

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 25**

**[Docket No. 04-17]**

**RIN 1557-AC86**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 228**

**[Regulation BB; Docket No. R-1205]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 345**

**RIN 3064-AC82**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 563e**

**[No. 2004-28]**

**RIN 1550-AB91**

## **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 interim rule with request for comment.

**SUMMARY:** The OCC, Board, FDIC and OTS (collectively, “we” or “the agencies”) are publishing this joint interim rule with request for comment to conform our regulations implementing the Community Reinvestment Act (CRA) to changes in: the Standards for Defining Metropolitan and Micropolitan Statistical Areas published by the U.S. Office of Management and Budget (OMB) in December 2000; census tracts designated by the U.S. Bureau of the Census (Census); and the Board’s Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). We are also making a technical correction to a cross-reference within our CRA regulations.

This joint interim rule does not make substantive changes in the requirements of the CRA regulations. We are publishing this document as a joint interim rule because the changes made by OMB, Census, and the Board have already become effective. Further, financial institutions must use OMB’s statistical area standards, Census’ geographies, and the Board’s Regulation C, when adjusting assessment area delineations and collecting CRA loan data, beginning January 1, 2004.

**DATES:** This joint interim rule is effective on July 8, 2004. Comments are due by September 7, 2004.

**ADDRESSES: OCC: Comments:** Your comment must designate “OCC” and include Docket Number 04-17 or Regulatory Information Number (RIN) 1557-AC86. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. Because paper mail in the Washington area and at the OCC may be subject to delays, please submit your comment by e-mail or fax whenever possible. However, you may submit your comment by any of the following methods:

**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

**OCC Web Site:** <http://www.occ.treas.gov>. Click on “Contact the OCC.” Next, scroll down and click on “Comments on Proposed Regulations.”

**E-mail Address:** [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

**Fax:** (202) 874-4448.

**Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1-5, Washington, DC 20219.

**Hand Delivery/Courier:** 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

**Docket Information:** For access to the docket to read comments received or background documents you may:

**View Docket Information in Person:** You may personally inspect and photocopy docket information at the OCC’s Public Information Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the docket by calling us at (202) 874-5043.

**View docket information electronically:** You may request that we send you an electronic copy of docket information via e-mail or CD-ROM by contacting [regs.comments@occ.treas.gov](mailto:regs.comments@occ.treas.gov).

**Request copies:** You may request that we send you a paper copy of docket information by faxing us at (202) 874-4448, by calling us at (202) 874-5043, or by mailing the OCC at 250 E Street, SW., Attn: Public Information Room, Mail Stop 1-5, Washington, DC 20219.

*Board:* You may submit comments, identified by Docket No. R-1205, 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/ProposedRegs.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/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, except as necessary 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, NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FDIC: Mail:** Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**Delivery:** Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

**Agency Web Site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow instructions for submitting comment on the agency Web site.

**E-mail:** You may also electronically mail comments to [comments@fdic.gov](mailto:comments@fdic.gov).

**Public Inspection:** Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC 20429, between 9:00 a.m. and 4:30 p.m. on business days.

**OTS:** You may submit comments, identified by No. 2004-28, by any of the following methods:

**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

**E-mail:** [regs.comments@ots.treas.gov](mailto:regs.comments@ots.treas.gov). Please include No. 2004-28 in the subject line of the message and include your name and telephone number in the message.

**Fax:** (202) 906-6518.

**Mail:** Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004-28.

**Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004-28.

**Instructions:** All submissions received must include the agency name and number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, 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) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 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: Karen Tucker, National Bank Examiner, Compliance Division, (202) 874-4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874-5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* William T. Coffey, Senior Review Examiner, (202) 452-3946; Catherine M.J. Gates, Oversight Team Leader, (202) 452-3946; Kathleen C. Ryan, Counsel, (202) 452-3667; or Dan S. Sokolov, Senior Attorney, (202) 452-2412, Division of Consumer and Community Affairs,

Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

*FDIC*: Pamela Freeman, Policy Analyst, (202) 898-6568, Division of Supervision and Consumer Protection; 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, Project Manager, Compliance Policy, (202) 906-7990; Theresa A. Stark, Program Manager, Compliance Policy, (202) 906-7054; or Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906-7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

## **SUPPLEMENTARY INFORMATION:**

### **Introduction**

The agencies jointly are amending our regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This joint interim rule conforms the agencies' CRA regulations to recent actions of OMB, Census, and the Board. (This joint interim rulemaking is unrelated to the agencies' comprehensive review of the CRA regulations and the proposed revisions to the regulations that were published for comment on February 6, 2004, at 69 FR 5729.)

