

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 25 and 195**

**Docket ID OCC-2017-0008**

**RIN 1557-AE15**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 228**

**Docket No. R-1574**

**RIN 7100-AE84**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 345**

**RIN 3064-AE58**

**Community Reinvestment Act Regulations**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

**ACTION:** Joint notice of proposed rulemaking; request for comment.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC)

(collectively, the Agencies) propose (1) to amend their regulations implementing the Community Reinvestment Act (CRA) to update the existing definitions of “home mortgage loan” and “consumer loan,” related cross references, and the public file content requirements to conform recent revisions made by the Consumer Financial Protection Bureau (Bureau) to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), and (2) to remove obsolete references to the Neighborhood Stabilization Program (NSP).

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

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

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Community Reinvestment Act Regulations” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

**Federal eRulemaking Portal—“Regulations.gov”:** Go to [www.regulations.gov](http://www.regulations.gov). Enter “Docket ID OCC-2017-0008” in the Search box and click “Search.” Click on “Comment Now” to submit public comments.

- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- **E-mail:** *regs.comments@occ.treas.gov*.
- **Mail:** Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, SW., Suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7<sup>th</sup> Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219.
- **Fax:** (571) 465-4326.

*Instructions:* You must include “OCC” as the agency name and “Docket ID OCC-2017-0008” in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov website without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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

- **Viewing Comments Electronically:** Go to *www.regulations.gov*. Enter “Docket ID OCC-2017-0008” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen.
- Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- **Viewing Comments Personally:** You may personally inspect and photocopy comments at the OCC, 400 7<sup>th</sup> Street, SW., Washington, DC 20219. For security reasons, the OCC

requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: When submitting comments, please consider submitting your comments by e-mail or fax because paper mail in the Washington, DC area and at the Board may be subject to delay.

You may submit comments, identified by Docket No. R-XXXX and RIN XXXX-XXXX, by any of the following methods:

- **Agency Website:** <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 and RIN numbers in the subject line of the message.
- **FAX:** (202) 452-3819 or (202) 452-3102.
- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue, NW., Washington, DC 20551.

*Instructions:* All public comments will be made available on the Board's website at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Streets, NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the

Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452-3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FDIC: You may submit comments, identified by RIN 3064-AE62, by any of the following methods:

- **Agency Website:** <http://www.fdic.gov/regulations/laws/federal/propose.html>.

Follow instructions for submitting comments on the Agency website.

- **E-mail:** [Comments@fdic.gov](mailto:Comments@fdic.gov). Include the RIN 3064-AE62 on the subject line of the message.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- **Hand 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.

*Instructions:* All comments received must include the agency name and RIN 3064-AE62 for this rulemaking. All comments received will be posted without change to

<http://www.fdic.gov/regulations/laws/federal/propose.html>, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Emily R. Boyes, Attorney, Community and Consumer Law Division, (202) 649-6350;  
Allison Hester-Haddad, Counsel, Legislative and Regulatory Activities Division, (202) 649-

5490; for persons who are deaf or hard of hearing, TTY, (202) 649-5597; or Vonda J. Eanes, Director for CRA and Fair Lending Policy, Compliance Risk Policy Division, (202) 649-6907, Office of the Comptroller of the Currency, 400 7th Street, SW., Washington, DC 20219.

Board: Amal S. Patel, Senior Supervisory Consumer Financial Services Analyst, Division of Consumer and Community Affairs, (202) 912-7879; Cathy Gates, Senior Project Manager, Division of Consumer and Community Affairs, (202) 452-2099, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6859; Sharon B. Vejvoda, Senior Examination Specialist, Examination Branch, Division of Depositor and Consumer Protection, (202) 898-3881; Richard M. Schwartz, Counsel, Legal Division (202) 898-7424; or Sherry Ann Betancourt, Counsel, Legal Division (202) 898-6560, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Board, the FDIC, and the OCC implement the CRA (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 195, 228, and 345. The CRA is designed to encourage regulated financial institutions to help meet the credit needs of the local communities in which an institution is chartered. The CRA regulations establish the framework and criteria by which the Agencies assess a financial institution's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, consistent with safe and sound operations. Under the CRA regulations, the Agencies apply different evaluation standards for financial institutions of different asset sizes and types.

The Agencies also publish the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers)<sup>1</sup> to provide guidance on the interpretation and application of the CRA regulations to agency personnel, financial institutions, and the public.

## **Introduction**

The Agencies jointly propose to amend their regulations implementing the CRA (12 U.S.C. 2901 *et seq.*). This proposed rulemaking amends the current definitions of “home mortgage loan” and “consumer loan” and the public file content requirements to conform to recent revisions made by the Bureau to its Regulation C, which implements HMDA, makes technical amendments to remove unnecessary cross references as a result of the amended definitions, and removes an obsolete reference to the NSP.

## **Amendments to Conform the CRA Regulations to Recent Revisions to the Bureau’s Regulation C**

### *Conforming Changes to the “Home Mortgage Loan” Definition*

The CRA regulations specify the type of lending and other activities that the Agencies evaluate to assess a financial institution’s CRA performance. In 1995, the Agencies substantively amended their CRA regulations to clarify the methods that examiners use to assess financial institutions’ CRA performance (1995 CRA Rule).<sup>2</sup> These amended regulations added the definition of “home mortgage loan,” to describe a category of loans that examiners evaluate

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<sup>1</sup> “Questions and Answers” refers to the “Interagency Questions and Answers Regarding Community Reinvestment” in its entirety; “Q&A” refers to an individual question and answer within the Questions and Answers.

<sup>2</sup> 60 FR 22156 (May 4, 1995). The CRA regulations were also issued by the Office of Thrift Supervision (OTS). In 2010, the OTS was integrated with the OCC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (15 U.S.C. 5413), and the regulation of thrifts was transferred to the OCC, the Board, and the FDIC (15 U.S.C. 5412).

when assessing a financial institution’s performance under the retail lending test. As part of efforts to produce a less-burdensome CRA assessment process, the Agencies relied on the scope of loans reported under the Board’s Regulation C, which implemented HMDA at the time, to define “home mortgage loan.” (12 CFR part 203 (1995)).<sup>3</sup> The Board’s Regulation C required a HMDA reporter to report data to its supervisory agency on originations, purchases, and applications for loans that were made for one of two purposes: home purchase or home improvement. (*See* 12 CFR 203.1(c) (1995)). As a result, the 1995 CRA Rule defined “home mortgage loan” to mean “home purchase loan” or “home improvement loan,” as those terms were defined in the Board’s Regulation C in 12 CFR 203.2.

