DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket ID OCC-2010-0014]

RIN 1557-AD24

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-1360]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

[RIN 3064-AD45]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[Docket ID OTS-2010-XXXX]

[RIN 1550-AC35]

Community Reinvestment Act Regulations

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

ACTION: Joint final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (collectively, "the Agencies") are issuing this joint final rule, which revises our rules implementing the Community Reinvestment Act (CRA). The rule implements the statutory requirement that the Agencies consider low-cost education loans provided by the financial institution to low-income borrowers, as a factor, when assessing an institution's record of meeting community credit needs. The final rule also incorporates the statutory provision that allows the Agencies to consider capital investment, loan participation, and other ventures undertaken by nonminority-owned and nonwomen-owned financial institutions in cooperation with minority- and women-owned financial institutions and low-income credit unions, as a factor, when assessing an institution's CRA record.

EFFECTIVE DATE: [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]**.

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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 (hereinafter, "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.[1] The Agencies have promulgated substantially similar regulations to implement the requirements of the CRA.[2]

Notice of Proposed Rulemaking

[1] 12 U.S.C. 2903.
[2] See 12 CFR parts 25 (OCC), 228 (Board), 345 (FDIC), and 563e (OTS).

On June 30, 2009, the Agencies published a joint notice of proposed rulemaking that would incorporate two statutory requirements into the CRA regulations.[3] The first revision would implement section 1031 of the Higher Education Opportunity Act, Pub. Law 110-315, 122 Stat. 3078 (August 14, 2008) (the "HEOA"), which amended the CRA. This provision requires the Agencies to consider low-cost education loans provided by the institution to low-income borrowers as a factor when evaluating an institution's record of meeting community credit needs. 12 U.S.C. 2903(d). The second revision would incorporate 12 U.S.C. 2903(b), which allows the Agencies to consider and take into account nonminority- and nonwomen-owned financial institutions' activities in connection with minority- and women-owned financial institutions and low-income credit unions.

Twenty-four different commenters provided their views to the Agencies on the proposed revisions. The commenters represented financial institutions, financial institution trade organizations, community or consumer organizations, and others.

Low-Cost Education Loans to Low-Income Borrowers

Background and General Comments

Under existing CRA regulations, education loans are evaluated as consumer loans.[4] An institution's consumer lending must be evaluated if consumer lending makes up a substantial majority of an institution's business. Institutions that do not meet this criterion may choose to have consumer loans evaluated when the institution's CRA record is being examined. Institutions must collect and maintain data about consumer

[3] 74 FR 31209 (Jun. 30, 2009).

[4] "Consumer loan" is defined in the CRA regulations as a loan to one or more individuals for household, family, or other personal expenditures. Consumer loans include the following categories of loans: motor vehicle loans, credit card loans, home equity loans, other secured consumer loans, and other unsecured consumer loans. 12 CFR 25.12(j), 228.12(j), 345.12(j), and 563e.12(j).

loans if they choose to have those loans evaluated.[5] Like other consumer loans, institutions' education loans are generally evaluated by total number and amount; borrower characteristics (i.e., distribution among borrowers of different income levels); geographic distribution (i.e., distribution among borrowers in geographies with different income levels and whether the loans are made to borrowers in the institution's assessment areas); and, for large retail institutions, whether the education loan program is innovative or flexible in addressing the credit needs of low- or moderate-income individuals or geographies.[6] This revised rule does not change the eligibility of education loans to be treated as consumer loans. Rather, the revised rule amends the general performance rules in 12 CFR 25.21, 228.21, 345.21, and 563e.21 to implement the requirements of section 1031 of the HEOA. If an institution's education loans do not qualify for CRA consideration under section 1031 of the HEOA and this implementing rule, the institution continues to be able to receive consideration under existing standards applicable to consumer loans.

Section 1031 of the HEOA revised the CRA to require the Agencies to consider low-cost education loans provided by the institution to low-income borrowers as a factor when evaluating an institution's record of meeting community credit needs.[7] The legislative history indicates that the provision was intended to provide incentives for lenders to provide low-cost education loans to low-income borrowers.[8]

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[5] See 12 CFR 25.22(a)(1) and 25.42(c); 12 CFR 228.22(a)(1) and 228.42(c); 12 CFR 345.12(a)(1) and 345.42(c); and 12 CFR 563e.22(a)(1) and 563e.42(c).
[6] See, e.g., 12 CFR 25.22 and 25.26; 228.22 and 228.26, 345.22 and 345.26, and 563e.22 and 563.26.
[7] 12 U.S.C. 2903(d).
[8] H.R. Rep. No. 110-500 at 297 (2007). See also Private Student Lending: Hearing before the Senate Comm. on Banking, Housing, and Urban Affairs, 110th Cong. (2007) (comment by Sen. Dodd: "It strikes me that we should be promoting, of course, incentives for lenders to provide the neediest students with good loans, loans, in my mind, that are similar in rate and fee structure to those under the federal loan

Consistent with the supplemental information accompanying the proposed rule, under the final rule as implemented by the Agencies, institutions will receive favorable qualitative consideration for originating "low-cost education loans to low-income borrowers" as a factor in the institutions' overall CRA rating. Such loans would be considered responsive to the credit needs of the institutions' communities.[9]

The Proposal

The Agencies proposed to consider low-cost education loans provided by the institution to borrowers in its assessment area(s) who have an individual income that is less than 50 percent of the area median income. Further, the Agencies proposed to define "low-cost education loans" to mean (1) education loans originated by an institution through a U.S. Department of Education loan program; or (2) any private education loan as defined in the Truth in Lending Act, including loans under a state or local education loan program, originated by an institution for a student at an "institution of higher education," with interest rates and fees no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

Under the first prong of the proposed definition, any loans that institutions make through a Department of Education loan program, such as the Federal Family Education Loan (FFEL) Program, would be considered "low-cost education loans."