### **Changes Resulting from OMB Revisions**

The OMB's standards for defining statistical areas provide nationally consistent definitions for government agencies to use when collecting, tabulating, and publishing Federal statistics by geographic area. OMB updates the standards approximately every 10 years.

The agencies' CRA regulations use OMB's standards for defining metropolitan areas for purposes of CRA data collection and reporting, and for delineating institutions' assessment area(s). Under OMB's 1990 standards, metropolitan areas consisted of: (1) metropolitan

statistical areas (MSAs) and (2) larger consolidated metropolitan statistical areas (CMSAs). CMSAs consisted, in turn, of primary metropolitan statistical areas (PMSAs).

On December 27, 2000, OMB published in the *Federal Register* a notice adopting new Standards for Defining Metropolitan and Micropolitan Statistical Areas. 65 FR 82228 (Dec. 27, 2000). These new standards replaced and superseded OMB's 1990 standards for defining metropolitan areas. The 2000 standards retain the basic concept of an MSA (an area with at least 50,000 population) and continue to recognize that in large MSAs, demographic and economic conditions vary widely. According to OMB, those variations necessitate dividing large MSAs into "metropolitan divisions," smaller statistical areas similar to PMSAs.<sup>1</sup> Metropolitan divisions are only in MSAs that have a single core with a population of at least 2.5 million.

More than two years later, in June 2003, OMB announced the specific boundaries of the new MSAs, metropolitan divisions, and other statistical areas based on data from the 2000 Census. OMB Bulletin No. 03-04 (June 6, 2003), *available at* <http://www.whitehouse.gov/omb/bulletins/b03-04.html>. OMB updated the list of MSAs and other statistical areas effective December 2003, in a bulletin issued in February 2004. OMB Bulletin No. 04-03 (February 18, 2004) *available at* <http://www.whitehouse.gov/omb/bulletins/b04-03.html>. In these bulletins, OMB directed all agencies that conduct statistical activities to collect and publish data for MSAs using the most recent definition of the area. To that end, the agencies have made a number of changes to the CRA regulations, which until now have conformed to OMB's 1990 statistical area standards, to incorporate OMB's new standards and definitions.

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<sup>1</sup> "The provision of data for only the entire metropolitan area based on such large urbanized areas may mask demographic and economic variations that are important for data users and analysts." Final Report and Recommendations from the Metropolitan Areas Standards Review Committee to OMB Concerning Changes to the Standards for Defining Metropolitan Areas, 65 FR 51060, 51067 (Aug. 22, 2000).

First, we removed the definition of “CMSA” and all references to CMSAs in our regulations because OMB no longer uses that term. We replaced “CMSA” with “MSA.”

Second, we revised the definition of “MSA” (§§ 25.12(r), 228.12(r), 345.12(r), and 563e.12(q)) to remove the reference to PMSA, another term that OMB no longer uses. The revised definition of “MSA” refers only to metropolitan statistical areas, as defined by OMB.

Third, we added a definition of “metropolitan division” (new §§ 25.12(q), 228.12(q), 345.12(q), and 563e.12(p)). In certain MSAs, OMB has delineated “metropolitan divisions” which are the statistical areas for which CRA data are to be reported, median family income is to be calculated, and within which an institution’s CRA performance is to be evaluated. These uses of the metropolitan divisions are consistent with the use of OMB’s 1990 standards in our CRA regulations in effect prior to this joint interim rule: institutions reported the location of loans by PMSA if the loan was located in a CMSA; the agencies evaluated the institution’s performance at the PMSA level; and the agencies calculated median family income by PMSA, not by CMSA. Focusing on performance at the metropolitan division level also is consistent with OMB’s recent direction to federal agencies to provide detailed data for each metropolitan division, in explanation of which OMB noted that “[a] Metropolitan Division is most generally comparable in concept, and equivalent to, the now obsolete Primary Metropolitan Statistical Area.” OMB Bulletin 04-03.