On February 15, 2002, the Board made substantial revisions to its Regulation C (2002 HMDA Rule), including, among other things, changing the scope of loans reported under Regulation C to include all refinancings, regardless of purpose.<sup>4</sup> Prior to this amendment, lenders were able to select from among four scenarios to decide which refinancings to report. The 2002 HMDA Rule revised Regulation C to define and include “refinancings” in the scope of loans that were reportable under HMDA and Regulation C. 12 CFR 203.1(c) (2004). As a result of this change, any closed-end home purchase or refinancing was reported if it was dwelling-secured and home improvement loans were reported whether or not they were dwelling-secured. To keep the CRA regulations aligned with the scope of loans reportable under

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<sup>3</sup> The Agencies originally proposed that the definition of “home mortgage loan” include all mortgage loans reportable under both the HMDA statute and its implementing regulations (*see* 58 FR 67466, at 67473, Dec. 21, 1993). However, some commenters noted that the Board had already refined the definition of home mortgage loan in its HMDA regulations (12 CFR part 203). These commenters indicated it would be preferable and, perhaps, less confusing if the Agencies only referred to the Board’s HMDA regulations, rather than both the HMDA statute and the regulation. As a result of these comments, the Agencies amended the proposed definition in the 1995 CRA Rule and defined “home mortgage loan” as a “home improvement loan” or a “home purchase loan,” as those terms were defined in 12 CFR 203.2 of the Board’s Regulation C.

<sup>4</sup> 67 FR 7222 (Feb. 15, 2002). The 2002 HMDA Rule revisions became effective on January 1, 2004.



HMDA and Regulation C, on March 28, 2005, the Agencies issued a final rule to change the definition of “home mortgage loan” in their CRA regulations to mean not only a “home improvement loan” or a “home purchase loan,” but also a “refinancing” as that term was defined in 12 CFR 203.2 of the Board’s Regulation C.<sup>5</sup>

On July 21, 2011, rulemaking authority for HMDA transferred from the Board to the Bureau pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>6</sup> On October 15, 2015, the Bureau issued a final rule substantially revising Regulation C (12 CFR 1003), in part, to implement amendments to HMDA required by section 1094 of the Dodd-Frank Act (2015 HMDA Rule).<sup>7</sup> The 2015 HMDA Rule, which in relevant part has a January 1, 2018, effective date, revises the scope of transactions reportable under Regulation C.<sup>8</sup> In some cases, the revised scope of loans reportable under HMDA is broader, and in other cases, it is more limited.<sup>9</sup> For consumer-purpose transactions, the 2015 HMDA

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<sup>5</sup> 70 FR 15570 (Mar. 28, 2005).

<sup>6</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010), codified in relevant part at 12 U.S.C. 5301, 5481-5603, and in laws amended (Title X); and 12 U.S.C. 5481 note, 15 U.S.C. 1601 note, 1602, and 1631 *et seq.* (Title XIV). The Bureau’s Regulation C is located at 12 CFR part 1003.

<sup>7</sup> 80 FR 66127 (Oct. 28, 2015). On August 24, 2017, the Bureau issued a final rule (2017 HMDA Rule) amending the 2015 HMDA Rule. The 2017 HMDA Rule finalizes a proposal issued by the Bureau on April 25, 2017 (82 FR 19142), to address technical errors, ease the burden on certain reporting requirements, and clarify some key terms. The 2017 HMDA Rule also finalizes a proposal issued by the Bureau on July 14, 2017 (82 FR 33455), to temporarily increase the institutional and transactional coverage thresholds for open-end lines of credit. *See* [http://files.consumerfinance.gov/f/documents/201708\\_cfbp\\_final-rule\\_home-mortgage-disclosure\\_regulation-c.pdf](http://files.consumerfinance.gov/f/documents/201708_cfbp_final-rule_home-mortgage-disclosure_regulation-c.pdf)

<sup>8</sup> 80 FR at 66128.

<sup>9</sup> The 2015 HMDA Rule revises the scope of transactions as well as financial institutions that must collect and report HMDA data. Under the revised rule, a financial institution that meets all other requirements for financial institution coverage is required to report HMDA data only if it originates at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years. The open-end lines of credit threshold will increase from 100 to 500 loans on a temporary basis for a period of two years (calendar years 2018 and 2019) pursuant to the 2017 HMDA Rule. The Bureau is not making the threshold increase for open-end lines of credit permanent at this time. Absent further action by the Bureau, effective January 1, 2020, the open-end threshold will be restored to the 2015 HMDA Rule level of 100 open-end lines of credit, and creditors originating between 100 and 499 open-end lines of credit will need to begin collecting and reporting HMDA data for open-end lines of credit at this time. While depository financial institutions with more than 100 open-end lines of credit (500 open-end lines of credit for 2018 and 2019) will have to report HMDA data, fewer depository financial institutions will report closed-end mortgage data under HMDA when the revised rule becomes effective.

Rule changes the traditional purpose-based reporting approach<sup>10</sup> to a dwelling-secured standard for all closed-end loans and open-end lines of credit that are for personal, family, or household purposes (*i.e.*, consumer purpose).<sup>11</sup> As a result, most consumer-purpose transactions, including closed-end mortgage loans, closed-end home equity loans, home-equity lines of credit, and reverse mortgages, will be reportable under HMDA if they are secured by a dwelling.<sup>12</sup> Home improvement loans that are not secured by a dwelling (*i.e.*, home improvement loans that are unsecured or that are secured by some other type of collateral), however, will now be excluded from Regulation C coverage.<sup>13</sup>

The 2015 HMDA Rule retains the traditional purpose-based reporting approach for all commercial-purpose transactions. Thus, if a dwelling-secured, commercial loan has the purpose of home purchase, home improvement, or refinancing, the loan will be subject to Regulation C.<sup>14</sup> Commercial-purpose loans or lines of credit that are not for home purchase, home improvement, or refinancing will continue to be excluded from the regulation's coverage under the 2015 HMDA Rule, as are all primarily agricultural-purpose transactions.<sup>15</sup>

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<sup>10</sup> Under current Regulation C, loans that are made primarily for personal, family or household purposes (*i.e.*, consumer purpose) and that are secured by a dwelling are reportable if they are made for the purpose of home-purchase or refinancing. Loans that are made for the purpose of home improvement are reported regardless of whether they are secured by a dwelling. The 2015 HMDA Rule modifies the types of transactions that are subject to Regulation C by changing this traditional "purpose-based" reporting approach to generally adopting a dwelling secured standard for transactional coverage.

<sup>11</sup> 80 FR at 66128.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* Under the 2015 HMDA Rule, dwelling-secured commercial-purpose transactions will be covered only if they are for home purchase, home improvement, or refinancing purposes. A closed-end mortgage loan or an open-end line of credit to purchase or to improve a multifamily dwelling or a single-family investment property, or a refinancing of a closed-end mortgage loan or an open-end line of credit secured by a multifamily dwelling or a single-family investment property, would be a reportable transaction under the 2015 HMDA Rule. *See* Comment 3(c)(10)—3.i. A closed-end mortgage loan or an open-end line of credit whose funds will be used primarily to improve or expand a business, for example, to renovate a family restaurant that is not located in a dwelling or to purchase a warehouse, business equipment, or inventory, would not be a reportable transaction. *See* Comment 3(c)(10)—4.i.