Under the second prong of the proposed definition, "private education loans" that institutions make would be considered "low-cost education loans," provided that the interest rates and fees are no greater than those of comparable education loans offered through loan programs of the U.S. Department of Education.

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program.") (transcript available through CQ Congressional Transcripts, Congressional Hearings, Jun. 6, 2007).

[9] 74 FR at 31214.

The Agencies also proposed a conforming amendment to Appendix A of the regulations to include consideration of a financial institution's low-cost education loans to low-income borrowers as a factor when assigning a rating to the institution.

The Agencies asked for comment on a number of areas related to the proposed definition.

General Comment about Education Lending by Financial Institutions

Several commenters noted that education lending, particularly private education lending, is a specialized type of lending engaged in by only a few financial institutions. These commenters requested that the Agencies expressly state that the final rule does not require institutions to make low-cost education loans, or, for that matter, education loans generally. The Agencies agree that the intent of the revision is to encourage, but not to require, financial institutions to make low-cost education loans to low-income borrowers and provide an incentive to do so.

Scope of "Education loans"

Education Loans – The Proposal

The HEOA amendment to the CRA specifies that the Agencies must consider low-cost "education loans" to low-income borrowers.[10] The Agencies proposed to define education loans as including loans originated by financial institutions through a program of the U.S. Department of Education. The Agencies also proposed to define education loans to include low-cost private education loans, including loans under State or local education loan programs.

As discussed in the preamble to the proposed rule, in defining private education loans, the Agencies proposed to adopt the terms "private education loan," "private

[10] 12 U.S.C. 2903(d) (as added by section 1031 of the HEOA).

educational lender," and "postsecondary educational expenses," each of which is defined in the HEOA in the context of the Truth in Lending Act (TILA). Section 1011 of the HEOA added section 140 of TILA to provide the following definition:

[T]he term "private education loan"—

(A) Means a loan provided by a private educational lender that—

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

(ii) Is issued expressly for postsecondary educational expenses to a borrower, regardless of whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) Does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.[11]

In turn, the HEOA defines a "private educational lender" to include, among others, any financial institution that solicits, makes, or extends private education loans.[12]

The HEOA defines "postsecondary educational expenses" to mean any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll). That definition includes tuition and fees, books, supplies, miscellaneous personal expenses, room and

[11] Section 140(a)(7) of the Truth in Lending Act, as added by section 1011 of the HEOA.
[12] Section 140(a)(6)(A) of the Truth in Lending Act, as added by section 1011 of the HEOA.

board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.[13]

Although section 1031 of the HEOA is not expressly limited to loans for higher education, the Agencies proposed to include this limitation in the definition of low-cost private education loans. Thus, the Agencies proposed that the private education loan definition would encompass loans made for expenses incurred at any "institution of higher education" as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1001 and 1002. Such institutions generally include accredited public or nonprofit colleges and vocational schools, accredited private colleges and vocational schools, and certain foreign institutions offering postsecondary education that are comparable to institutions of higher education in the United States based on standards approved by the U.S. Department of Education. The Agencies did not propose to cover unaccredited colleges, universities, or vocational schools because they lacked sufficient information regarding these institutions, but solicited comment on this issue.

Based on these definitions and considerations, under the proposed rule, financial institutions would receive CRA consideration for making private (non-Federal) closed-end education loans, not secured by real property or a dwelling, for post-secondary educational expenses at an institution of higher education. They would also receive consideration for making education loans through a program of the U.S. Department of Education.

Comments and Final Rule

[13] See 20 U.S.C. 1087ll (definition of "cost of attendance").

As discussed above, the Agencies proposed to define education loans as including loans originated by financial institutions through a program of the U.S. Department of Education, such as the Federal Family Education Loan (FFEL) Program. As of July 1, 2010, no new loans may be made or insured under the FFEL program, and no new funds may be appropriated or expended to make or insure such loans.[14] Thus, the final rule does not include in the definition of education loans any reference to the FFEL program.

The proposed definition of "private education loan" included only loans made for post-secondary (beyond high school) educational expenses, not for primary or elementary education. The Agencies sought comment on whether coverage should be limited in this manner. Most commenters who addressed the issue, including financial institutions, trade associations, and community groups, supported the Agencies' proposal to limit the definition of private education loans to loans made for post-secondary education expenses. These commenters agreed that the amendment to the CRA statute should be viewed in light of the HEOA's overall purpose of promoting post-secondary education affordability. One trade association supported the proposal, but encouraged the Agencies to consider expanding the scope at a later time to include vocational and career training.[15] One financial institution suggested that coverage should be as broad as possible and should include all types of education, including primary and secondary education.

The final rule covers only loans made for higher education expenses, not for primary or secondary education expenses. As the preamble to the proposed rule explained, the statutory requirement to consider education loans under the CRA was

[14] Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010).
[15] The Agencies note, however, that many such institutions are covered under the definition of "institution of higher education" discussed below, and loans to their students could qualify for CRA consideration under this provision if other applicable criteria are met.

adopted as a part of the HEOA, which specifically addresses higher education reform. The purpose of H.R. 4137, which introduced the incentive of CRA consideration for low-cost education loans was "to make college more affordable and accessible;" to "expand college access and support for low-income and minority students;" and to provide incentives for lenders to provide "low-cost private student loans to low-income borrowers."[16]

Higher Education Institutions – The Proposal

In defining the types of higher education institutions covered, the Agencies proposed to include "institutions of higher education" as defined in sections 101 and 102 of the HEA, 20 U.S.C. 1001-1002. The Agencies requested comment on whether the scope of the definition should be narrowed to encompass only loans made for education expenses at an "institution of higher education" as that term is defined for general purposes in section 101 of the HEA, 20 U.S.C. 1001, which is limited generally to accredited public and nonprofit colleges, universities, and employment training schools in the United States.[17] The Agencies also requested comment on whether, alternatively, the scope of the educational institutions covered should be expanded to include unaccredited institutions that would not meet the definition of "institution of higher education" under the HEA but would be covered by the definition of "covered educational institution" under TILA section 140(a)(1).