The agencies are aware that in some MSAs, OMB’s new designations of metropolitan divisions will result in the income level of census tracts changing without any actual change in the economic conditions of the area. Based on estimated data, the agencies believe that in most MSAs, any such changes will be de minimus. For example, many MSAs show negligible change in the median family income levels of census tracts. On the other hand, in the Detroit-Warren-

Livonia MSA, changes in census tract income level may be significant; the application of OMB's 2000 standards resulted in two metropolitan divisions, one consisting of Wayne county, which includes the inner city, and one consisting of the suburban counties that surround Wayne county. A number of geographies in the suburban metropolitan division that previously were classified as middle-income are now moderate-income, while in the urban metropolitan division (Wayne county), a similar number of moderate-income geographies are now middle-income. Examiners will consider these differences and the effect they may have on an institution's CRA performance as part of the performance context applicable to the institution's CRA examination and in connection with the institution's delineation of assessment area(s).

Fourth, we changed our regulations (§§ 25.41, 228.41, 345.41, and 563e.41) to allow an institution to designate an assessment area that includes one or more metropolitan divisions, just as an institution until now could designate an assessment area that includes one or more PMSAs. Under this joint interim rule, an institution may designate one or more metropolitan divisions, up to an entire MSA, as an assessment area.

Although the agencies' regulations prior to publication of this joint interim rule allowed an institution to delineate an entire CMSA as an assessment area, examiners have evaluated CRA performance at the PMSA level, using PMSA income data. Under this joint interim rule, examiners will evaluate CRA performance at the metropolitan division level, even if the institution delineates an assessment area of more than one metropolitan division or an entire MSA.

Fifth, prior to this joint interim rule, §§ 25.41(e)(4), 228.41(e)(4), 345.41(e)(4), and 563e.41(e)(4) stated that an assessment area "may not extend substantially beyond a CMSA boundary ...." We have changed these provisions to replace "CMSA" with "MSA." These

changes conform the terminology in this section to the new OMB area standards. The regulations still allow an institution to delineate an assessment area consisting of more than one MSA. *See* §§ 21.41(c)(1), 228.41(c)(1), 345.41(c)(1), and 563e.41(c)(1). The border of such an assessment area, however, may not extend substantially beyond the boundaries of the MSAs in the assessment area.

Sixth, we added a new definition of “nonmetropolitan area,” which is any area that is not included in an MSA (new §§ 25.12(s), 228.12(s), 345.12(s), and 563e.12(r)). This definition will encompass areas covered by the new OMB term “micropolitan statistical area.” Because micropolitan statistical areas are not located in MSAs, they are part of the nonmetropolitan area of a state. In a related matter, the agency-prepared annual aggregate disclosure statements will continue to include a statement for the non-MSA portion of every state, which will include all micropolitan statistical areas in the state. We changed the reference to “non-MSA portion of each state” in §§ 25.42(i), 228.42(i), 345.42(i), and 563e.42(i) to “nonmetropolitan portion of each state” to ensure clarity.

### **Changes Resulting from Census Revisions**

Prior to this joint interim rule, the CRA regulations (former §§ 25.12(l), 228.12(l), 345.12(l), and 563e.12(k)) defined the term “geography” as “a census tract or a block numbering area delineated by the United States Bureau of the Census in the most recent decennial census.” Prior to Census 2000, a “block numbering area” was a statistical subdivision created for grouping and numbering blocks within a county for which census tracts had not been established. Beginning with Census 2000, the Bureau of Census assigned census tracts in all counties, making block numbering areas unnecessary. *See, e.g.,* U.S. Census Bureau, Geographic Terms and Concepts (definition of “census tract”) *available at*

<http://www.census.gov/geo/www/tiger/glossry2.html#CensusTract>. As a result, we changed our definition of “geography” to omit the term “block numbering area” (§§ 25.12(k), 228.12(k), 345.12(k), and 563e.12(j)).

The definition of “geography” affects assessment area delineation and data collection and reporting. First, when delineating an assessment area, a financial institution must include only whole geographies. Second, data about small business, small farm, community development, and consumer loans include loan location, which is the geography (census tract) in which the loan or borrower is located.

### **Changes Resulting from Revisions to the Board’s Regulation C**

Prior to this joint interim rule, the CRA regulations defined a “home mortgage loan” to mean a “home improvement loan” or a “home purchase loan” as defined in 12 CFR 203.2. The interagency CRA guidance that we published clarified that this definition of “home mortgage loan” also includes refinancings of home improvement and home purchase loans. See 66 FR 36620, 36628 (July 12, 2001) (question 1 addressing §§ \_\_.12(m) & 563e.12(l)).

