective date of January 1, 2009, was not extended and expired on November 17, 2008.

This final rule will implement a uniform increase to current rates for the first quarter 2009 assessment period only. The FDIC will issue another final rule early in 2009, to be effective April 1, 2009, to change the way that the FDIC's assessment system differentiates for risk, to set new assessment rates beginning with the second quarter of 2009, and make certain technical and other changes to the assessment rules.

**II. The Final Rule: Assessment Rate Schedule for the First Quarter of 2009**

The final rule raises the current rates uniformly by 7 basis points for the quarterly assessment period beginning January 1, 2009 only. The higher assessments would be reflected in the fund balance as of March 31, 2009, and collected on June 30, 2009. Rates for the first quarter of 2009 are shown in Table 1 as follows:

<sup>1</sup> At the same meeting, the Board set the Designated Reserve Ratio of the DIF at 1.25 percent for 2009.