products manufactured on or after January 1, 2005. (42 U.S.C. 6295(e)(4)(B)) On February 7, 1989 and October 17, 1990, DOE published in the **Federal Register** final rules codifying the minimum efficiency levels prescribed by NAECA, and thereby established the first set of energy conservation standards for residential water heaters, direct water heating equipment, and pool heaters. 54 FR 6097 and 55 FR 42163.

The energy conservation standards established by NAECA for residential water heaters require that each gas, oil, and electric water heater manufactured on or after January 1, 1990, meet a minimum energy factor based on the water heater's rated storage volume in gallons. (42 U.S.C. 6295(e)(1)) On January 17, 2001, DOE published a final rule (the January 2001 final rule) in which it increased the required minimum efficiency levels for gas and electric storage water heaters (except for tabletop models), but declined to amend the energy conservation standards for oil storage water heaters. 66 FR 4474. DOE also established separate product classes for tabletop water heaters, instantaneous gas-fired water heaters, and instantaneous electric water heaters, but let the existing EPCA efficiency levels in place for these types of equipment. 66 FR 4474. Pursuant to 42 U.S.C. 6295(e)(4)(A), the January 2001 final rule amended the DOE regulations to specify a minimum energy factor for gas-fired storage-type, oil-fired storage-type, electric storage-type, gas-fired instantaneous, electric instantaneous, and tabletop water heaters, based on rated storage volume and became effective on January 20, 2004. 66 FR 4474.

Furthermore, EPCA requires that pool heaters manufactured on or after January 1, 1990, meet a thermal efficiency standard of not less than 78 percent. (42 U.S.C. 6295(e)(2)) In addition, the energy conservation standards established by EPCA at 42 U.S.C. 6295(e)(3) specify a minimum annual fuel utilization efficiency (AFUE) for sixteen product classes of direct heating equipment, as shown in Section 430.32(i) of Part 430, Title 10, Code of Federal Regulations.

DOE initially considered amending the energy conservation standards for pool heaters and direct heating equipment as part of an eight-product standards rulemaking. DOE issued a notice of proposed rulemaking (NOPR) on March 4, 1994 to amend the energy conservation standards for pool heaters and direct heating equipment, as well as other consumer products. 59 FR 10464. The Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1996 (Pub. L. 104–134) included a moratorium on proposing or issuing final rules for appliance standards rulemakings for the remainder of Fiscal Year 1996, which caused DOE to suspend action on the 1994 proposed standards. Currently, the first set of EPCA efficiency levels for pool heaters and direct heating equipment remain in place.

To begin today's rulemaking process, DOE has prepared a Rulemaking Framework Document for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (Framework Document) to present the issues and explain the analyses and process it anticipates using to amend the energy conservation standards for residential water heaters, direct heating equipment, and pool heaters. The focus of the public meeting will be to discuss the analyses and issues identified in the Framework Document. During DOE's presentation to stakeholders, DOE will discuss each item listed in the Framework Document as an issue for comment. DOE will also make a brief presentation on the rulemaking process for these products. DOE encourages interested persons who wish to participate in the public meeting to obtain the Framework Document and be prepared to discuss its contents. A copy of the draft Framework Document is available at *http://www.eere.doe.gov/buildings/appliance_standards.* However, public meeting participants need not limit their discussion to the topics in the Framework Document. DOE is also interested in receiving comments concerning other relevant issues that participants believe would affect energy conservation standards for residential water heaters, direct heating equipment, and pool heaters. DOE also welcomes all interested parties, whether or not they participate in the public meeting, to submit in writing by January 30, 2007, comments and information on the matters addressed in the Framework Document and on other matters relevant to consideration of standards for residential water heaters, direct heating equipment, and pool heaters.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to prepare a transcript of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to prepare a transcript of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by the U.S. antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, DOE will begin collecting data, conducting the analyses as discussed in the Framework Document and at the public meeting, and reviewing the comments received.

Anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding residential water heaters, direct heating equipment, and pool heaters, should contact Ms. Brenda Edwards-Jones at (202) 586–2945.

Issued in Washington, DC, on November 13, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 06–9372 Filed 11–22–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 2006–44]

RIN 1550–AC08

Community Reinvestment Act—Interagency Uniformity

AGENCY: Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (proposal), OTS is proposing changes to its Community Reinvestment Act (CRA) regulations in four areas to reestablish uniformity between its regulations and those of the other Federal banking agencies. OTS is proposing revisions to its CRA rule to promote consistency and help facilitate objective evaluations of CRA performance across the banking and thrift industries. Consistent standards could allow the public to make more effective comparisons of bank and thrift CRA performance.