<sup>15</sup> *Id.* Note that under current Regulation C, a loan to purchase property used primarily for agricultural purposes, is not a home purchase loan. However, under certain circumstances a refinance with a primarily agricultural purpose

Effective January 1, 2018, Regulation C will require covered financial institutions to report applications for, and originations and purchases of, “covered loans” that are secured by a dwelling. A “covered loan” is defined in 12 CFR 1003.2(e) to mean a closed-end mortgage loan, as defined in § 1003.2(d), or an open-end line of credit, as defined in § 1003.2(o), that is not an excluded transaction under 12 CFR 1003.3(c).<sup>16</sup> To conform to the new revisions in Regulation

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could be reported as a refinancing on the HMDA Loan Application Register (LAR). For purposes of CRA, this loan could be captured as both a “refinancing” under the CRA definition of “home mortgage loan” and, because the refinancing would be for an agricultural loan, the loan would also be captured on the Call Report as a refinance of a small farm loan. Under the 2015 HMDA Rule, all loans with a primarily agricultural purpose, whether they are for home purchase, home improvement, refinancing, or another purpose, will no longer be reported on the HMDA LAR. As a result, for purposes of CRA, the likelihood of double counting primarily agricultural purpose loans as both a “refinancing” under the definition of “home mortgage loan” and a refinancing of small farm loans is decreased. The Agencies do not believe the proposed change in transactional coverage for commercial loans and loans with a primarily agricultural purpose will negatively impact a financial institution’s CRA rating.

<sup>16</sup> The 2015 HMDA Rule retains existing categories of excluded transactions, clarifies some categories of excluded transactions, and expands the existing exclusion for agricultural-purpose transactions. Effective January 1, 2018, the following transactions will not be reportable under Regulation C:

1. A closed-end mortgage loan or open-end line of credit originated or purchased by a financial institution acting in a fiduciary capacity;
2. A closed-end mortgage loan or open-end line of credit secured by a lien on unimproved land;
3. Temporary financing;
4. The purchase of an interest in a pool of closed-end mortgage loans or open-end lines of credit;
5. The purchase solely of the right to service closed-end mortgage loans or open-end lines of credit;
6. The purchase of closed-end mortgage loans or open-end lines of credit as part of a merger or acquisition, or as part of the acquisition of all of the assets and liabilities of a branch office as defined in 12 CFR 1003.2(c);
7. A closed-end mortgage loan or open-end line of credit, or an application of a closed-end mortgage loan or open-end line of credit, for which the total dollar amount is less than \$500;
8. The purchase of a partial interest in a closed-end mortgage loan or open-end line of credit;
9. A closed-end mortgage loan or open-end line of credit used primarily for agricultural purposes;
10. A closed-end mortgage loan or open-end line of credit that is or will be made primarily for a business or commercial purpose, unless the closed-end mortgage loan or open-end equity line of credit is a home improvement loan under § 1003.2(i), a home purchase under § 1003.2(j), or a refinancing under § 1003.2(p);
11. A closed-end mortgage loan, if the financial institution originated fewer than 25 closed-end mortgage loans in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded closed-end mortgage loan as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan; or
12. An open-end equity line of credit, if the financial institution originated fewer than 500 open-end equity lines of credit in either of the two preceding calendar years; a financial institution may collect, record, report, and disclose information, as described in §§ 1003.4 and 1003.5, for such an excluded open-end line of credit as though it were a covered loan, provided that the financial institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it

C, the proposed rule would revise the current definition of “home mortgage loan” in their CRA regulations, also effective on January 1, 2018, to mean a “closed-end mortgage loan” or an “open-end line of credit,” as those terms are defined under new 12 CFR 1003.2(d) and (o), respectively, and as may be amended from time to time, and that is not an excluded transaction under new 12 CFR 1003.3(c)(1)-(10) and (13), as may be amended from time to time.<sup>17</sup> The Agencies have used the scope of HMDA reportable transactions to define “home mortgage loan” in the CRA regulations since 1995. The Agencies will review any amendments made to the cross-referenced definitions in HMDA to ensure that such cross-referenced terms continue to meet the statutory objectives of the CRA.

As a result of the proposed revisions to the “home mortgage loan” definition, the manner in which some loan transactions are considered under CRA will be affected. Effective January 1, 2018, home improvement loans that are not secured by a dwelling, which are currently required to be reported under Regulation C, will no longer be reportable transactions under the 2015 HMDA Rule. Therefore, also effective January 1, 2018, for purposes of CRA, home improvement loans that are not secured by a dwelling may be considered at the option of the financial institution. A financial institution that opts to have its home improvement loans considered would need to collect and maintain data on these loans in machine readable form

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originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit (as noted above, the increased threshold from 100 to 500 open-end lines of credit is temporary and applies only to calendar years 2018 and 2019; absent action from the Bureau, the threshold for reporting open-end lines of credit reverts to 100 effective January 1, 2020); or

13. A transaction that provided or, in the case of an application, proposed to provide new funds to the applicant or borrower in advance of being consolidated in a New York State consolidation, extension, and modification agreement classified as a supplemental mortgage under New York Tax Law section 255; the transaction is excluded only if final action on the consolidation was taken in the same calendar year as final action on the new funds transaction.

<sup>17</sup> The 2017 HMDA Rule adds a new exclusion from reporting HMDA data for certain transactions concerning New York consolidation, extension, and modification agreements (also known as NY CEMAs) under new § 1003.3(c)(13).

under the category of “other secured consumer loan” or “other unsecured consumer loan,” as appropriate. *See* 12 CFR \_\_.12(j)(3) or (4). The Agencies note that, notwithstanding an institution’s option, home improvement loans that are not secured by a dwelling may still be evaluated by the Agencies under the lending test set out under 12 CFR \_\_.22(a)(1), in circumstances where the consumer lending is so significant a portion of an institution’s lending by activity and dollar volume of loans that the lending test evaluation would not meaningfully reflect lending performance if consumer loans were excluded.<sup>18</sup>

Home equity lines of credit secured by a dwelling, which are currently reported at the option of the financial institution under Regulation C, will be covered loans under the 2015 HMDA Rule. Effective January 1, 2018, financial institutions that meet the reporting requirements under the 2015 HMDA Rule will be required to collect, maintain, and report data on home equity lines of credit secured by a dwelling. For purposes of CRA consideration, in the case of financial institutions that report closed-end mortgage loans and/or home equity lines of credit under the 2015 HMDA Rule, those loans would be considered as home mortgage loans under the proposed amended definition of “home mortgage loan.” The effect of the proposed change will vary depending upon the amount and characteristics of the financial institution’s mortgage loan portfolio. As with all aspects of an institution’s CRA performance evaluation, the performance context of the institution will affect how the Agencies will consider home equity lines of credit. Performance context includes a broad range of economic, demographic, and financial institution and community-specific information that the Agencies use to understand the circumstances in which a financial institution’s record of performance should be evaluated. Performance context information is used by the Agencies to support a financial institution’s level

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<sup>18</sup> Q&A § \_\_.22(a)(1)—2.

of performance and CRA performance rating. For financial institutions that would not be required to report these transactions under Regulation C, examiners may review the relevant files and consider these loans for CRA performance on a sampling basis under the home mortgage loan category.

The Agencies request comment on their proposal to amend the definition of “home mortgage loan,” including how the amended definition may impact a financial institution’s CRA performance.