Comments and Final Rule

[16] H.R. Rep. No. 110–500 at 203, 297 (2007) (emphasis added).
[17] If the Agencies were to restrict the definition of "institution of higher education" to only those institutions defined in section 101 of the HEA, loans to cover educational expenses at for-profit institutions of higher education, some post-secondary vocational institutions that provide training to prepare students for employment in a recognized occupation, and some U.S. Department of Education-approved institutions located outside the United States would not qualify for consideration.

Commenters generally opposed using the narrower definition of "institution of higher education" found in section 101 of the HEA because it would exclude some institutions providing vocational and career training. The Agencies agree that, consistent with the HEOA's purpose, eligible schools should include the broad range of accredited institutions under the definition of "institution of higher education," including accredited vocational institutions that provide educational programs that prepare students for gainful employment in a recognized profession.

Community group commenters opposed expanding coverage to include unaccredited institutions, citing a concern about providing CRA credit for student loans to finance inadequate, unaccredited training programs. Financial institution and trade group commenters were split. Those who supported the proposal expressed similar concerns that degrees from unaccredited institutions may not be acceptable for certain positions such as federal or state civil service positions or other employment. One commenter did, however, request that the Agencies publish a list of accredited programs.[18] By contrast, commenters who supported expanding coverage to include unaccredited institutions encouraged the Agencies to provide maximum flexibility to financial institutions to provide a wide range of education loans.

The Agencies are adopting the scope of higher education institutions as proposed. As noted above, the Agencies believe that the broader definition of "institution of higher education," including accredited vocational institutions, provides flexibility to financial

[18] The Agencies note that the U.S. Department of Education provides a database of post-secondary educational institutions and programs that are, or were, accredited by an accrediting agency or state approval agency recognized by the Secretary of Education as a "reliable authority as to the quality of postsecondary education" within the meaning of the HEA at http://ope.ed.gov/accreditation. The Department of Education recommends that the database be used as one source of qualitative information and that additional sources of qualitative information be consulted.

institutions, while limiting the definition to accredited institutions will help ensure that such programs benefit students. The Agencies will consider, as a factor, low-cost education loans to low-income borrowers to attend institutions of higher education, as defined in sections 101 and 102 of the HEA, 20 U.S.C. 1001-1002, when evaluating a financial institution under the CRA.

Private Education Loans – The Proposal

As discussed above, the Agencies proposed to consider low-cost private education loans made to low-income borrowers, as well as loans provided to low-income borrowers by a financial institution under a Federal education program. The Agencies requested comment on whether private education loans not made, insured, or guaranteed under a Federal, state, or local education program should be considered for CRA purposes.

Comments and Final Rule

Although one commenter stated that private education loans should not be considered because a private loan to a student may not guarantee that the funds are used for education, many commenters strongly believed that private loans should be considered. In fact, several commenters noted that if then pending legislation in Congress were passed, private lenders would no longer be involved in Department of Education loan programs.[19]

These commenters noted that many students and families are unable to cover the full cost of an education relying only on government programs and may need to pursue other types of funding to complete their education. Consequently, these commenters encouraged the Agencies to allow CRA consideration for non-governmental low-cost private education loans. The Agencies note that the HEOA's purpose was, in significant

[19] H.R. 3221, 111th Cong., 1st Sess. (2009).

part, to provide an incentive to financial institutions to provide low-cost private education loans to low-income borrowers not currently served by education loan programs.

The Agencies also considered whether CRA consideration is necessary for loans made by financial institutions under the Federal education programs. Federal program education loans generally subjected an institution to little or no risk and, therefore, already provided an incentive to lenders. However, because as of July 1, 2010, financial institutions may no longer originate education loans under the Federal program,[20] the final rule does not provide for CRA consideration of such loans under § 1031 of HEOA. However, if an institution has made education loans under the Federal program, it would be able to receive consideration for those loans under existing standards applicable to consumer loans.

State or Local Government-Sponsored Education Loans – The Proposal

The Agencies proposed to treat education loans offered to low-income borrowers under state or local government education programs the same as all other private education loans, consistent with the definition of "private education loans" in section 140(a)(7) of the Truth in Lending Act, which includes education loans made by financial institutions under local and state education loan programs. The Agencies asked whether all education loans offered to low-income borrowers under state or local education programs, regardless of whether the fees and rates are greater than those under comparable Department of Education programs, should be eligible for CRA consideration.

Comments and Final Rule

[20] Title II, Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010).

Only three commenters addressed this question. One commenter advised that the Agencies should use consistent measures among all private education loan programs, without favoring state and local programs. A second commenter believed that rates and fees on loans made by an institution under state or local education programs would not have to be exactly the same, but should be reasonably comparable to rates and fees on loans made under the Department of Education programs. The third commenter believed that all education loans offered to low-income borrowers and families under state or local programs, regardless of whether the rates and fees are comparable to those under Department of Education programs, should be eligible for CRA consideration.

After a review of the comments, the Agencies have adopted the language in the provision regarding state or local education programs as proposed. The Agencies are not aware of any state or local education loan programs that are targeted or available to low-income students in which costs are limited in a manner similar to the Federal direct loan program, and for which an alternative definition of "low-cost" might be appropriate.

Types of Loans – The Proposal

The proposed definition of a private education loan was limited to closed-end loans not secured by real property or a dwelling originated by a financial institution.

