

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

**[Docket ID OCC-2010-10]**

**[RIN 1557-AD34]**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 228**

**[Docket No. R-1387]**

**[RIN 7100-AD50]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 345**

**[RIN 3064-AD60]**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 563e**

**[Docket ID OTS-2010-0017]**

**[RIN 1550-AC42]**

## **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:** Notice of proposed rulemaking.

**SUMMARY:** The OCC, the Board, the FDIC, and the OTS (collectively, “the agencies”) are issuing this proposed rule to revise provisions of our rules implementing the Community Reinvestment Act (CRA). The agencies propose to revise the term “community development” to include loans, investments, and services by financial institutions that support, enable, or facilitate projects or activities that meet the criteria described in Section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA) and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development (HUD) under the Neighborhood Stabilization Program, established pursuant to the HERA and the American Recovery and Reinvestment Act of 2009. The proposed rule would provide favorable CRA consideration to such activities that, pursuant to the requirements of the program, benefit low-, moderate-, and middle-income individuals and geographies in designated target areas. Such consideration would include covered activities within an institution’s assessment area(s) and outside of its assessment area(s), as long as the institution has adequately addressed the community development needs of its assessment area(s). As proposed, favorable consideration under the new rule would only be available until no later than two years after the last date appropriated funds for the program are required to be spent by the grantees. The agencies will provide reasonable advance

notice to institutions in the Federal Register regarding termination of the rule once a date certain has been identified.

**DATES:** Comments must be received by: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** Comments should be directed to:

Because paper mail in the Washington, DC area and at the agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Community Reinvestment Act Regulation” to facilitate the organization and distribution of the comments.

OCC: You may submit comments by any of the following methods:

- **Federal eRulemaking Portal – “Regulations.gov”:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2010-10” to submit or view public comments and to view supporting and related materials for this proposed rulemaking. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- **E-mail:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- **Fax:** (202) 874-5274.
- **Hand Delivery/Courier:** 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket Number OCC-2010-10” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rule by any of the following methods:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>, under the “More Search Options” tab click next to the “Advanced Document Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2010-10” to view public comments for this proposed rulemaking action.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons,

the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

- **Docket:** You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R-1387, by any of the following methods:

- **Agency Web Site:** <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/Regs.cfm>.
- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.
- **FAX:** 202/452-3819 or 202/452-3102.
- **Mail:** Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at [www.federalreserve.gov/generalinfo/foia/Regs.cfm](http://www.federalreserve.gov/generalinfo/foia/Regs.cfm) as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically

or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC:** You may submit comments, identified by RIN 3064-AD60 by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal.html>. Follow instructions for submitting comments on the Agency Web site.
- **E-mail:** [Comments@FDIC.gov](mailto:Comments@FDIC.gov). Include the RIN number in the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW., Washington, DC 20429.
- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

**Instructions:** All submissions received must include the agency name and RIN number.

All comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal.html>, including any personal information provided.

**OTS:** You may submit comments identified by OTS-2010-0017, by any of the following methods:

- **Federal eRulemaking Portal-“Regulations.gov”:** Go to <http://www.regulations.gov>, and follow the instructions for submitting or viewing public comments.

- **Mail:** Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS-2010-0017.
- **Fax:** (202) 906-6518.
- **Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS-2010-0017.
- **Instructions:** All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- **Viewing Comments Electronically:** Go to <http://www.regulations.gov> and follow the instructions for reading comments.
- **Viewing Comments On-Site:** You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906-6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Michael S. Bylsma, Director, or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750; Greg Nagel or Brian Borkowicz, National Bank Examiner, Compliance Policy, (202) 874-4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Paul J. Robin, Manager, Reserve Bank Oversight and Policy, (202) 452-3140; or Jamie Z. Goodson, 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: Janet Gordon, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898-3850 or Richard Schwartz, Counsel, Legal Division, (202) 898-7424; Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, NW., Washington, DC 20429.