*Conforming Changes to the “Consumer Loan” Definition*

The CRA regulations currently define “consumer loan” as a loan to one or more individuals for household, family, or other personal expenditures and that is *not* a home mortgage, small business, or small farm loan under 12 CFR \_\_. 12(j). A “home equity loan” is one of five loan categories listed under the definition of “consumer loan” and is defined as a “consumer loan secured by a residence of the borrower” under 12 CFR \_\_.12(j)(3). As noted above, the proposed CRA definition of “home mortgage loan” would refer to “closed-end mortgage loans” and “open-end lines of credit” as those terms are defined in §§ 1003.2(d) and 1003.2(o), respectively, of Regulation C. Under Regulation C, a closed-end mortgage loan is defined “as an extension of credit secured by a lien on a dwelling,” and therefore, includes a home equity loan secured by a dwelling per 12 CFR 1003.2(d), effective January 1, 2018. Thus, the Agencies believe it is no longer necessary to separately categorize home equity loans under the CRA definition of “consumer loan” because both home equity loans and home equity lines of credit would be specifically included in the proposed revised CRA definition of “home mortgage loan.” Accordingly, the proposed rule would remove the term “home equity loan” from the list of consumer loan categories provided under the definition of “consumer loan” in

12 CFR \_\_.12(j). The Agencies request comment on their proposal to amend the definition of “consumer loan.”

*Changes to the Content of the Public File*

The CRA regulations currently provide that financial institutions shall maintain a public file of certain information and specify, among other things, the information that should be maintained and made available to the public upon request under 12 CFR \_\_.43(a)-(d). Currently, a financial institution that is required to report HMDA data under Regulation C must include a copy of the HMDA disclosure statement that is provided to each financial institution by the Federal Financial Institutions Examination Council in the institution’s CRA public file for each of the prior two calendar years per 12 CFR \_\_.43(b)(2). However, pursuant to changes to Regulation C under the 2015 HMDA Rule, which becomes effective January 1, 2018, financial institutions will no longer be required to provide this HMDA disclosure statement directly to the public. Instead, pursuant to Regulation C, a financial institution will only be required to provide a notice that clearly conveys to the public that they can obtain a copy of the financial institution’s disclosure statement on the Bureau’s website under 12 CFR 1003.5(b). As a result, the proposed rule would amend the CRA public file content requirements under 12 CFR \_\_.43(b)(2) for consistency and to reduce burden. Specifically, under the proposal, institutions that are required to report HMDA data would need to only maintain the notice required under Regulation C in their CRA public file, rather than a copy of the HMDA disclosure statement. The Agencies request comment on their proposal to amend the CRA public file content requirements.

As explained in more detail under the Regulatory Analysis section of this proposal, the Agencies expect the proposed changes to the CRA definitions and to the content of the public file, to reflect revisions made to the Bureau’s Regulation C, to generally have little economic

effect and believe the proposed changes would not create additional regulatory burden on financial institutions.

## **Technical Amendments**

### *“Home Equity” When Used as a Category of Consumer Loans*

As indicated above, the proposed rule would remove the term “home equity loan” currently included under 12 CFR \_\_.12(j)(3) from the categories of consumer loans listed in 12 CFR \_\_.12(j). Based on the new proposed definition of “consumer loan,” any cross-references to home equity loans as a category of “consumer loans” in the CRA regulations would be invalid. As a result, the proposed rule would amend 12 CFR \_\_.22, Lending Test, and 12 CFR \_\_.42, Data Collection, Reporting, and Disclosure, to remove the term “home equity” each time it appears as a category of consumer loans.

### *Technical Revision to the “Community Development Loan” Definition*

The CRA regulations under 12 CFR \_\_.12(h) currently define “community development loan” as a loan that,

- (1) Has as its primary purpose, community development; and
- (2) Except in the case of a wholesale or limited purpose bank:
  - (i) Has not been reported or collected by the bank or an affiliate for consideration in the bank’s assessment as a home mortgage, small business, small farm, or consumer loan, unless it is a multifamily dwelling loan (as described in appendix A to part 1003 of this title); and
  - (ii) Benefits the bank’s assessment area(s) or a broader statewide or regional area that includes the bank’s assessment area(s).



Effective January 1, 2019, the 2015 HMDA Rule removes appendix A from Regulation C. The instructions for completion of the HMDA LAR currently found in part 1 of that appendix A will not apply to data collected pursuant to the amendments to Regulation C that are effective January 1, 2018. The substantive requirements found in existing appendix A will be moved to the text and commentary of Regulation C and going forward, any reference to appendix A will become obsolete. As a result, the Agencies believe that the reference to appendix A of Regulation C in the “community development loan” definition in the CRA regulations needs to be removed. Moreover, effective January 1, 2018, the term “multifamily dwelling” will be specifically defined under 12 CFR 1003.2(n). Accordingly, the proposed rule would remove the reference to appendix A in the definition of “community development loan” and replace it with a reference to the definition of “multifamily dwelling” under new 12 CFR 1003.2(n).

*Removal of Obsolete Language Related to the NSP*

The NSP was authorized by the Housing and Economic Recovery Act<sup>19</sup> to stabilize communities suffering from foreclosures and abandonment. On December 20, 2010, the Agencies issued a joint final rule amending the definition of “community development” to include qualifying NSP-related activities that benefit low-, moderate-, and middle-income individuals and geographies in NSP-target areas.<sup>20</sup> Under the joint final rule, NSP-eligible activities would receive consideration if conducted no later than two years after the last date appropriated funds for the program were required to be spent by the grantees. After the two-year period, the rule would cease to apply. The last date appropriated funds were required to be spent

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<sup>19</sup> Pub. L. 110-289, 122 Stat. 2654 (2008).

<sup>20</sup> 75 FR 79278 (Dec. 20, 2010).

by grantees was March 2014.<sup>21</sup> Thus, pursuant to 12 CFR \_\_.12(g)(5)(ii), after March 2016, NSP-eligible activities no longer receive consideration as “community development” under the CRA regulations. On that basis, the proposed rule would amend 12 CFR 25.12, 195.12, 228.12, and 345.12 to revise the definition of “community development” to remove qualifying NSP-related activities that benefit low-, moderate-, and middle-income individuals and geographies in NSP-targeted areas.

The Agencies request comment on their proposal to make the technical amendments described above.

The Agencies note that they plan to make conforming changes to the relevant Interagency CRA Q&As if the proposed changes to the CRA regulations become final.

### **Effective date**

The proposed rule would have an effective date of January 1, 2018, to conform to the effective date of the revisions resulting from the Bureau’s Regulation C. The Agencies request comment on the proposed effective date.

### **Regulatory Analysis**

#### *Regulatory Flexibility Act*

*OCC*: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a brief explanatory statement in the **Federal Register** along with its rule.

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<sup>21</sup> See [https://www.hudexchange.info/resources/documents/NSP3\\_100\\_Expenditure\\_Deadline.pdf](https://www.hudexchange.info/resources/documents/NSP3_100_Expenditure_Deadline.pdf).