Comments and Final Rule

Community group commenters supported limiting coverage in this manner noting a concern about using a home as collateral for an education loan. One financial institution commenter also supported the proposed limitation, noting that there may be operational difficulties determining whether a dwelling-secured loan was used for educational expenses. By contrast, other financial institution and trade group

commenters encouraged the Agencies to broaden the scope of the private education loan definition to include open-end or dwelling-secured credit, noting that consumers use these types of credit to fund educational expenses. These commenters requested that the Agencies provide flexibility to financial institutions by including such types of credit.

The definition of education loan in the final rule incorporates the TILA definition of that term, which excludes open-end credit and credit secured by real property or a dwelling. As discussed more fully below, the HEOA amended both the CRA to provide an incentive for financial institutions to make low-cost education loans and TILA to provide for new disclosures and additional consumer protections for private education loans. The Agencies believe that in order for financial institutions to receive consideration under the CRA for an education loan, it is appropriate that such loans also be covered by the new disclosures and other substantive restrictions added to TILA by the HEOA. Therefore the Agencies are adopting the definition of private education loan as used in section 140(a)(7) of TILA.

Some community group commenters suggested that the Agencies place further conditions on the types of loans that could be eligible for CRA consideration. For example, commenters suggested that the Agencies provide consideration only for loans that meet a standard of affordability and provide certain consumer protections such as income-based repayment plans, fixed interest rates, and no prepayment penalties.

The final rule does not impose additional restrictions on education loans for purposes of CRA consideration because the Agencies have limited the types of loans eligible for CRA consideration to those covered under the new TILA protections in the HEOA. For example, the HEOA requires that consumers receive disclosures regarding

private education loans that explain the terms and costs of those loans on or with an application, after the consumer is approved for the loan, and before funds are disbursed. The disclosures also provide consumers with information about federal student loan alternatives where applicable. Consumers are provided 30 days after a private education loan is approved in which to accept the offer and the lender is prohibited, with few exceptions, from making changes to the rate or terms of the loan during that time. Consumers are also provided with three days in which to cancel a loan after receiving the final TILA disclosure.[21] In addition, the HEOA places restrictions on private education loan terms and on private educational lenders. For example, the HEOA specifically prohibits prepayment penalties for private education loans. The HEOA also amended TILA to prohibit practices such as revenue sharing and co-branding between private educational lenders and educational institutions.[22]

The Agencies also requested comment on whether to limit consideration to loans originated by the financial institution, as proposed, or to consider loans purchased by the institution. Community group commenters opposed providing consideration for purchased loans, stating a concern that purchasing loans does not significantly expand the capacity of financial institutions to offer additional loans. By contrast, financial institution commenters supported allowing consideration for purchased loans, consistent with other types of CRA-eligible loans.

The final rule limits consideration to low-cost education loans originated by the financial institution, and not to purchased loans. As discussed above, the Agencies believe that the intent of the HEOA amendment to the CRA was to provide an incentive

[21] Section 128(e) of the Truth in Lending Act, as added by section 1021 of the HEOA.
[22] Section 140(e) of the Truth in Lending Act, as added by section 1011 of the HEOA.

to financial institutions to originate loans to low-income borrowers currently not reached by most private loan programs. The Agencies believe that providing consideration only for loans originated by the financial institution provides an incentive to financial institutions to develop education loan programs that are tailored to the specific need targeted by the statutory amendment.

"Low-cost education loans"

The Proposal

The Agencies proposed to define "low-cost education loans" as education loans that are originated by financial institutions through a program of the U.S. Department of Education; or any private education loans, including loans under state or local education loan programs, originated by financial institutions with interest rates and fees no greater than those of comparable education loan programs offered by the U.S. Department of Education.

The proposal would have looked to guaranteed education loans provided by financial institutions through the U.S. Department of Education's Federal Family Education Loan Program (FFEL loans) as being the comparable education loan program.

Comments and Final Rule

The Agencies asked whether the proposed definition of the term "low-cost education loans" is appropriate and, if not, how the Agencies should define "low-cost education loans." Commenters representing community organizations generally agreed with the proposed definition that private education loans receiving CRA consideration should have interest rates and fees no greater than comparable loans offered through the Department of Education. In fact, the same commenters stated that, to maintain

consistency with the purpose of the HEOA to make college affordable, the lowest rates and fees should be used.

Although commenters representing financial institutions and their trade organizations generally agreed that loans made by financial institutions under Department of Education programs should be considered low-cost, they raised concerns about requiring the rates and fees on private education loans to be comparable to the rates and fees applicable to Department of Education loans. In particular, they noted the substantial differences between loans made by financial institutions under Department of Education programs and private education loans in terms of risks, costs, and pricing. For example, commenters noted that FFEL education loans have a 97 percent guarantee against default and that a lender's yield is not tied to the fixed interest rate paid by the borrower, but rather is based on a separate formula set in statute. By contrast, private education loans generally have a variable rate determined by an index, such as Prime or one- or three-month LIBOR, and a margin, which typically varies depending on a borrower's creditworthiness. In addition, the lender assumes all of the risk of default on a private education loan.

Several of the commenters representing financial institutions or their trade groups suggested that the Agencies should develop a formula, based on an index and a margin, to define low-cost, variable rate private education loans. Commenters suggested one-month or three-month LIBOR or Prime as possible rates to use as an index. Margin suggestions varied from three to eight percent. Commenters also suggested that upfront fees of up to four percent would be appropriate.

The Agencies also asked how to determine whether a private education loan is comparable to a Department of Education loan and whether the lowest or highest rate and fees available under the comparable Department of Education program should be used to determine whether a private education loan is low cost. Although few commenters addressed these questions, the views of the commenters that did respond were mixed. Commenters suggested both that it is necessary to use the lowest rates and fees, as well as that the higher rate should serve as the maximum permissible rate for private loans. Industry commenters reasserted that it is not appropriate to evaluate whether a private education loan is "low-cost" based on rates and fees applicable to federal education loans.