OTS: Stephanie M. Caputo, Senior Compliance Program Analyst, Compliance and Consumer Protection, (202) 906-6549; 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**

The Community Reinvestment Act (CRA) requires the federal banking and thrift regulatory agencies to assess the record of each insured depository institution in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the institution, and to take



that record into account when the agency evaluates an application by the institution for a deposit facility.<sup>1</sup> The agencies have promulgated substantially similar regulations to implement the requirements of the CRA.<sup>2</sup>

### **Regulatory Revision**

Today, there is a pressing need to provide housing-related assistance to stabilize communities affected by high levels of foreclosures. High levels of foreclosures have devastated communities and are projected to continue into 2012 and beyond with damaging spillover effects for low- and moderate-income census tracts, as well as middle-income census tracts affected by high levels of loan delinquencies and foreclosures. Among the many consequences of high levels of foreclosures are growing inventories of vacant foreclosed properties and institution “other real estate owned” (OREO) properties, depreciating home values, declining property tax bases, and destabilization of communities directly affected by high levels of foreclosures and of adjacent and surrounding neighborhoods.

### **Neighborhood Stabilization Program (NSP)**

Congress recognized the need to provide emergency assistance to address these problems with the establishment of the Neighborhood Stabilization Program (NSP) through Division B, Title III, of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289 (2008). Under HERA, emergency funds (“NSP1”), totaling nearly \$4 billion, for the redevelopment of abandoned and foreclosed properties were distributed to States and localities with the greatest need for such funds according to a formula based on the number and percentage of home foreclosures, the number and

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<sup>1</sup> 12 U.S.C. 2903.

<sup>2</sup> See 12 CFR parts 25, 228, 345, and 563e.

percentage of homes financed by a subprime mortgage-related loan, and the number and percentage of homes in default or delinquency in each State or unit of general local government. Under NSP1, each of the 50 states and Puerto Rico received a minimum award of \$19.6 million and 254 local areas received grants totaling \$1.86 billion ranging from \$2.0 million to \$62.2 million.<sup>3</sup>

Using similar criteria, the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5 (2009), provided supplementary NSP funding (“NSP2”) to be awarded as grants, through a competitive bidding process, to State and local governments as well as to non-profit organizations and consortia of non-profit entities. On January 14, 2010, HUD awarded a combined total of nearly \$2 billion in NSP2 grants.<sup>4</sup> To receive NSP funding, each grantee was required to submit an action plan or application, including any amendments thereto, to HUD according to specific alternative requirements set out by HUD in 2008 and 2009.<sup>5</sup>

Section 2301(c)(3) of HERA establishes five activities that are “eligible uses” of NSP funds (for purposes of this proposed rule, designated as “NSP-eligible activities”). NSP-eligible activities are projects or activities that use the NSP funds to: (1) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared equity loans for low- and moderate-income homebuyers; (2) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed

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<sup>3</sup> See *Neighborhood Stabilization Grants*, <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp1.cfm>.

<sup>4</sup> See *Neighborhood Stabilization Program 2*, <http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/arrafactsheet.cfm>.

<sup>5</sup> 74 FR 21377 (May 7, 2009); 73 FR 58330 (Oct. 6, 2008).

upon, in order to sell, rent, or redevelop such homes and properties; (3) establish and operate land banks for homes and residential properties that have been foreclosed upon; (4) demolish blighted structures; and (5) redevelop demolished or vacant properties.<sup>6</sup> In addition, Section 2301(f)(3)(A) of HERA provides that all NSP funds must be used with respect to individuals and families whose income does not exceed 120 percent of the area median income and not less than 25% of funds must be used for the purchase and redevelopment of abandoned or foreclosed homes and residential properties that will be used to house individuals and families whose incomes do not exceed 50 percent of area median income.

### **Revision of “Community Development” under CRA**

The definition of “community development” is a key definition in the agencies’ CRA regulations. Financial institutions receive positive consideration in their CRA examinations for community development loans, qualified investments, and community development services, all of which must have a primary purpose of “community development.”