The OCC currently supervises approximately 956 small entities. Although the proposed rule would apply to all OCC-supervised financial institutions, we anticipate that the proposal would not impose costs on any OCC-supervised financial institutions since the proposed rule does not impose new requirements or include new mandates. Any burden that may be associated with changes made to Regulation C HMDA reporting are a result of Bureau rulemakings. However, the proposed rule may reduce regulatory costs for covered financial institutions that are required to report HMDA data because those institutions would no longer be required to keep two years of HMDA disclosure statements in their CRA public file. Instead, covered financial institutions would provide a notice in the public file with a website address indicating where the HMDA disclosure statements can be accessed. Among the small entities that the OCC currently supervises, 518 are HMDA reporters. By not having to keep paper copies of the HMDA disclosure statements in their CRA public file, the OCC estimates that the savings for these small entities will be less than \$1,142 (10 hours X \$114.20 per hour) per entity. Therefore, the proposal will not have a significant economic impact on a substantial number of small entities. Accordingly, the OCC certifies that the joint proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small OCC-supervised entities.

*Board:* The RFA (5 U.S.C. 601 *et seq.*) generally requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>22</sup> Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests public comment on all aspects of

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<sup>22</sup> See 5 U.S.C. 601 *et seq.*

its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

There are 820 Board-supervised state member banks, and 566 are identified as small entities according to the RFA.<sup>23</sup> The Board estimates that the proposed rule will have generally small economic effects for small entities. The new CRA public file disclosure statement option will reduce recordkeeping burden for covered financial institutions. Additionally, the Board expects that the proposed changes to definitions within the CRA performance standards will have little impact on supervisory assessments of CRA performance generally, but could affect some financial institutions more than others depending upon the amount and characteristics of their loan portfolio.

The proposed rule changes the CRA public file notification requirements for covered financial institutions. Financial institutions that are required to report HMDA data can maintain the notice required under Regulation C in their CRA public file of their branch office, rather than the HMDA Disclosure Statement. By allowing covered financial institutions to utilize the same disclosure for both purposes, the proposed rule will reduce compliance burden. As previously stated, there are 566 Board-supervised entities that are identified as small entities by the terms of the RFA. Of those, 304 were HMDA filers in 2016.<sup>24</sup> All FDIC-insured financial institutions reported having 31,096 branch offices, for an average of 7.9 branches per financial institution.<sup>25</sup> The Board assumes it takes one employee 10 minutes at a rate of \$76.61 an hour<sup>26</sup> to print and

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<sup>23</sup> Call Report Data as of June 30, 2017.

<sup>24</sup> 2016 HMDA Data and Call Report Data as of June 30, 2017.

<sup>25</sup> 2015 Summary of Deposits Data.

<sup>26</sup> Estimated total hourly compensation for Compliance Officers in the Depository Credit Intermediation sector as of December 2016. The estimate includes the May 2015 90th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2015 and December

file the CRA notification and an additional 10 minutes to print and file the HMDA notification per year. This equates to an estimated annual printing and filing cost of \$25.54 per branch office. Therefore, complying with the new rule will save small entities an estimated \$61,336.86 in costs per year.<sup>27</sup>

The Board expects the proposed changes to definitions within the CRA performance standards to generally have little economic effect for small entities, however the amendments could pose some effects for individual entities depending upon the amount and characteristics of their loan portfolio. As noted previously, in some cases the revised scope of the CRA definitions is broader, and in other cases, it is more limited. These changes could affect supervisory assessment of CRA performance for small entities. However, it is unlikely that small financial institutions will be significantly affected given that HMDA reporting will be limited to financial institutions that originate more than 25 home mortgage loans or 100 home equity lines of credit each year.<sup>28</sup> There could be a net effect on CRA examination results for some small entities which may, in turn, affect the future behavior of those financial institutions. But, it is difficult to accurately determine the likelihood and degree of aggregate lending or economic effects that may result because they are dependent upon firm-specific business plans and propensities to lend.

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2016 (2.5 percent) and grossed up by 54.3 percent to account for non-monetary compensation as reported by the December 2016 Employer Costs for Employee Compensation Data.

<sup>27</sup> Assuming that each covered institution will no longer have to print and file the CRA notification, the recordkeeping burden for each branch office declines by 10 minutes for all 7.9 branch offices, for all 304 small entities that are HMDA filers.

<sup>28</sup> The open-end lines of credit threshold will increase from 100 to 500 loans on a temporary basis for a period of two years (calendar years 2018 and 2019) pursuant to the 2017 HMDA Rule. The Bureau is not making the threshold increase for open-end lines of credit permanent at this time. Absent further action by the Bureau, effective January 1, 2020, the open-end threshold will be restored to the 2015 HMDA Rule level of 100 open-end lines of credit, and creditors originating between 100 and 499 open-end lines of credit will need to begin collecting and reporting HMDA data for open-end lines of credit at this time.

Finally, Board-supervised small entities will likely benefit from the harmonization of definitions for CRA performance standards with HMDA data reporting requirements by avoiding unnecessary confusion and costs. Inconsistencies between CRA examination metrics and the HMDA data, which is used to assess performance, could lead to misleading results causing small entities to change future lending behavior.

1. Statement of the need for, and objectives of, the proposed rule. The proposed rule makes revisions to certain definitions in the current CRA regulations and the public file content requirements to conform to recent changes made by the Bureau to Regulation C, removes cross references related to the proposed definitional changes, and removes an obsolete reference to the NSP.

2. Small entities affected by the proposed rule. State member banks that are subject to the Board's CRA regulation would be affected. The Board currently supervises approximately 566 small entities, and does not believe the proposed rule will have a significant economic impact on these entities. As noted, the Board believes that the proposed changes to the definition of "home mortgage loan" and "consumer loan" will have minimal impact on supervisory assessments of a financial institution's CRA performance generally, but could affect some financial institutions more than others depending on the characteristics of their loan portfolios. For example, home improvement loans that are not secured by a dwelling, which are currently required to be reported under Regulation C, will no longer be reportable transactions under HMDA, effective January 1, 2018. A financial institution that opts to have these loans considered would need to collect and maintain data on these loans in machine readable form under the category of "other secured consumer loan" or "other unsecured consumer loan," as appropriate.

The Board invites comment on the effect of the proposed rule on small entities.

3. Recordkeeping, reporting, and compliance requirements. The proposed rule would impose minor recordkeeping, reporting, or compliance requirements on some entities. Additionally, it is anticipated that by allowing covered financial institutions to utilize the Regulation C notice that clearly conveys to the public that they can obtain a copy of the financial institution's HMDA disclosure statement at the Bureau's website to satisfy the associated CRA public file content requirements the proposed rule will reduce compliance burden.

4. Other federal rules. The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed rule.

5. Significant alternatives to the proposed revisions. The Board is not aware of any significant alternatives that would further minimize the impact on small entities of the proposed rule, but solicits comment on any significant alternatives that would reduce the regulatory burden associated on small entities with this proposed rule.

*FDIC:* The RFA (5 U.S.C. 601 *et seq.*) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). A regulatory flexibility analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the proposed rule. For the reasons provided below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

There are 3,787 FDIC-supervised financial institutions, and 3,080 are identified as small entities according to the RFA.<sup>29</sup> The FDIC estimates that the proposed rule would have generally small economic effects for small entities. The new proposed CRA public file disclosure statement option would reduce regulatory costs for covered financial institutions. Additionally, the FDIC expects that the proposed changes to definitions within the CRA performance standards would have little impact on supervisory assessments of CRA performance generally, but could affect some financial institutions more than others depending upon the amount and characteristics of their loan portfolio.