The Agencies have considered these comments carefully. The Agencies considered various options with regard to a definition of a "low-cost" private education loan that could address these concerns. For example, the Agencies considered whether a low-cost private education loan should be defined with a rate that is 100 to 300 basis points over a Federal loan rate. However, we did not receive comments that identified a standard benchmark, margin, or number of basis points to be used as an alternative formula for "low cost."

After consideration of the comments and recent changes in the law described above, the Agencies have revised the rule to refer solely to the Federal direct loan program of the U.S. Department of Education as the benchmark for "low cost" education loans.

To determine whether education loans have rates and terms that are no greater than the rates and terms on loans made under the Federal direct loan program, education loans will be compared with comparable direct loans. For example, fixed-rate loans will

be compared to fixed-rate Federal loans, variable-rate loans will be compared to variable-rate Federal loans, loans to students will be compared to Federal loans to students, and loans to parents will be compared to Federal loans to parents. The Agencies note that most education loans originated by financial institutions have a variable rate.

The direct loan program formally called the William D. Ford Federal Direct Loan Program is the program against which the rates and fees of private education loans must be compared.[23] The rates and fees that have been allowed under the FFEL program, which the preamble of the proposal explained was a "comparable U.S. Department of Education program," are statutorily specified and are very similar to the rates and fees charged to borrowers under the William D. Ford Direct Loan Program, which are also statutorily prescribed. The fixed rates under the Federal direct loan program that the agencies will use as benchmarks are the rates for unsubsidized direct Stafford loans for students and direct PLUS loans for parents.[24]

Although variable-rate loans are no longer available under the Department of Education programs, the Department of Education publishes rates annually for those variable-rate education loans that remain outstanding. The rate is based on 91-day Treasury bills plus a statutory percentage margin.[25]

Origination fees are allowed for Federal direct loans. Financial institutions may use the fee percentages for Federal loans to students and parents, as appropriate, as benchmarks.

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[23] *See* 20 U.S.C. 1087e.
[24] *See* http://studentaid.ed.gov/PORTALSWebApp/students/english/studentloans.jsp; http://studentaid.ed.gov/PORTALSWebApp/students/english/parentloans.jsp.
[25] 20 U.S.C. 1087e(b)(6). See also U.S. Department of Education, "FFEL and Direct Loan Interest Rates Effective July 1, 2009," available at http://studentaid.ed.gov/PORTALSWebApp/students/english/FFEL_DL_InterestRates.jsp.

Although the Agencies are adopting a definition of "low-cost education loan" that is generally similar to the proposal, if the Agencies find that the rules as adopted have not acted as an incentive to financial institutions' providing low-cost education loans to low-income borrowers, the Agencies may reconsider these provisions.

"Low-income borrower"

The Proposal

Under the proposed regulation, the term "low-income" had the same meaning as that term is defined in the existing CRA rule: an individual income less than 50 percent of area median income. In the preamble to the proposed regulation, the Agencies clarified that, if an institution considers the income of more than one person in connection with an education loan, the gross annual incomes of all primary obligors on the loan, including co-borrowers and co-signers, would be combined to determine whether the borrowers are "low-income."[26] The Agencies further noted that various education programs offered by the U.S. Department of Education are targeted to individuals who have financial needs and the criteria for the programs vary. The Agencies requested comment on whether low-income should be defined differently than the term is already defined in the CRA regulation. The Agencies also sought comment on how they should treat the income of a student's family or other expected family contributions to ensure that the CRA consideration provided is consistent with HEOA's focus on low-income borrowers.

Final Rule and Comments

Several commenters, including community groups and several financial institutions or trade associations generally supported using the 50 percent benchmark as

[26] This is consistent with guidance issued by the Agencies in the Interagency Questions and Answers Regarding Community Reinvestment, 75 FR 11642, 11671 (Mar. 11, 2010) (Q&A § __.42(c)(1)(iv) – 4).

proposed. Several financial institutions and trade associations advocated that the final rule be expanded to cover both low-income and moderate-income borrowers as defined by the existing CRA rule. A state association of lenders commented that the Agencies should simply base the income assessment on loans originated through the U.S. Department of Education by defining low-cost education loans as need-based federal student loans. This commenter and several financial institutions further explained that institutions that make U.S. Department of Education loans do not have access to financial and income information on students and their families because the student borrowers are qualified by the school; thus, it would be hard to determine for CRA purposes whether the borrowers are low-income. Some of these commenters recommended that low-income borrowers be defined as any borrower eligible for a loan through a program of the U.S. Department of Education or, for a borrower through a private loan program, with qualifying income that is less than 50 percent of area median income. Another financial institution recommended that government loans that are needs-based, such as subsidized Stafford loans, automatically qualify as loans to low-income borrowers. One trade association suggested that, as an alternative to the proposed definition of low-income (less than 50 percent of the area median income), the Agencies could look only at the household income of the primary obligor on the loan and if the primary obligor is a dependent in a low-income household, the primary obligor would be considered a low-income borrower no matter what additional guarantors or co-signors are obligated on the loan. Similarly, the commenter noted, if the student is a financially emancipated adult, then his/her individual income would determine his/her income status. Alternatively, the commenter suggests that if all those obligated on the credit are taken into account, then

the final rule needs to clarify how the Agencies will calculate whether the low-income standard is met.

Several commenters addressed how to treat the income of a student's family or other expected family contributions to ensure that the CRA consideration is consistent with HEOA's focus on low-income borrowers. As noted above, a trade association suggested the final regulation should look at the household income of the primary obligor. That commenter recommended that household income be considered in lieu of considering income of a co-signer, to avoid any situation where obtaining a co-signer, who might strengthen the loan application and improve the safety and soundness of the loan, might be discouraged for CRA-related loans.