The agencies are proposing to revise the interagency CRA regulations by adding to the definition of “community development” loans, investments, and services that support, enable, or facilitate NSP-eligible activities in designated target areas identified in plans approved by HUD under the NSP. For example, under the proposed revised definition of “community development,” a financial institution would receive favorable CRA consideration for a donation of OREO properties to non-profit housing organizations in eligible middle-income, as well as low- and moderate-income,

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<sup>6</sup> NSP2 funds for redevelopment of demolished or vacant properties may only be used for housing.

geographies. In addition, institutions would receive favorable CRA consideration if they provide financing for the purchase and rehabilitation of foreclosed, abandoned, or vacant properties. Other examples of activities that would receive favorable CRA consideration under the proposal include loans, investments, and services that support the redevelopment of demolished or vacant properties in such areas, consistent with eligible uses for NSP funds.

Allowing institutions to receive CRA consideration for NSP-eligible activities in NSP-targeted areas creates an opportunity to leverage government funding targeted to areas with high foreclosure or vacancy rates. HUD approves NSP action plans and applications, including amendments thereto (hereinafter referred to as “NSP plans” or “plans”), for all NSP grantees. These public documents must designate “areas of greatest need” for targeting NSP-eligible activities, consistent with statutory criteria. Therefore, the agencies propose to provide institutions CRA consideration for supporting NSP-eligible activities, subject to the requirements in Section 2301(c)(3) and the limitations set forth in Section 2301(d)(1)-(3) of HERA, in the geographies identified under these HUD-approved NSP plans. The vast majority of NSP-targeted areas will be listed on a database located on HUD’s website at: <http://www.hud.gov/nspmaps>. However, there may be a few NSP-targeted geographies in HUD-approved State NSP1 plans that are not identified in the HUD census tract database. Information about these targeted areas may be found in the individual plans.

Although the CRA rules expressly encourage activities that benefit low- or moderate-income individuals or geographies, the agencies have created limited exceptions to cover certain exigencies that may include middle-income individuals and

geographies.<sup>7</sup> The agencies believe that the purposes of CRA can be served by providing CRA incentives to institutions to engage in community development loans, investments and services that meet the narrowly tailored requirements of the NSP. First, HUD has stated that its funding of these programs was designed to satisfy Congressional intent that the funds have maximum impact and be targeted to States and local communities with the greatest needs.<sup>8</sup> In addition, while, by its statutory terms, the NSP may include some middle-income individuals, the program must use 25 percent of its funds on low-income individuals and may, in some cases, cover higher percentages of low- and moderate-income individuals.

Under the current CRA rules, an institution is evaluated primarily on how it helps meet the credit and community development needs of its CRA assessment area(s). However, the agencies note that many foreclosed properties owned by an institution may be located in areas that are outside of the institution's CRA assessment area(s). Restricting CRA consideration of NSP-eligible activities to an institution's assessment area(s) may not fully help to promote Congress's objectives for the NSP. Therefore, the proposed rule provides that an institution that has adequately addressed the community development needs of its assessment area(s) may receive favorable consideration for NSP-eligible activities under this provision that are outside of its assessment area(s).

There is precedent for allowing greater flexibility concerning the CRA focus on assessment area(s) in certain temporary and exigent circumstances. For example, in 2006, the agencies issued a supervisory policy statement providing that an institution

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<sup>7</sup> 70 FR 44256 (Aug. 2, 2005), and 71 FR 18614 (Apr. 12, 2006).

<sup>8</sup> See HUD, NSP Frequently Asked Questions, [http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp\\_faq\\_formula\\_allocation.pdf](http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/nsp_faq_formula_allocation.pdf).

would receive favorable CRA consideration for engaging in activities that helped revitalize or stabilize areas affected by Hurricanes Katrina and Rita, even if such areas were not in the institution's assessment area(s), provided the institution had adequately met the CRA-related needs of its assessment area(s).

Finally, the agencies intend for this proposed rule to be generally tied to the duration of the NSP. The NSP does not have a "sunset" date. Under NSP1, grantees must expend NSP funds within four years of the date the grant is awarded. Under NSP2, grantees have three years from that date to fully spend the grant, and HUD was required to obligate all funds appropriated for NSP2 in February 2010. As noted above, the NSP does not have a termination date and Congress could appropriate additional funds for the program. Therefore, a specific termination date for the regulatory provision has not been chosen. Instead, the proposed rule provides that NSP-eligible activities would receive favorable consideration under the new rule if conducted no later than two years after the last date appropriated funds for the program are required to be spent by the grantees. The agencies will provide reasonable advance notice to institutions in the Federal Register regarding termination of the rule once a date certain has been identified.