The proposed rule changes the CRA public file notification requirements for covered financial institutions. Financial institutions required to report HMDA data can maintain the notice required under Regulation C in the CRA public file of their branch office, rather than the HMDA Disclosure Statement. By allowing covered financial institutions to utilize the same disclosure for both purposes, the proposed rule would reduce regulatory costs. As previously stated, there are 3,080 FDIC-supervised entities that are identified as small entities by the terms of the RFA. Of those, 1,856 were HMDA filers in 2015.<sup>30</sup> All FDIC-insured financial institutions reported having 31,096 branch offices, for an average of 7.9 branches per financial institution.<sup>31</sup> The FDIC assumes it takes one employee 10 minutes at a rate of \$76.61 an hour<sup>32</sup> to print and file the CRA notification and an additional 10 minutes to print and file the HMDA

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<sup>29</sup> Call Report Data as of Dec. 31, 2016.

<sup>30</sup> 2015 HMDA Data and Call Report Data as of Dec. 31, 2015.

<sup>31</sup> 2015 Summary of Deposits Data.

<sup>32</sup> Estimated total hourly compensation for Compliance Officers in the Depository Credit Intermediation sector as of December 2016. The estimate includes the May 2015 90th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2015 and December 2016 (2.5 percent) and grossed up by 54.3 percent to account for non-monetary compensation as reported by the December 2016 Employer Costs for Employee Compensation Data.



notification per year. This equates to an estimated annual printing and filing cost of \$25.54 per branch office. Therefore, complying with the new rule would save small entities an estimated \$187,214 in costs per year.<sup>33</sup>

The FDIC expects the proposed changes to definitions within the CRA performance standards to generally have little economic effect for small entities, however the amendments could pose some effects for individual entities depending upon the amount and characteristics of their loan portfolio. As noted previously, in some cases the revised scope of the CRA definitions is broader, and in other cases, it is more limited. These changes could affect supervisory assessment of CRA performance for small entities. However, it is unlikely that small financial institutions would be significantly affected given that HMDA reporting will be limited to financial institutions that originate more than 25 home mortgage loans or 100 home equity lines of credit each year.<sup>34</sup> There could be a net effect on CRA examination results for some small entities which may, in turn, affect the future behavior of those financial institutions. But, it is difficult to accurately determine the likelihood and degree of aggregate lending or economic effects that may result because they are dependent upon firm-specific business plans and propensities to lend.

Finally, FDIC-supervised small entities would likely benefit from the harmonization of definitions for CRA performance standards with HMDA data reporting requirements by avoiding unnecessary confusion and costs. Inconsistencies between CRA examination metrics and the

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<sup>33</sup> Assuming that each covered institution will no longer have to print and file the CRA notification, the recordkeeping burden for each branch office declines by 10 minutes for all 7.9 branch offices, for all 1,856 small entities that are HMDA filers.

<sup>34</sup> The open-end lines of credit threshold will increase from 100 to 500 loans on a temporary basis for a period of two years (calendar years 2018 and 2019) pursuant to the 2017 HMDA Rule. The Bureau is not making the threshold increase for open-end lines of credit permanent at this time. Absent further action by the Bureau, effective January 1, 2020, the open-end threshold will be restored to the 2015 HMDA Rule level of 100 open-end lines of credit, and creditors originating between 100 and 499 open-end lines of credit will need to begin collecting and reporting HMDA data for open-end lines of credit at this time.

HMDA data which is used to assess performance could lead to misleading results causing small entities to change future lending behavior.

*Paperwork Reduction Act of 1995*

Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB’s implementing regulations (5 CFR 1320). The OMB control number for the OCC is 1557-0160 and the FDIC is 3064-0092. The OMB control number for the Board is 7100-0197 and will be extended, with revision. The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Under this proposal, effective January 1, 2018, financial institutions required to collect data under the CRA would also be required to collect data for open-end lines of credit in MSA and non-MSA areas where they have no branch or home office. The Agencies estimate that this proposed change would not result in an increase in burden under the currently approved CRA information collections because the burden associated with the above-described requirement is accounted for under the HMDA information collections.<sup>35</sup>

The agencies have determined that the proposed revised definition of “home mortgage loan” to include home equity lines of credit and to exclude home improvement loans that are not

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<sup>35</sup> OMB Control Number 1557-0159 (OCC); OMB Control Number 7100-0247 (Board); and OMB Control Number 3064-0046 (FDIC).

secured by a dwelling (*i.e.*, home improvement loans that are unsecured or that are secured by some other type of collateral) does not warrant a change to the current burden estimates.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: by mail to U.S. Office of Management and Budget, 725 17<sup>th</sup> Street, NW., # 10235, Washington, DC 20503; by facsimile to (202) 395-5806; or by email to: oira\_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

*Proposed Information Collection*

*Title of Information Collection:* Reporting, Recordkeeping, and Disclosure Requirements Associated with the Community Reinvestment Act (CRA).

*Frequency of Response:* Annually.

*Affected Public:* Businesses or other for-profit.

*Respondents:*

*OCC:* National banks, trust companies, savings associations (except special purpose savings associations pursuant to 12 CFR 195.11(c)(2)), insured Federal branches and any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

*Board:* State member banks.

*FDIC:* Insured state nonmember banks and insured state branches.

*Abstract:* The CRA was enacted in 1977 and is implemented by 12 CFR parts 25, 195, 228, and 345. The CRA directs the Agencies to evaluate financial institutions' records of helping to meet the credit needs of their entire communities, including low- and moderate-income areas consistent with the safe and sound operation of the institutions. The CRA is implemented through regulations issued by the Agencies.<sup>36</sup>

In 1995, the federal banking agencies issued substantially identical regulations under CRA to reduce unnecessary compliance burden, promote consistency in CRA assessments, and encourage improved performance.<sup>37</sup> As a result, the current reporting, recordkeeping, and disclosure requirements under the CRA regulations depend in part on a bank's size.

Under the CRA regulations, large banks are defined as those with assets of \$1.226 billion or more for the past two consecutive year-ends; all other banks are considered small or

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<sup>36</sup> As noted above in footnote 2, the Dodd-Frank Act transferred from the OTS all authorities (including rulemaking) relating to savings associations to the OCC and all authorities (including rulemaking) relating to savings and loan holding companies (SLHCs) to the Board on July 21, 2011.

<sup>37</sup> See 60 FR 22156 (May 4, 1995).

intermediate.<sup>38</sup> The banking agencies amend the definition of a small bank and an intermediate small bank in their CRA regulations each year when the asset thresholds are adjusted for inflation pursuant to the CRA regulations, most recently in January 2017.<sup>39</sup>

Other than the information collections pursuant to the CRA, the Agencies have no information collection that supplies data regarding the community reinvestment activities.

#### *PRA Burden Estimates*

##### *OCC*

*Number of respondents:* Recordkeeping requirement, small business and small farm loan register, 142; Optional recordkeeping requirements, consumer loan data, 85, and other loan data, 25; Reporting requirements, assessment area delineation, 189; loan data: Small business and small farm, 142, community development, 142, and HMDA out of MSA, 142; Optional reporting requirements, data on lending by a consortium or third party, 31; affiliate lending data, 9; request for strategic plan approval, 5; request for designation as a wholesale or limited purpose bank, 12; Disclosure requirement, public file, 1,234.