To advance these objectives OTS is proposing to align its CRA rule with the rule adopted by the banking agencies by: (1) Eliminating the option of alternative weights for lending, investment, and service under the large, retail savings association test; (2) defining small savings associations with between $250 million and $1 billion in assets as ''intermediate small savings associations'' and establishing a new

community development test for them; (3) indexing the asset threshold for small and intermediate small savings associations annually based on changes to the Consumer Price Index (CPI); and (4) clarifying the impact on a savings association's CRA rating if OTS finds evidence of discrimination or other illegal credit practices.

DATES: Comments must be received by January 23, 2007.

ADDRESSES: You may submit comments, identified by No. 2006–44, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: regs.comments@ots.treas.gov.* Please include No. 2006–44 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2006–44.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2006–44.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.*

In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

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

SUPPLEMENTARY INFORMATION:

Background

The CRA requires the Federal banking and thrift agencies to assess the record of each insured depository institution of 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 they evaluate an application by the institution for a deposit facility. 12 U.S.C. 2903. In 1995, when OTS, 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 four agencies) adopted major amendments to regulations implementing the CRA, they committed to reviewing the amended regulations in 2002 for their effectiveness in placing performance over process, promoting consistency in evaluations, and eliminating unnecessary burden. 60 FR 22156, 22177 (May 4, 1995). The four agencies indicated that they would determine whether and, if so, how the regulations should be amended to better evaluate financial institutions' performance under the CRA, consistent with the Act's authority, mandate, and intent.

The four agencies initiated their public review in July 2001 with publication in the **Federal Register** of an advance notice of proposed rulemaking. 66 FR 37602 (July 19, 2001). It requested comment on whether the regulations were effective in meeting the stated goals of the 1995 rulemaking and whether any changes should be made to the rules. It solicited comment on a wide variety of issues including the large retail institution test, the small institution test, the community development test for limited purpose and wholesale institutions, strategic plans, the performance context, assessment areas, affiliate activities, and data collection and maintenance of public files.

After nearly three years of discussions, in February 2004, the four agencies published a notice of proposed rulemaking. 69 FR 5729 (Feb. 6, 2004). Through it, the Agencies proposed to raise the small institution asset threshold to $500 million without regard to holding company affiliation; to amend the regulations to provide that certain discriminatory, illegal, or abusive credit practices would adversely affect the evaluation of the institution's CRA performance; and to enhance the data disclosed in CRA public evaluations and CRA disclosure statements.

On July 16, 2004, the OCC and the Board announced that they would not proceed with their respective February 2004 proposals. The OCC did not formally withdraw the proposal, but did not adopt it. The Board formally withdrew its proposal.

On August 18, 2004, OTS published a final rule that raised the small savings association asset threshold to $1 billion without regard to holding company affiliation effective October 1, 2004. 69 FR 51155 (Aug. 18, 2004).

On August 20, 2004, the FDIC issued another proposed rule. 69 FR 51611 (Aug. 20, 2004). The FDIC proposed to raise the small institution asset threshold to $1 billion, while adding a community development activity criterion to the small institution test for banks with assets greater than $250 million up to $1 billion. It also proposed to expand the definition of ''community development'' to encompass a broader range of activities in rural areas.

On November 24, 2004, OTS proposed further CRA regulatory reforms. 69 FR 68257 (Nov. 24, 2004). Like the FDIC, it proposed to expand the definition of ''community development'' to encompass certain community development activities in underserved nonmetropolitan areas. OTS also solicited comment on expanding the definition of ''community development'' to encompass certain community development activities in areas affected by natural or other disasters or other major community disruptions without regard to whether those areas or the individuals served were low- or moderate-income. Further, OTS solicited comment on providing additional flexibility in the CRA examinations of large retail institutions.

On March 2, 2005, OTS adopted a final rule effective April 1, 2005, that provided additional flexibility under the large retail savings association test whereby the weight given to the three components of the test does not uniformly apply approximately 50 percent weight to lending, 25 percent weight to services, and 25 percent weight to investments. 70 FR 10023 (Mar. 2, 2005).

After OTS adopted final rules on CRA regulatory reform, the other agencies also amended their CRA rules. On August 2, 2005, following their publication of a notice of proposed rulemaking (70 FR 12148, 12149 (Mar. 11, 2005)), the OCC, the Board, and the

FDIC (collectively, the three agencies) issued a joint final rule amending their CRA regulations. 70 FR 44256 (Aug. 2, 2005). The three agencies' August 2005 final rule extended eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion, without regard to holding company assets. The three agencies' final rule expanded the definition of ''community development'' to include certain activities in underserved rural areas and disaster areas.