The proposed rule imposes no new requirements on institutions. It simply expands the categories of activities that qualify for CRA considerations as "community development." No institution will be required to provide loans, investments, or services pursuant to the proposed expanded definition. In addition, any community development loans that are made by large institutions under the proposed new provision would be covered under existing loan reporting requirements. As such, no new reporting requirements and negligible, if any, administrative costs will result from the proposed

rule. The agencies anticipate that the proposal, if finalized, would provide an incentive for institutions to engage in activities that stabilize foreclosure affected communities approved for NSP projects and, thus, will create an opportunity to leverage government funded projects with complementary private financing in areas targeted for assistance. The likely benefits of the proposed rule are of uncertain magnitude, however, because they cannot be quantified at this time.

### **Request for Comments**

The agencies request comment on all aspects of the proposed rule, and particularly seek comment on:

- Whether the agencies should specify a date certain for the rule to “sunset” and, if so, what that date should be;
- Whether CRA consideration should be limited to those NSP-eligible activities reflected in HUD-approved NSP plans or to activities undertaken by financial institutions that support activities that have been funded by the NSP;
- Recognition of NSP-eligible activities outside of an institution’s assessment area(s);
- The potential costs and benefits of the proposed rule if adopted; and
- Whether and the extent to which the proposed rule if adopted will affect an institution’s decisions about the amount and type of community development loans, investments, and services it will provide or the geographies it will target in doing so.

In addition, smaller financial institutions are invited to comment on whether any aspects of the proposed rule should be modified to address any implementation issues unique to their lines of business or to provide additional flexibility.

## **Regulatory Analysis**

### Request for Comments Regarding the Use of “Plain Language.”

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, sec. 722, 133 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically invite your comments on how to make this proposed rule easier to understand. For example,

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements clearly stated? If not, how could the regulations be more clearly stated?
- Do the regulations contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make them easier to understand?
- What else could we do to make the regulations easier to understand?

## **Regulatory Analysis**

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR 1320 Appendix A.1), each agency reviewed its proposed rule and determined that there are no collections of information. The proposed rule would expand the types of activities that qualify for CRA consideration, if an institution chooses to engage in them,



but it would not impose any new requirements, including paperwork requirements. The overall cost of this proposed rule is expected to be negligible, at most. The amendments could have a negligible effect on burden estimates for existing information collections, including recordkeeping requirements for community development loans.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires agencies that are issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.<sup>9</sup> The RFA provides that agencies are not required to prepare and publish an initial regulatory flexibility act analysis if the agencies certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.<sup>10</sup> The Small Business Administration (SBA) has defined “small entities” for banking purposes as a bank or savings association with \$175 million or less in assets.<sup>11</sup> 13 CFR 121.201. Each agency has reviewed the impact of this proposed rule on the small entities subject to its regulation and supervision and certifies that it will not have a significant economic impact on a substantial number of the small entities that it regulates and supervises.

OCC: The OCC has reviewed the proposed amendments to Part 25. The proposed rule would expand the definition of the term “community development,” which is applied in the CRA regulations’ performance tests. However, the proposed rule does not impose new requirements on small entities because the CRA performance test for

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<sup>9</sup> See 5 U.S.C. 603(a).

<sup>10</sup> See 5 U.S.C. 605(b).

<sup>11</sup> A financial institution’s assets are determined by averaging the assets reported on its four immediately preceding full quarterly financial statements.

small entities (as defined above) does not require community development activities. Rather, the proposed rule reduces burden by expanding the types of community development activities for which institutions may receive CRA consideration. Only 617 national banks are small entities based on the SBA's general principles of affiliation (13 CFR 121.103(a)) and the size threshold for commercial banks and trust companies. The OCC reviewed national banks with assets of less than \$175 million that are evaluated under the lending, investment, and service tests, which are normally applicable to large banks, the community development test, which is applicable to wholesale and limited purpose banks, and the community development performance factor applicable to intermediate small banks. As of March 31, 2010, only 17 of the 617 national banks that are small entities would be required to engage in community development activities under these examination types. The rest would be evaluated under the small bank examination procedures, which do not require consideration of community development activities. Therefore, the OCC has determined that the proposal does not affect a substantial number of small entities.