*Estimated average hours per response:* Recordkeeping requirement, small business and small farm loan register: 219 hours; Optional recordkeeping requirements, consumer loan data, 326 hours, and other loan data, 25 hours; Reporting requirements, assessment area delineation, 2 hours; loan data: Small business and small farm, 8 hours, community development, 13 hours, and HMDA out of MSA, 253 hours; Optional reporting requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; request for strategic plan

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<sup>38</sup> Beginning January 18, 2017, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.226 billion are small banks or small savings associations. Small banks or small savings associations with assets of at least \$307 million as of December 31 of both of the prior two calendar years, and less than \$1.226 billion as of December 31 of either of the prior two calendar years, are intermediate small banks or intermediate small savings associations.

<sup>39</sup> See 82 FR 5354 (Jan. 18, 2017).

approval, 275 hours; request for designation as a wholesale or limited purpose bank, 4 hours; Disclosure requirement, public file, 10 hours.

*Estimated annual reporting hours:* Recordkeeping requirement, small business and small farm loan register: 31,098 hours; Optional recordkeeping requirements, consumer loan data, 27,710 hours and other loan data, 625 hours; Reporting requirements, assessment area delineation, 378 hours; loan data: Small business and small farm, 1,136 hours, community development, 1,846 hours, and HMDA out of MSA, 35,926 hours; Optional reporting requirements, data on lending by a consortium or third party, 527 hours; affiliate lending data, 342 hours; request for strategic plan approval, 1,375 hours; request for designation as a wholesale or limited purpose bank, 48 hours; Disclosure requirement, public file, 12,340 hours.

*Total annual burden:* 113,351 hours.

#### *Board*

*Number of respondents:* Recordkeeping requirement, small business and small farm loan register, 94; Optional recordkeeping requirements, consumer loan data, 21, and other loan data, 15; Reporting requirements, assessment area delineation, 98; loan data: Small business and small farm, 94, community development, 98, and HMDA out of MSA, 89; Optional reporting requirements, data on lending by a consortium or third party, 9; affiliate lending data, 8; request for strategic plan approval, 2; request for designation as a wholesale or limited purpose bank, 1; Disclosure requirement, public file, 817.

*Estimated average hours per response:* Recordkeeping requirement, small business and small farm loan register: 219 hours; Optional recordkeeping requirements, consumer loan data, 326 hours, and other loan data, 25 hours; Reporting requirements, assessment area delineation, 2 hours; loan data: Small business and small farm, 8 hours, community development, 13 hours, and

HMDA out of MSA, 253 hours; Optional reporting requirements, data on lending by a consortium or third party, 17 hours; affiliate lending data, 38 hours; request for strategic plan approval, 275 hours; request for designation as a wholesale or limited purpose bank, 4 hours; Disclosure requirement, public file, 10 hours.

*Estimated annual reporting hours:* Recordkeeping requirement, small business and small farm loan register: 20,586 hours; Optional recordkeeping requirements, consumer loan data, 6,846 hours and other loan data, 375 hours; Reporting requirements, assessment area delineation, 196 hours; loan data: Small business and small farm, 752 hours, community development, 1,274 hours, and HMDA out of MSA, 22,517 hours; Optional reporting requirements, data on lending by a consortium or third party, 153 hours; affiliate lending data, 304 hours; request for strategic plan approval, 550 hours; request for designation as a wholesale or limited purpose bank, 4 hours; Disclosure requirement, public file, 8,170 hours.

*Total annual burden:* 61,727 hours.

#### *FDIC*

*Number of respondents:* Reporting requirements: Request for designation as a wholesale or limited purpose bank, 1 respondent; Strategic plan, 7 respondents; Small business/small farm loan data, 393 respondents; Community development loan data, 393 respondents; Home mortgage loans, 393 respondents; Data on affiliate lending, 200 respondents; Data on lending by a consortium or a third party, 75 respondents; and Assessment area data, 393 respondents; Recordkeeping requirements: Small business/small farm loan register, 393 respondents; Optional consumer loan data, 75 respondents; and Other loan data, 100 respondents; Disclosure requirements: Content and availability of public file, 3,971 respondents.

*Estimated average hours per response:* Reporting requirements: Request for designation as a wholesale or limited purpose bank, 4 hours; Strategic plan, 400 hours; Small business/small farm loan data, 8 hours; Community development loan data, 13 hours; Home mortgage loans, 253 hours; Data on affiliate lending, 38 hours; Data on lending by a consortium or a third party, 17 hours; and Assessment area data, 2 hours; Recordkeeping requirements: Small business/small farm loan register, 219 hours; Optional consumer loan data, 326 hours; and Other loan data, 25 hours; Disclosure requirements: Content and availability of public file, 10 hours.

*Estimated annual reporting hours:* Reporting requirements: Request for designation as a wholesale or limited purpose bank, 4 hours; Strategic plan, 2,800 hours; Small business/small farm loan data, 3,144 hours; Community development loan data, 5,109 hours; Home mortgage loans, 99,429 hours; Data on affiliate lending, 7,600 hours; Data on lending by a consortium or a third party, 1,275 hours; and Assessment area data, 786 hours; Recordkeeping requirements: Small business/small farm loan register, 86,067 hours; Optional consumer loan data, 24,450 hours; and Other loan data, 2,500 hours; Disclosure requirements: Content and availability of public file, 39,710 hours.

*Total annual burden:* 272,874 hours.

#### *Unfunded Mandates Reform Act of 1995*

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a 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 (adjusted for inflation). The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the



private sector, of \$100 million or more in any one year.<sup>40</sup> Accordingly, the OCC has not prepared a written statement to accompany this notice of proposed rulemaking.

### *Plain Language*

Section 722 of the Gramm-Leach-Bliley Act requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. The Agencies invite comment on how to make this proposed rule easier to understand.

For example:

- Have the Agencies organized the material to inform your needs? If not, how could the Agencies present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the proposed regulation easier to understand?

### **List of Subjects**

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<sup>40</sup> The OCC anticipates that the proposal would not impose costs on any OCC-supervised financial institutions since the proposed rule does not impose new requirements or include new mandates. Any burden that may be associated with changes made to Regulation C HMDA reporting are a result of CFPB rulemakings.

12 CFR Part 25

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

12 CFR Part 195

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

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

12 CFR Chapter I

**Authority and Issuance**

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, the Office of the Comptroller of the Currency proposes to amend 12 CFR parts 25 and 195 as follows:

**PART 25 – COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS**

1. The authority citation for part 25 continues to read as follows:

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

**§ 25.12 [Amended]**

2. Section 25.12 is amended:

a. By inserting “or” at the end of (g)(3);

b. By Removing “; or” at the end of (g)(4), and replacing with “.”;

c. By removing paragraph (g)(5);

d. In paragraph (h)(2)(i), by removing the phrase “unless it is a multifamily dwelling loan (as described in appendix A to part 1003 of this title)” and adding in its place the phrase “unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title)”;

e. By removing paragraph (j)(3), and redesignating paragraph (j)(4) as paragraph (j)(3) and redesignating paragraph (j)(5) as paragraph (j)(4); and

f. In paragraph (l), by removing the phrase “‘home improvement loan,’ ‘home purchase loan,’ or a ‘refinancing’ as defined in § 1003.2 of this title” and adding in its place the phrase “closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1)-(10) and (13) of this title”.