The three agencies' final rule contained some differences from provisions OTS had proposed or finalized. It provided that the three agencies would separately evaluate and rate the community development records of institutions between $250 million and $1 billion (termed ''intermediate small banks'' by the three agencies), but under a new, more streamlined basis than under the large retail institution test. Under this new test, the three agencies no longer require an intermediate small bank to collect and report data on small business or small farm loans or on the location of certain nonmetropolitan mortgage loans. However, the new test contains two components, a lending test and a community development test.

It also refined one aspect of the February 2004 joint proposal to provide that evidence of discrimination or evidence of credit practices that violate an applicable law, rule, or regulation could adversely affect an agency's evaluation of a bank's CRA performance. The final rule included an illustrative list of such practices. Further, it provided that the asset thresholds would be adjusted annually for inflation, based on changes to the Consumer Price Index.

On April 12, 2006, OTS adopted a further final rule revising the definition of ''community development'' to reduce burden and provide greater flexibility to meet community needs. The revised definition is the same as the definition that the Board, OCC, and FDIC adopted in their August 2, 2005 final rule.

Today's Proposal

OTS believes that its rule achieved regulatory burden reduction. All four agencies have reduced the regulatory burden associated with the CRA regulations through steps such as amending the definition of small bank. However, OTS believes consistent standards applied equally across the banking and thrift industries could facilitate objective evaluations of CRA performance and ensure accurate assessments of institutions that operate in the same market. As a result, OTS is proposing to align its CRA regulation with those of the other Federal banking agencies to best serve the interests of insured depository institutions and their communities by providing for consistency in regulation and compliance.

In issuing this proposal, OTS notes that savings associations have an excellent record in the provision of credit, investments, and services in their markets, particularly in low- to moderate-income communities. It is OTS's experience that, as a percentage of their total assets, savings associations far outdistance banks and other lenders in originating multi-family housing loans, a vehicle frequently utilized to provide affordable housing.[1] OTS believes savings associations will continue to serve their markets, including low- and moderate-income communities, regardless of the applicable CRA rules.

Accordingly, OTS is proposing changes to its CRA regulations in four areas. While the preamble addresses each area in turn, the overriding question OTS poses to commenters with respect to each area is whether the benefits of greater regulatory uniformity and any other benefits outweigh any potential disadvantages. OTS also invites comment on all aspects of the proposal, including whether OTS should make any variations to the approach adopted by the other Federal banking agencies in any of these areas.

1. Alternative Weights

OTS's March 2005 final rule provided additional flexibility for the weights given to lending, services, and investments for each examination under the large retail savings association test. OTS issued guidance on April 7, 2005, explaining the methodology it would apply through Thrift Bulletin 85 (April 7, 2005). The other three agencies have not adopted this approach.

OTS is proposing to eliminate alternative weights to facilitate uniformity in the assessment of CRA performance between banks and thrifts. Most large institutions elected to continue to allocate weights under the three performance categories of lending, investments, and services.

Retaining Flexibility

OTS notes that if the agency eliminates the alternative weight option for large savings associations, large savings associations would retain flexibility to focus their CRA efforts with emphasis on lending, just as they have in the past. For example, a savings association with outstanding performance in lending and services would still receive an ''outstanding'' CRA rating overall, even if it makes few or no qualified investments. Additionally, a savings association with a poor record on the service test and few or no qualified investments would still receive a ''satisfactory'' CRA rating overall if its lending is at least highly satisfactory.

As explained in the preamble to OTS's March 2005 final rule, a savings association with a strong lending record has always been able to receive at least a ''low satisfactory'' rating on the investment test while making few or no qualified investments due to limits on savings associations' investment authority. 70 FR at 10025. This policy originated in the preamble to 1995 CRA rule. The preamble explained that because of differences between savings associations and other financial institutions (*e.g.*, the qualified thrift lender test and lending and investment limits on commercial loans and community development investments) a savings association could receive at least a ''low satisfactory'' rating on the investment test without making qualified investments depending upon its lending performance. 60 FR at 22163. Similarly, the 2001 Interagency Q&A Regarding Community Reinvestment indicate that a savings association that has made few or no qualified investments due to its limited investment authority may still receive a satisfactory rating under the investment test if it has a strong lending record. Q&A 21(b)(4), 66 FR 36620, 36631 (July 12, 2001). If OTS eliminates the alternative weight option, these principles would continue to apply.