OTS: The OTS has reviewed the proposed amendments to Part 563e. The proposed rule would expand the definition of the term "community development," which is applied in the CRA regulations' performance tests. However, the proposed rule does not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not include evaluation of community development activities. Rather, the proposed rule reduces burden by expanding the types of community development activities for which institutions may receive CRA consideration. The Small Business Administration (SBA) has defined "small entities" for banking

purposes as a savings association with \$175 million or less in assets. See 13 CFR 121.201. As of March 31, 2010, only 369 OTS-regulated thrifts are small entities with assets of \$175 million or less. However, also as of that date, only two of those small savings associations are wholesale or limited purpose savings associations whose community development activities would be evaluated as part of the CRA examination process. Therefore, the OTS has determined that the proposal does not affect a substantial number of small entities.

FDIC: The FDIC has reviewed the proposed amendments to Part 345. The proposal does not impose new requirements on small entities because the CRA performance test for small entities (as defined above) does not require community development activities. Rather, the proposed rule reduces burden by expanding the types of community development activities for which institutions may receive CRA consideration. As of March 31, 2010, FDIC regulated entities under the SBA's size criteria, with assets of less than \$175 million, totaled 2872. However, also as of that date, only 3 of those banks that are small entities would be required to engage in community development activities under the examination types that include such consideration. Therefore, the FDIC has determined that the proposal does not affect a substantial number of small entities.

Board: In accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Board has reviewed the proposed amendments to Regulation BB. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period. The Small Business Administration (SBA) has defined "small entities" for banking purposes as a banking organization with \$175

million or less in assets. See 13 CFR 121.201. The Board invites comment on the effect of the proposed rule on small entities.

1. Description of rule. The proposed rule expands the definition of the term “community development,” which is applied in the CRA regulations’ performance tests. However, it does not impose new requirements on small entities because the CRA performance test for small entities does not require community development activities. Rather, the proposed rule expands the types of community development activities for which institutions may receive CRA consideration.
2. Reasons for agency action and statement of the objectives/ legal basis for the proposal. As explained above in the supplementary information, the Board believes that it is desirable to expand CRA eligibility to include NSP-eligible activities and areas in order provide financial institutions incentives to leverage NSP funding by providing loans, investments, and services in areas with high foreclosure or vacancy rates. The legal basis of the proposed rule is in CRA Section 806, 12 U.S.C. 2905.
3. Small entities affected by proposal. As of December 2009, the Board supervised 403 banking organizations that meet the definition of small entities, all of which are subject to the proposed rule.
4. Other federal rules. The Board is not aware of any other Federal rules which may duplicate, overlap or conflict with the proposed rule.
5. Significant alternatives to the proposed revisions. Given that the proposed rule does not require institutions to fund NSP-eligible activities and reduces burdens

and restrictions on CRA funding in general, the Board does not believe any other alternatives would accomplish the stated objectives while minimizing burden of the proposed rule. The Board welcomes comment on any significant alternatives that would minimize the impact of the proposal on small entities.

#### OCC Executive Order 12866 Consideration

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated the proposed rule to be significant. It has not yet been determined whether the proposal would have an annual effect on the economy of \$100 million or more. OCC solicits comment on the likely increase in lending and costs incurred by banks as a result of this proposed rule. For the final rule, OCC will conduct additional analysis based on information provided by commenters or otherwise obtained during the comment period.

#### OTS Executive Order 12866 Consideration

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated the proposed rule to be significant. It has not yet been determined whether the proposal would have an annual effect on the economy of \$100 million or more. OTS solicits comment on the likely increase in lending and costs incurred by savings associations as a result of this proposed rule. For the final rule, OTS will conduct additional analysis based on information provided by commenters or otherwise obtained during the comment period.

#### OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that covered agencies prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires covered agencies to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and the OTS have determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, neither agency has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

The Treasury and General Government Appropriations Act, 1999 – Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. 105-277 (5 U.S.C. 601 note).