**§ 25.22 [Amended]**

3. Section 25.22 is amended in paragraph (a)(1), by removing the phrase “home equity,” after “credit card.”

**§ 25.42 [Amended]**

4. Section 25.42 is amended in paragraph (c)(1), by removing the phrase “home equity,” after credit card.”

5. Section 25.43 is amended by revising paragraph (b)(2) to read as follows:

**§ 25.43 Content and availability of public file.**

\* \* \* \* \*

(b) \* \* \*

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution’s HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau’s (Bureau’s) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate’s HMDA Disclosure Statement may be obtained at the Bureau’s website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

\* \* \* \* \*

**PART 195 – COMMUNITY REINVESTMENT**

6. The authority citation for part 195 continues to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

**§ 195.12 [Amended]**

7. Section 195.12 is amended:

- a. By inserting “or” at the end of (g)(3);
- b. By Removing “; or” at the end of (g)(4), and replacing with “.”;

c. By removing paragraph (g)(5);

d. In paragraph (h)(2)(i), by removing the phrase “unless it is a multifamily dwelling loan (as described in appendix A to part 1003 of this title)” and adding in its place the phrase “unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title)”;

e. By removing paragraph (j)(3), and redesignating paragraph (j)(4) as paragraph (j)(3) and redesignating (j)(5) as paragraph (j)(4); and

f. In paragraph (l), by removing the phrase “‘home improvement loan,’ ‘home purchase loan,’ or a ‘refinancing’ as defined in § 1003.2 of this title” and adding in its place the phrase “closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1)-(10) and (13) of this title”.

**§ 195.22 [Amended]**

8. Section 195.22 is amended in paragraph (a)(1), by removing the phrase “home equity,” after “credit card.”

**§ 195.42 [Amended]**

9. Section 195.42 is amended in paragraph (c)(1), by removing the phrase “home equity,” after credit card.”

10. Section 195.43 is amended by revising paragraph (b)(2) to read as follows:

**§ 195.43 Content and availability of public file.**

\* \* \* \*

(b) \* \* \*

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A savings association required to report home mortgage loan data pursuant part 1003 of

this title shall include in its public file a written notice that the institution’s HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau’s (Bureau’s) website at *www.consumerfinance.gov/hmda*. In addition, a savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate’s HMDA Disclosure Statement may be obtained at the Bureau’s website. The savings association shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

\* \* \* \* \*

## **Federal Reserve System**

### **12 CFR Chapter II**

#### **Authority and Issuance**

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, the Board of Governors of the Federal Reserve System proposes to amend part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

#### **PART 228 – COMMUNITY REINVESTMENT (REGULATION BB)**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 et seq.

#### **§ 228.12 [Amended]**

2. Section 228.12 is amended:
  - a. By inserting “or” at the end of (g)(3);
  - b. By Removing “; or” at the end of (g)(4), and replacing with “.”;

c. By removing paragraph (g)(5);

d. In paragraph (h)(2)(i), by removing the phrase “unless it is a multifamily dwelling loan (as described in appendix A to part 1003 of this title)” and adding in its place the phrase “unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title)”;

e. By removing paragraph (j)(3), and redesignating paragraph (j)(4) as paragraph (j)(3) and redesignating paragraph (j)(5) as paragraph (j)(4); and

f. In paragraph (l), by removing the phrase “‘home improvement loan,’ ‘home purchase loan,’ or a ‘refinancing’ as defined in § 1003.2 of this title” and adding in its place the phrase, “closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1)-(10) and (13) of this title”.

**§ 228.22 [Amended]**

3. Section 228.22 is amended in paragraph (a)(1), by removing the phrase “home equity,” after “credit card.”

**§ 228.42 [Amended]**

4. Section 228.42 is amended in paragraph (c)(1), by removing the phrase “home equity,” after credit card.”

5. Section 228.43 is amended in paragraph (b)(2), to read as follows:

**§ 228.43 Content and availability of public file.**

\* \* \* \* \*

(b) \* \* \*

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its

public file a written notice that the institution’s HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau’s (Bureau’s) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the Board consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate’s HMDA Disclosure Statement may be obtained at the Bureau’s website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

## **Federal Deposit Insurance Corporation**

### **12 CFR Chapter III**

#### **Authority and Issuance**

For the reasons discussed in the **SUPPLEMENTARY INFORMATION** section, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 345 of chapter III of title 12 of the Code of Federal Regulations 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 2901-2908, 3103-3104, and 3108(a).

#### **§ 345.12 [Amended]**

2. Section 345.12 is amended:
  - a. By inserting “or” at the end of (g)(3);
  - b. By Removing “; or” at the end of (g)(4), and replacing with “.”;
  - c. By removing paragraph (g)(5);



d. In paragraph (h)(2)(i), by removing the phrase “unless it is a multifamily dwelling loan (as described in appendix A to part 1003 of this title)” and adding in its place the phrase “unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title)”;

e. By removing paragraph (j)(3), and redesignating paragraph (j)(4) as paragraph (j)(3) and redesignating paragraph (j)(5) as paragraph (j)(4); and

f. In paragraph (l), by removing the phrase “‘home improvement loan,’ ‘home purchase loan,’ or a ‘refinancing’ as defined in § 1003.2 of this title” and adding in its place the phrase, “closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1)-(10) and (13) of this title”.

**§ 345.22 [Amended]**

3. Section 345.22 is amended in paragraph (a)(1), by removing the phrase “home equity,” after “credit card.”

**§ 345.42 [Amended]**

4. Section 345.42 is amended in paragraph (c)(1), by removing the phrase “home equity,” after credit card.”

5. Section 345.43 is amended in paragraph (b)(2), to read as follows:

**§ 345.43 Content and availability of public file.**

\* \* \* \* \*

(b) \* \* \*

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution’s HMDA Disclosure Statement may be obtained on

the Consumer Financial Protection Bureau's (Bureau's) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the FDIC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED  
RULEMAKING TITLED “COMMUNITY REINVESTMENT ACT REGULATIONS”]

Dated: September 12, 2017

Keith A. Noreika (signed)  
Keith A. Noreika,  
Acting Comptroller of the Currency.

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED  
RULEMAKING TITLED “COMMUNITY REINVESTMENT ACT REGULATIONS”]

By order of the Board of Governors of the Federal Reserve System, September 6, 2017.

Ann E. Misback (signed)

Ann E. Misback,  
Secretary of the Board.

[THIS SIGNATURE PAGE RELATES TO THE JOINT NOTICE OF PROPOSED  
RULEMAKING TITLED “COMMUNITY REINVESTMENT ACT REGULATIONS”]

Dated at Washington, D.C. this 31st day of August, 2017.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman (signed)

Robert E. Feldman

Executive Secretary