The Board substantially revised Regulation C (12 CFR 203) in 2002, effective January 1, 2004. 67 FR 7222 (Feb. 15, 2002). Before these revisions, a lender could choose among four standards to determine which refinancings to report; two of the standards considered the purpose of the loan being refinanced. The revised Regulation C replaced this approach with a definition of “refinancing” that applies uniformly, namely, a loan is reportable as a refinancing if an obligation satisfies and replaces another obligation, and both the existing obligation and the new obligation are secured by a lien on a dwelling. 12 CFR 203.2(k). Under this definition, the purpose of the loan being refinanced is not considered. Furthermore, if the obligation meets the definition of a “refinancing” under the revised Regulation C, then it is reportable even if it is not

a “refinancing” under Regulation Z requiring new disclosures. See 12 CFR 226.20(a). As a result of the revisions to Regulation C, we changed the definition of “home mortgage loan” in the CRA regulations to include refinancings, as well as home purchase loans and home improvement loans, as defined in 12 CFR 203.2.

In some cases, the new definition of “home mortgage loan” could lead to “double counting” of certain loans because refinancings reported under HMDA and evaluated under CRA may also be reported as refinancings of small business or small farm loans under CRA. The definition of “small business loan” under the CRA regulations incorporates the Consolidated Report of Condition and Income (Call Report) or Thrift Financial Report (TFR) definition of “loans to small businesses.” See §§ 25.12(u), 228.12(u), 345.12(u), and 563e.12(t). The Call Report and TFR instructions exclude from this category loans secured by residential real estate. See Schedule RC-C, part II, Loans to Small Businesses and Small Farms; Schedule RC-C, part I, item 1.e.; Schedule RC-C, part I, item 4 (list of exclusions); *see also* TFR Schedule SB. However, a loan secured by real estate nonetheless is considered not secured by real estate for purposes of the Call Report instructions if the security interest is taken “solely through an abundance of caution and where the terms as a consequence have not been made more favorable than they would have been in the absence of the lien.” See Call Report Glossary definition of “Loan Secured by Real Estate.” Thrifts, on the other hand, have the option of reporting such loans as small business loans or home mortgage loans. See TFR Instructions and Schedule SB.

Under this standard, a financial institution could report a loan secured by a dwelling as a small business loan. If such a loan were to a small business, as “loan to small business” is defined in the Call Report and TFR instructions, the institution would report the loan, for CRA purposes, as a small business loan. A refinancing of such a loan, moreover, would be reported

for CRA purposes as a refinancing of a small business loan. If the refinancing is secured by a dwelling and it satisfies or replaces another loan that was secured by a dwelling, the refinancing would also be reported as a refinancing of a mortgage loan under HMDA and, therefore, also considered as a “home mortgage loan” in the institution’s CRA evaluation.

Similarly, some refinancings of small farm loans that are reported as small farm loans on Schedule RC-C, part II of the Call Report and TFR Schedule SB and, thus, are included as small farm loans for CRA data reporting purposes, are also reported as refinancings under HMDA and captured as home mortgage loans for CRA evaluation purposes. Schedule RC-C, part II and TFR Schedule SB require reporting of “loans secured by farmland (including farm residential and other improvements)” and “loans to finance agricultural production and other loans to farms” that have original amounts of \$500,000 or less. Loans in either category could be secured by a dwelling, either primarily as part of the farmland, in the first category, or through an abundance of caution, in the second category. Institutions would report refinancings of such loans on the Call Report and the TFR as loans to small farms and also under HMDA as refinancings.

We do not anticipate that loans counted as both “small business/small farm loans” and “home mortgage loans” will be so numerous as to affect the typical institution’s CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business or farm loans, examiners will consider that overlap in evaluating the institution’s performance.

#### **Technical Correction**

We also have corrected an error in the cross-reference found in §§ 25.27(g)(1), 228.27(g)(1), 345.27(g)(1), and 563e.27(g)(1). Those provisions, which address the time for an

agency's decision following receipt of a completed strategic plan, previously referred the reader to paragraph (d) of §§ 25.27, 228.27, 345.27, or 563e.27, respectively, for a description of the materials that had to be included with a strategic plan submission. This information is found instead in paragraph (e) of §§ 25.27, 228.27, 345.27, or 563e.27. Therefore, we corrected the cross-references in §§ 25.27(g)(1), 228.27(g)(1), 345.27(g)(1), and 563e.27(g)(1) to refer to paragraph (e) of §§ 25.27, 228.27, 345.27, and 563e.27, respectively.