OCC and OTS Executive Order 13132 Determination

The OCC and the OTS have each determined that its portion of this proposed 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**

Authority and Issuance

For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency proposes to amend part 25 of chapter I of title 12 of the Code of Federal Regulations 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. In § 25.12:

- a. Remove the word “or” at the end of paragraph (g)(3);
- b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and
- c. Add a new paragraph (g)(5).

The revision reads as follows:

**§ 25.12 Definitions.**

\* \* \* \* \*

(g) Community development means:

\* \* \* \* \*

- (5) Loans, investments, and services that –
  - (i) Support, enable or facilitate projects or activities that meet the criteria described in Section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP) established by the HERA and the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115;
  - (ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and



(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank’s assessment area(s) or areas outside the bank’s assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

## **Federal Reserve System**

### **12 CFR Chapter II**

#### Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Governors of the Federal Reserve System proposes to amend 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. In § 228.12:

a. Remove the word “or” at the end of paragraph (g)(3);

b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and

c. Add a new paragraph (g)(5).

The revision and addition read as follows:

#### **§ 228.12 Definitions.**

\* \* \* \* \*

(g) Community development means:

\* \* \* \* \*

(5) Loans, investments, and services that –

(i) Support, enable or facilitate projects or activities that meet the criteria described in Section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP) established by the HERA and the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115;

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank's assessment area(s) or areas outside the bank's assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

## **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 proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations 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, 1819-1920, 1828, 1831u and 2901-2907, 3103-3104, and 3108(a).

2. In § 345.12:

a. Remove the word “or” at the end of paragraph (g)(3);

b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and

c. Add a new paragraph (g)(5).

The revision and addition read as follows:

**§ 345.12 Definitions.**

\* \* \* \* \*

(g) Community development means:

\* \* \* \* \*

(5) Loans, investments, and services that –

(i) Support, enable or facilitate projects or activities that meet the criteria described in Section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP) established by the HERA and the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115;

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the bank’s assessment area(s) or areas outside the bank’s assessment area(s) provided the bank has adequately addressed the community development needs of its assessment area(s).

**Office of Thrift Supervision**

**12 CFR Chapter V**

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations 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. In § 563e.12:

- a. Remove the word “or” at the end of paragraph (g)(3);
- b. Remove the period at the end of paragraph (g)(4)(iii)(B) and replace it with “; or”; and
- c. Add a new paragraph (g)(5).

The revision and addition read as follows:

**§ 563e.12 Definitions.**

\* \* \* \* \*

(g) Community development means:

\* \* \* \* \*

(5) Loans, investments, and services that –

(i) Support, enable or facilitate projects or activities that meet the criteria described in Section 2301(c)(3) of the Housing and Economic Recovery Act of 2008 (HERA), Pub. L. 110-289, 122 Stat. 2654, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP) established by the HERA and the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115;

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the savings association's assessment area(s) or areas outside the savings association's assessment area(s) provided the savings association has adequately addressed the community development needs of its assessment area(s).

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF  
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT  
ACT REGULATIONS.”]**

Dated: \_\_\_\_\_, 2010.

\_\_\_\_\_  
**John C. Dugan,**

Comptroller of the Currency.

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF  
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT  
ACT REGULATIONS.”]**

By order of the Board of Governors of the Federal Reserve System, June 15, 2010.

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**Jennifer J. Johnson**  
Secretary of the Board.

**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF  
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT  
ACT REGULATIONS.”]**

Dated at Washington, D.C., this        day of        , 2010.

FEDERAL DEPOSIT INSURANCE CORPORATION

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**Robert E. Feldman,**

Executive Secretary.

(SEAL)



**[THIS SIGNATURE PAGE PERTAINS TO THE JOINT NOTICE OF  
PROPOSED RULEMAKING ENTITLED “COMMUNITY REINVESTMENT  
ACT REGULATIONS.”]**

Dated:

By the Office of Thrift Supervision.

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**John E. Bowman,**  
Acting Director.

**BILLING CODES:**

OCC: 4810-33-P (25%)  
Board: 6210-01-P (25%)  
FDIC: 6714-01-P (25%)  
OTS: 6720-01-P (25%)