A nonprofit organization commented that, in cases where a student is the borrower but is claimed as a dependent, the household income of the taxpayer claiming the student should be used to determine whether the loan qualifies for CRA consideration. A trade association also suggested that if a student has applied for financial aid and has been identified as eligible, that should qualify the student as "low-income" for purposes of the test. A financial institution commented that, in addition to consideration of income, the CRA evaluation of education lending should also consider how many individuals are enrolled in or will be enrolled in an institution of higher education and whether such individuals had unmet financial needs that could be addressed by a private education loan. Another financial institution commented that the differences between the U.S. Department of Education loan qualification standards, which are generally based on need, and the private education loan qualification standards, which are generally based on credit score and income, should preclude treating Federal

program loans and private education loans the same for purposes of the "low-income" analysis.

The Agencies considered these commenters' concerns about the possibility that a student borrower may be considered to be "low-income" under the CRA standard, even though the student's family may be able to provide additional financial support. The Agencies considered, for example, adopting a test to determine whether a student borrower is an "independent" student and, if not, requiring the use of family income to determine whether the loan was to a "low-income" borrower.

The Agencies are adopting the definition of "low-income" as proposed – based on an individual income that is less than 50 percent of the area median income. As noted above, some financial institutions may not require family income information in connection with education loans (except when family members co-sign or guaranty the loan). Requiring collection of data on family income would likely have imposed new burdens and procedural requirements on both borrowers and financial institutions.

"Other Education Loan Issues"

Quantitative Consideration

As proposed by the Agencies, institutions would receive favorable qualitative consideration for originating "low-cost education loans to low-income borrowers" as a factor in the institutions' overall CRA rating, independent of the consideration for consumer loans under the current lending test. Such loans would be considered responsive to the credit needs of the institutions' communities.

Under the CRA regulations, an institution's consumer lending must be evaluated if consumer lending makes up a substantial majority of an institution's business.

Institutions that do not meet this criterion may choose to have education loans evaluated as consumer loans under the lending test applicable to the institution. If an institution opts to have education loans evaluated, the loans would be evaluated quantitatively, based on the data the institution provides. The Agencies requested comment on whether the final regulation should also allow an institution to receive separate quantitative consideration for the number and amount of low-cost education loans to low-income borrowers as part of its CRA evaluation under the performance test applicable to that institution, without regard to other consumer loans.

Comments and Final Rule

One financial institution agreed that institutions should receive favorable qualitative consideration for originating low-cost loans to low-income borrowers and recommended that, consistent with the treatment of other consumer loans, education loans not be reviewed as part of the quantitative CRA evaluation unless such loans represent a substantial majority of the financial institution's business or at the institution's option if it has collected and maintained data. Other financial institutions and a trade association strongly supported providing institutions the option to receive favorable quantitative consideration as consumer loans under the lending test of the current CRA rules. These commenters further stated that if the low-cost education loans were to become a separate subcategory of consumer lending, financial institutions would have to generate the necessary data, to the extent they do not already exist and that it would be difficult to evaluate the data in the absence of data from other institutions. They further stated that if this were the approach taken, it may be a disincentive to participate. Finally, one financial institution commented that the legislation regarding the

low-cost education loans clearly anticipates that the agencies would consider student lending on its own merits, apart from other consumer loan categories and suggested that consideration could be accomplished by revising the consumer loan reporting categories to include a separate category for student loans.

After consideration of the comments, the Agencies have adopted the provision as proposed to make clear that all types and sizes of institutions will be eligible to receive qualitative consideration for originating "low-cost education loans to low-income borrowers" as a factor in the institutions' overall CRA rating, without regard to the performance test under which an institution is evaluated. As noted above, institutions may obtain CRA consideration of education loans as consumer loans under existing standards applicable to consumer loans.

Application to All Institutions

The Agencies also asked whether institutions and other interested parties understood that the new provision on low-cost education loans to low-income borrowers is applicable to all institutions, without regard to institution size, as a result of the provisions' placement in 12 CFR 25.21, 228.21, 345.21 and 563e.21. No commenters responded directly to the question. However, several commenters suggested that the Agencies should treat low-cost education loans to low-income borrowers differently than initially proposed.

Several commenters representing small financial institutions suggested that the provision should not apply to small financial institutions because few small institutions make education loans. As discussed above, financial institutions that do not make education loans will not be required to start making such loans.

Another commenter believed that evaluation of education lending should not apply to wholesale or limited purpose institutions. The Agencies agree that wholesale institutions will not engage directly in education lending because, by definition, wholesale institutions do not engage in retail lending. Limited purpose institutions, on the other hand, could engage in education lending as their narrow product line.

One commenter suggested that low-cost education loans to low-income borrowers should be considered as community development loans. The primary reason for this suggestion was based on the more expansive consideration of loans that are considered under the community development test – not only in an institution's assessment area(s), as proposed, but also in the broader statewide or regional area that includes its assessment area(s). The Agencies decline to adopt this change as suggested. The Agencies note that the legislative history of the Act indicates that the Agencies are to consider "low-cost education loans provided by a financial institution to low-income borrowers in assessing and taking into account the record of a financial institution in meeting the credit needs of its local community."[27] The proposed rule restricted favorable consideration for low-cost education loans to low-income borrowers to the institution's assessment area(s). After careful consideration of the comments received, the Agencies have decided to apply the same rule that applies to the consideration of loans made to low- and moderate-income borrowers.[28] Thus, the final rule provides that the Agencies will consider low-cost education loans originated by a financial institution to low-income borrowers "particularly in its assessment area(s)." Similar to the analysis for loans to low- and

[27] H. Rep. No. 110-500 at 366 (2007) (emphasis added). The CRA also generally encourages financial institutions to help meet the credit needs of the local communities in which they are chartered. 12 U.S.C. 2901(b).
[28] See 12 CFR 25.22(b)(3), 228.22(b)(3), 345.22(b)(3), and 563e.22(b)(3).

moderate-income individuals generally, the Agencies will consider first whether a financial institution has adequately addressed the low-cost education loan needs of low-income borrowers in its assessment area(s) and, if so, will also consider such loans outside of its assessment area(s).[29] The Agencies believe that the final rule may provide greater flexibility and additional incentives for financial institutions to provide low-cost education loan programs for low-income borrowers.