### **Timing and Comments**

This joint interim rule is effective immediately. Institutions must be aware of these changes when designating their assessment areas and collecting CRA performance data for calendar year 2004, which must be reported by March 1, 2005. Financial institutions and others who wish to express their views about the appropriateness of these changes are encouraged to send comments to the agencies. We will consider the comments and, if appropriate, address them when we adopt this joint interim rule as a final rule.

### **Effective Date**

The Administrative Procedure Act provides that, subject to several exceptions, a substantive rule may not be made effective until 30 days after publication in the *Federal Register*. 5 U.S.C. 553(d). However, an agency may make a rule immediately effective upon publication if the agency finds good cause for doing so and publishes its findings with the rule. Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103-325, authorizes a banking agency to issue a rule to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

This joint interim rule takes effect immediately. The agencies find good cause to dispense with the 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The agencies also have determined that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 102 of the CDRI (12 U.S.C. 4802(b)(1)). As discussed more fully earlier in this preamble, the changes adopted in this joint interim rule merely conform our CRA regulations to recent changes by OMB, Census, and the Board. These changes are not substantive; the technical correction merely corrects a cross-reference. Financial institutions must use the new statistical area standards and definitions when adjusting assessment area delineations and collecting loan data during calendar year 2004 (beginning with loans made as of January 1, 2004) for reporting by March 1, 2005. Therefore, this joint interim rule must take effect immediately upon publication in the *Federal Register* in order to eliminate potential confusion for financial institutions attempting to comply with their 2004 data collection requirements. For the foregoing reasons, the agencies have determined that it is unnecessary and contrary to public interest to delay the effective date of this joint interim rule.

### **Regulatory Analysis**

#### *Paperwork Reduction Act*

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

#### *Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the OCC, Board, FDIC, and OTS hereby certify that this joint interim rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this joint interim rule will not have significant secondary or incidental effects on a substantial number of

small entities, or create any additional burden on small entities. This joint interim rule merely makes a technical correction and conforms terminology in the current CRA regulations with terms and definitions already adopted by OMB, Census, and the Board. Accordingly, a regulatory flexibility analysis is not required.

*OCC and OTS Executive Order 12866 Determination*

The OCC and the OTS have determined that this joint interim rule is not a significant regulatory action as defined in Executive Order 12866.

*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 joint interim 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 joint interim 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).

*Solicitation of Comments Regarding the Use of “Plain Language”*

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the agencies to use “plain language” in all proposed and final rules published after January 1, 2000. We invite comments on whether this joint interim rule is stated clearly and effectively organized, and how we might make the regulatory text easier to read.

*OCC Executive Order 13132 Determination*

The OCC has determined that this joint interim 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, part 25 of chapter I of title 12 of the Code of Federal Regulations 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. In § 25.12:

- a. Revise paragraph (b)(1);
- b. Remove paragraph (g);
- c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);
- d. Revise newly redesignated paragraphs (k) and (l);
- e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);
- f. Add a new paragraph (q);
- g. Revise paragraph (r);
- h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and
- i. Add a new paragraph (s) to read as follows:

**§ 25.12 Definitions.**

\* \* \* \* \*

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

\* \* \* \* \*

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a “home improvement loan,” “home purchase loan,” or a “refinancing” as defined in § 203.2 of this title.

\* \* \* \* \*

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

\* \* \* \* \*

3. Amend § 25.27(g)(1) by removing the term “paragraph (d)” and adding in its place the term “paragraph (e)”.

4. In § 25.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

**§ 25.41 Assessment area delineation.**

\* \* \* \* \*

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) \* \* \*

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

\* \* \* \* \*

5. In § 25.42, revise paragraph (i) to read as follows:

**§ 25.42 Data collection, reporting, and disclosure.**

\* \* \* \* \*

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 228, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

\* \* \* \* \*

**Board of Governors of the Federal Reserve System**

**12 CFR CHAPTER II**

*Authority and Issuance*

For the reasons discussed in the joint preamble, part 228 of chapter II of title 12 of the Code of Federal Regulations is amended 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. Revise paragraph (b)(1);

b. Remove paragraph (g);

c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);

d. Revise newly redesignated paragraphs (k) and (l);

e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);

f. Add a new paragraph (q);

g. Revise paragraph (r);

h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and

i. Add a new paragraph (s) to read as follows:

**§ 228.12 Definitions.**

\* \* \* \* \*

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

\* \* \* \* \*

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a “home improvement loan,” “home purchase loan,” or a “refinancing” as defined in § 203.2 of this title.