Further, a savings association that would like OTS to evaluate its performance based on even more flexible criteria could opt for a strategic plan. While a strategic plan for a large retail savings association should generally address all three performance categories (lending, service, and investment), a different emphasis, including a focus on one or more performance categories, may be appropriate. The CRA rule specifically provides—and would continue to provide—that such a focus may be appropriate if responsive to the characteristics and credit needs of its assessment area, considering public comment and the savings association's capacity and constraints, product offerings, and business strategy. 12 CFR 563e.27(f)(ii).

[1] OTS calculates that as of June 30, 2006, savings associations had 4.41% of their assets in multifamily loans whereas commercial banks had only 1.03% of their assets in multifamily loans.

OTS solicits comment. Should OTS eliminate or retain the alternative weight option? Do the benefits of greater uniformity and any other benefits associated with eliminating the alternative weight option outweigh any potential disadvantages? If OTS eliminates the alternative weight option, what transition period, if any, should OTS provide for savings associations that have already begun adjusting their CRA-related programs in anticipation of having this flexibility on their next examination?

2. Community Development Test

OTS's August 2004 final rule raised the small savings association asset threshold from $250 million to $1 billion and eliminated consideration of holding company affiliation. This change enabled OTS to evaluate the CRA performance of savings associations with $250 million or more, but less than $1 billion, in assets under the small savings association test. In contrast to OTS, the other three agencies imposed a different community development test for institutions with $250 million or more, but less than $1 billion, in assets, which they call ''intermediate small banks.'' Under their test, the three agencies evaluate an intermediate small bank's lending performance under the small bank lending criteria, but they also evaluate the bank's community development performance under the following criteria:

- The number and amount of community development loans;
- The number and amount of qualified investments;
- The extent to which the bank provides community development services; and
- The bank's responsiveness through such activities to community development lending, investment, and services needs.

OTS is proposing to adopt the intermediate small institution test. OTS believes that intermediate small savings associations are responsive to the community development needs within the communities they serve. The adoption of the intermediate small institution test will provide a more comprehensive framework for assessing the community development performance of intermediate small savings associations than the small savings association performance criteria. In addition, adopting the intermediate small institution test will assist the public in making a reasonable comparison of community development performance between banks and savings associations operating in the same market.

OTS anticipates that if it adopts this test, it would allow flexibility. This proposal does not prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the savings association's assessment of community development needs in its assessment area(s), it would be able to engage in those categories of community development activities that are responsive to observed needs and consistent with the savings association's capacity. Savings associations that have been providing community development loans and services would find that OTS continues to give those activities credit when OTS evaluates compliance under the new test.

Further, as under the large retail institution test, examiners would take into account statutory and supervisory limitations on a savings association's ability to engage in any lending, investment, and service activities. For example, OTS could still deem a savings association that has made few or no qualified investments due to limits on investment authority to have satisfied the criterion in the community development component of the test regarding ''the number and amount of qualified investments'' if the institution has a strong lending record.

OTS solicits comment. Should it adopt the intermediate small bank test or continue to examine savings associations with up to $1 billion in assets under the small institution performance standards? Do the benefits of greater uniformity and any other benefits associated with adopting the intermediate small bank test outweigh any potential disadvantages? If OTS adopts the intermediate small bank test, what sunset period, if any, should OTS provide for savings associations that have already begun adjusting their CRA-related programs in anticipation of being examined under the small institution performance standards on their next examination? Is there a need to clarify any aspects of the intermediate small bank test and, if so, how?

3. Indexing Asset Thresholds

OTS has not previously proposed to index the relevant asset thresholds for purposes of determining whether an institution is small or large. In contrast, the three agencies' final rule provides that they annually adjust the asset thresholds for small and intermediate small banks based on changes to the Consumer Price Index (CPI). Therefore, to ensure consistency in the standards for evaluating small and intermediate savings associations, OTS is proposing to index the asset threshold consistent with the approach adopted by the other Federal banking agencies.

As the three agencies explained in the preamble to their March 11, 2005 proposed rule (70 FR at 12151), there is precedent for indexing asset thresholds to the CPI. Under the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*, institutions under a certain asset threshold are exempt from HMDA requirements, with the threshold adjusted annually to the CPI and rounded to the nearest multiple of $1 million. 12 U.S.C. 2808.

OTS solicits comment. Should it adopt the same indexing for the asset size for small and intermediate small savings associations as the other three agencies or should it not index? Do the benefits of greater uniformity and any other benefits associated with adopting the same indexing outweigh any potential disadvantages?