Finally, one commenter emphasized that the provision addressing consideration of low-cost education loans to low-income borrowers should not affect CRA strategic plans that are already in effect or future plans. The Agencies do not intend this provision to affect CRA strategic plans.

Other Comments on the Proposed Education Loan Provision

Several commenters suggested that unnecessarily detailed technical requirements should be kept to a minimum in the final rule. The Agencies agree and have attempted to do so.

One commenter suggested that financial institutions should be able to receive CRA consideration for loans to students who reside in their assessment area(s) and also for loans to students who attend schools in the institutions' assessment area(s). The Agencies decline to adopt this suggestion. As with other consumer lending, a financial institution would look to the "loan location" to determine whether the loan meets the geographical requirements for loan consideration. "A consumer loan is located in the geography where the borrower resides . . .."[30] Therefore, the lender should rely on the

[29] See Interagency Questions and Answers Regarding Community Reinvestment, 75 FR at 11656-57 (Q&A § __.22(b)(2) & (3) – 4).
[30] 12 CFR 25.12(o)(1), 228.12(o)(1), 345.12(o)(1), and 563e.12(o)(1).

address on the education loan application or otherwise provided by the borrower or school to determine the loan location.

Activities Undertaken in Cooperation with Minority- and Women-Owned Financial Institutions and Low-Income Credit Unions

The Proposal

Section 804(b) of the Community Reinvestment Act (CRA) provides that the Agencies may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions in assessing the CRA record of nonminority- and nonwomen-owned financial institutions. These activities, however, must help meet the credit needs of the local communities in which such institutions and credit unions are chartered.[31] The Agencies proposed to incorporate this statutory language into their regulations and to clarify that such activities need not also benefit the assessment area or the broader statewide or regional area that includes the assessment area of the nonminority- and nonwomen-owned institution. The preamble of the proposed rule indicated that activities undertaken to assist minority- and women-owned financial institutions and low-income credit unions would be considered as part of the overall assessment of the nonminority- and nonwomen-owned institution's CRA performance.[32]

The preamble further explained that the proposed revision to the rule would reinforce to examiners, financial institutions, and the public that the Agencies may consider and take into account nonminority- and nonwomen-owned financial institutions'

[31] 12 U.S.C. 2903(b).
[32] 74 CFR at 31213.

activities in connection with minority- and women-owned financial institutions and low-income credit unions.[33] The Agencies noted that their 2009 revisions to the "Interagency Questions and Answers Regarding Community Reinvestment" clarified this point[34] and indicated the proposal was intended to codify this clarification in the rule.

The Agencies proposed to add the new provision addressing favorable CRA consideration for activities in cooperation with minority- and women-owned financial institutions and low-income credit unions to 12 CFR 25.21, 228.21, 345.21, and 563e.21. These sections apply to all types and sizes of institutions, without regard to the performance test under which an institution is evaluated. Accordingly, the preamble indicated that the proposed provision would also be applicable to all financial institutions. The Agencies also proposed a conforming amendment to Appendix A of the regulations to include consideration of a financial institution's activities in cooperation with minority- and women-owned financial institutions as a factor when assigning a rating to the institution.

Comments and Final Rule

Several consumer and community groups commented on the geographic scope of the proposal. They urged the Agencies to narrow the geographic scope by providing favorable CRA consideration to investments outside the majority-owned institution's assessment area only if the majority-owned institution met the needs of its assessment area. One community organization urged the Agencies to narrow the geographic scope even further by providing favorable CRA consideration only to loan participations and other ventures undertaken in cooperation with minority- and women-owned financial

[33] Id.
[34] 74 FR 498, 507 (Jan. 6, 2009) (Q&A § __.12(g)—4).

institutions and low-income credit unions outside the majority-owned institution's assessment area only if the majority-owned institution met the needs of its assessment area.

As the Agencies explained in the preamble to their 2009 Interagency Questions and Answers Regarding Community Reinvestment, the Agencies do not currently interpret section 804(b) of the CRA to impose such limitations.[35] However, as indicated in the question and answer guidance, the impact of such activities on majority-owned institution's CRA rating is determined in conjunction with its overall performance in its assessment area(s).[36] The Agencies note that activities outside of the majority-owned institution's assessment area will not compensate for poor lending performance within its assessment area and intend to add this clarification to the Interagency Questions and Answers Regarding Community Reinvestment.

One financial institution trade association urged the Agencies to treat all capital investments, loan participations, and other ventures undertaken by a majority-owned institution in cooperation with minority- and women-owned financial institutions and low-income credit unions as community development activities. The statute does not specify how the Agencies must evaluate these activities, some of which may not qualify as community development activities under the existing rules. Therefore, the Agencies have not adopted this suggestion.

However, the Agencies note that nothing in today's final rule affects the ability of any institution to receive community development consideration for activities undertaken in cooperation with minority- and women-owned financial institutions, low-income credit

[35] 74 FR at 500.
[36] 74 FR at 507 (Q&A §__.12(g)–4); 75 FR at 11645 (same).

unions, and other financial intermediaries in those limited circumstances where such activities meet all of the rule's requirements for community development consideration. These requirements include having a primary purpose of community development (as defined in 12 CFR 25.12(g), 228.12(g), 345.12(g), or 563e.12(g), as applicable) and meeting the applicable geographic restrictions for community development activities. The Agencies' Interagency Questions and Answers Regarding Community Reinvestment provide as an example of "qualified investments," investments, grants, deposits, or shares in or to financial intermediaries, including minority- and women-owned financial institutions, that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development.[37] Similarly, the Interagency Questions and Answers provide as an example of "community development loans," loans to financial intermediaries, including minority- and women-owned financial institutions, which primarily lend or facilitate lending to promote community development.[38] The Agencies are not changing the availability of community development consideration for these activities. Today's final rule allows capital investments, loan participations, and other ventures undertaken by a majority-owned institution in cooperation with minority- and women-owned financial institutions and low-income credit unions to be considered as a factor when assigning a rating; it applies to a broader range of activities than may qualify for community development consideration.