\* \* \* \* \*

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

\* \* \* \* \*

3. Amend § 228.27(g)(1) by removing the term “paragraph (d)” and adding in its place the term “paragraph (e)”.

4. In § 228.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

**§ 228.41 Assessment area delineation.**

\* \* \* \* \*

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) \* \* \*

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

\* \* \* \* \*

5. In § 228.42, revise paragraph (i) to read as follows:

**§ 228.42 Data collection, reporting, and disclosure.**

\* \* \* \* \*

(i) *Aggregate disclosure statements.* The Board, in conjunction with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 345, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the Board may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

\* \* \* \* \*

**Federal Deposit Insurance Corporation**

**12 CFR CHAPTER III**

*Authority and Issuance*

For the reasons discussed in the joint preamble, the Board of Directors of the FDIC 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. In § 345.12:

- a. Revise paragraph (b)(1);
- b. Remove paragraph (g);
- c. Redesignate paragraphs (h), (i), (j), (k), (l), and (m) as paragraphs (g), (h), (i), (j), (k), and (l);
- d. Revise newly redesignated paragraphs (k) and (l);
- e. Redesignate paragraphs (n), (o), (p), and (q) as paragraphs (m), (n), (o), and (p);
- f. Add a new paragraph (q);
- g. Revise paragraph (r);
- h. Redesignate paragraphs (s), (t), (u), (v), and (w) as (t), (u), (v), (w), and (x); and
- i. Add a new paragraph (s) to read as follows:

**§ 345.12 Definitions.**

\* \* \* \* \*

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

\* \* \* \* \*

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a “home improvement loan,” “home purchase loan,” or a “refinancing” as defined in § 203.2 of this title.

\* \* \* \* \*

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

\* \* \* \* \*

3. Amend § 345.27(g)(1) by removing the term “paragraph (d)” and adding in its place the term “paragraph (e)”.

4. In § 345.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

**§ 345.41 Assessment area delineation.**

\* \* \* \* \*

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) \* \* \*

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

\* \* \* \* \*

5. In § 345.42, revise paragraph (i) to read as follows:

**§ 345.42 Data collection, reporting, and disclosure.**

\* \* \* \* \*

(i) *Aggregate disclosure statements.* The FDIC, in conjunction with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 563e of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the FDIC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

\* \* \* \* \*

**Department of the Treasury**

**Office of Thrift Supervision**

**12 CFR CHAPTER V**

*Authority and Issuance*

For the reasons discussed in the joint preamble, part 563e of chapter V of title 12 of the Code of Federal Regulations 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. In § 563e.12:

a. Revise paragraph (b)(1);

b. Remove paragraph (f);

c. Redesignate paragraphs (g), (h), (i), (j), (k), and (l) as paragraphs (f), (g), (h), (i), (j), and (k);

d. Revise newly redesignated paragraphs (j) and (k);

e. Redesignate paragraphs (m), (n), (o), and (p) as paragraphs (l), (m), (n), and (o);

f. Add a new paragraph (p);

g. Revise paragraph (q);

h. Redesignate paragraphs (r), (s), (t), (u), and (v) as (s), (t), (u), (v), and (w); and

i. Add a new paragraph (r) to read as follows:

**§ 563e.12 Definitions.**

\* \* \* \* \*

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

\* \* \* \* \*

(j) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(k) *Home mortgage loan* means a “home improvement loan,” “home purchase loan,” or a “refinancing” as defined in § 203.2 of this title.

\* \* \* \* \*

(p) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(q) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(r) *Nonmetropolitan area* means any area that is not located in an MSA.

\* \* \* \* \*

3. Amend § 563e.27(g)(1) by removing the term “paragraph (d)” and adding in its place the term “paragraph (e)”.

4. In § 563e.41, revise paragraphs (b), (c)(1) and (e)(4) to read as follows:

**§ 563e.41 Assessment area delineation.**

\* \* \* \* \*

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) \* \* \*

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

\* \* \* \* \*

5. In § 563e.42, revise paragraph (i) to read as follows:

**§ 563e.42 Data collection, reporting, and disclosure.**

\* \* \* \* \*

(i) *Aggregate disclosure statements.* The OTS, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OTS may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

\* \* \* \* \*

Dated: \_\_\_\_\_.

\_\_\_\_\_  
/signed/  
John D. Hawke, Jr.,  
Comptroller of the Currency.