4. Discriminatory or Other Illegal Credit Practices

The preamble to OTS's August 2004 final rule explained why OTS was withdrawing one part of its portion of the February 2004 joint proposed rule. The withdrawn language would have added regulatory text providing that evidence that an institution or affiliate engages in discriminatory, illegal, or abusive credit practices would adversely affect the evaluation of the institution's CRA performance. Opposition came from financial institutions and consumer groups. OTS indicated that it would continue to rely on the more general provision in its rule that evidence of discriminatory or other illegal credit practices adversely affects the performance evaluation as interpreted in interagency Q&A 28(c)–1, 66 FR at 36640.

The language adopted by the other three agencies in their August 2005 final rule stated that with respect to discrimination in affiliate lending, the three agencies would reduce a rating based on discrimination in an affiliate's loans made inside the institution's assessment area where the loans have been considered as part of the institution's lending performance. The three agencies explained in the preamble to their August 2, 2005 final rule (70 FR at 44263) that a bank may not elect to include as part of its CRA evaluation affiliate loans outside the bank's assessment area. OTS is proposing to amend its CRA rule to reflect this approach.

OTS solicits comment. Should it adopt the same language on

discriminatory or other illegal credit practices or adopt no new language? Do the benefits of greater uniformity and any other benefits associated with adopting the same approach to discriminatory or other illegal credit practices outweigh any potential disadvantages?

Regulatory Analysis

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995, OTS may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection of information is currently approved under OMB Control Number 1550–0012. This proposal would not change the collection of information.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the proposal would not have a significant economic impact on a substantial number of small entities. None of the provisions would impose any additional paperwork or regulatory reporting requirements. Eliminating the option of alternative weights would only affect savings associations with assets of $1 billion or more. Imposing a community development test for intermediate small savings associations would only affect savings associations with assets of $250 million up to $1 billion. Likewise, indexing the asset thresholds would only affect savings associations with assets around $250 million or more. In contrast, the Small Business Administration (SBA) has defined ''small entities'' for banking purposes as those with assets of $165 million or less. 13 CFR 121.201.

Incorporating language into the rule regarding discriminatory or illegal credit practices has no impact whatsoever. It does not change the laws or regulations applicable to savings associations that prohibit discriminatory or illegal conduct. It simply affects the way OTS considers noncompliance with these laws and regulations as part of the CRA performance evaluation.

Executive Order 12866 Determination

OTS has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in 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 an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that this rule would not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement nor specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 563e

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

Office Of Thrift Supervision

12 CFR Chapter V

For the reasons outlined in the preamble, the Office of Thrift Supervision proposes to amend part 563e of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 563e—COMMUNITY REINVESTMENT

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

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

2. In § 563e.12 revise paragraph (u), to read as follows:

§ 563e.12 Definitions.

* * * * *

(u) *Small savings associations*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1 billion. *Intermediate small savings association* means a small savings association with assets of at least $250 million as of December 31 of both of the prior two calendar years and less than $1 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OTS, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

* * * * *

3. Amend § 563e.21(a)(1) by removing '', and to the extent consistent with § 563e.28(d)''.

4. Revise § 563e.26 to read as follows:

§ 563e.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations with assets of less than $250 million.* The OTS evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small savings associations.* The OTS evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small savings association's lending performance is evaluated pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the savings association provides community development services; and

(4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small savings association performance rating.* The OTS rates the performance of a savings association evaluated under this section as provided in Appendix A of this part.

5. Amend § 563e.28 by:

a. Removing ''paragraphs (b), (c), and (d) of this section'' in paragraph (a) and by adding in lieu thereof ''paragraphs (b) and (c) of this section'';

b. Removing paragraph (d);

c. Revising paragraph (c) to read as follows:

§ 563e.28 Assigned ratings.

* * * * *

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OTS's evaluation of a savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 563e.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the OTS considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

5. In Appendix A to part 563e, revise paragraph (d) to read as follows:

Appendix A to Part 563e—Ratings

* * * * *

(d) *Savings associations evaluated under the small savings association performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The OTS rates a small savings association's lending performance ''satisfactory'' if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small savings association may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small savings associations*—

(i) *Eligibility for a satisfactory community development test rating.* The OTS rates an intermediate small savings association's community development performance ''satisfactory'' if the savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OTS rates an intermediate small savings association's community development performance ''outstanding'' if the savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small savings association may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small savings association may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small savings association that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small savings association that is not an intermediate small savings association that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OTS considers the extent to which the savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small savings association may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

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Dated: November 20, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

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