Several consumer and community organizations urged the Agencies to conduct an analysis of the impact of the 2009 guidance on minority- and women-owned institutions

[37] 75 FR at 11652 (Q&A § __.12(t) – 4).
[38] 75 FR at 11648 (Q&A § __.12(h) – 1).

(Q&A §__.12(g)–4) before codifying the question and answer into the CRA rule. They urged the Agencies to evaluate the types of investments, loans, and services that have been leveraged to see whether they have disproportionately benefited predominantly white middle- and upper-income communities. They also urged the Agencies to ascertain whether bank financing of low-income credit unions and minority- and women-owned financial institutions has also benefited minorities and communities of color. The Agencies note that they are generally incorporating into the CRA regulations the statutory provision adopted by Congress.

The Agencies are adopting 12 CFR __.21(f) and revising Appendix A as proposed.

Effective Date

This joint final rule becomes effective 30 days after the date of publication in the Federal Register.

Interagency Guidance

The Agencies intend to issue for comment interagency CRA guidance addressing primarily the new provision addressing low-cost education loans made to low-income borrowers in the near future. The guidance, in the form of new interagency questions and answers, will include relevant explanatory discussion in the supplementary information accompanying this final rule. As noted above, the Agencies will also revise existing guidance to reflect the regulatory provisions[39] on activities in cooperation with minority- and women-owned financial institutions and low-income credit unions and to indicate that such activities outside of the majority-owned institution's assessment area(s) will not compensate for poor lending performance within its assessment area(s).

[39] 12 CFR 25.21(f); 228.21(f); 345.21(f); and 563e.21(f).

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) (PRA), each agency reviewed its final rule and determined that there are no new collections of information contained therein. However, the amendments may have a negligible affect on burden estimates for existing information collections, including recordkeeping requirements for consumer loans. The Agencies did not receive any comments on the PRA section of the proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration, a small entity includes a bank holding company, commercial bank, or savings association with assets of $175 million or less (collectively, small banking organizations). Under this joint final rule, the Agencies would consider, as a factor, when assessing an institution's CRA record that the institution made low-cost education loans to low-income borrowers or engaged in activities in cooperation with minority- or women-owned financial institutions or low-income credit unions. The Agencies believe that this joint final rule will not have a significant economic impact on a substantial number of small entities because the final rule does not require a financial institution to engage in these activities. In addition, the Agencies did not receive any comments that the proposal would have a significant impact

on small banking organizations. Accordingly, each of the Agencies certifies that this rule will not have a significant economic impact on a substantial number of small entities.

OCC and OTS Executive Order 12866 Determinations

Pursuant to Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) has designated the final rule to be significant.

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 final 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 final 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 joint final rule does not have any Federalism implications, as required by Executive Order 13132.

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

This joint final rule becomes effective 30 days after the date of publication in the Federal Register.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), Pub. L. 103-325, authorizes a banking agency to issue a rule that contains additional reporting, disclosure, or other requirements 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). Section 302 of CDRIA does not apply because this final rule imposes no additional requirements. Rather, it reduces burden by expanding the ways institutions may receive CRA consideration.

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 amends 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 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

2. In § 25.21, add new paragraphs (e) and (f) to read as follows:

§ 25.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its

assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 25, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 25 -- RATINGS

(a) * * * (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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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 amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228 – COMMUNITY REINVESTMENT (REGULATION BB)

1. The authority citation for part 228 is revised as proposed to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 through 2908.

2. In § 228.21, add new paragraphs (e) and (f) to read as follows:

§ 228.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the Board considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its

assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the Board considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 228, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 228 – RATINGS

(a) * * * (1) In assigning a rating, the Board evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 228.21 and 228.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 345 – COMMUNITY REINVESTMENT

1. The authority citation for part 345 is revised to read as follows:

Authority: 12 U.S.C. 1814-1817, 1819-1920, 1828, 1831u and 2901-2908, 3103-3104, and 3108(a).

2. In § 345.21, add new paragraphs (e) and (f) to read as follows:

§ 345.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a bank under this part, the FDIC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its

assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the FDIC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

3. In Appendix A to Part 345, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 345 -- RATINGS

(a) * * * (1) In assigning a rating, the FDIC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 345.21 and 345.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

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Department of the Treasury

Office of Thrift Supervision

12 CFR Chapter V

For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends 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 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1814, 1816, 1828(c), and 2901 through 2908.

2. In § 563e.21, add new paragraphs (e) and (f) to read as follows:

§ 563e.21 Performance tests, standards, and ratings, in general.

* * * * *

(e) Low-cost education loans provided to low-income borrowers. In assessing and taking into account the record of a savings association under this part, the OTS considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who have an individual income that is

less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions. In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the OTS considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

3. In Appendix A to Part 563e, paragraph (a)(1) is revised to read as follows:

APPENDIX A TO PART 563e -- RATINGS

(a) * * * (1) In assigning a rating, the OTS evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 563e.21 and 563e.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

* * * * *

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

Dated: June 29, 2010

John C Dugan (signed)
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, acting through the Secretary of the Board under delegated authority,

September 2, 2010.

Jennifer J. Johnson (signed)
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 27th day of September, 2010.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman (signed)
Robert E. Feldman,

Executive Secretary.

(SEAL)

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

Dated: September 24, 2010

By the Office of Thrift Supervision.

John E. Bowman (signed)
John E. Bowman,
Acting Director.