

regulations by changing the classification of the State of Wyoming from Class A to Class Free. That action relieved certain restrictions on the interstate movement of cattle from Wyoming.

Comments on the interim rule were required to be received on or before November 14, 2006. We received one comment by that date, from an industry group.

The commenter supported our determination that Wyoming has met the requirements to be classified as a Class Free State. The commenter also raised separate points related to this change in classification, which we will address in this document.

The interim rule stated that the last brucellosis-infected herd of cattle in Wyoming was depopulated in December 2004. The commenter stated that, because the requirements for Class Free classification state that all cattle herds in a Class Free State or area must remain free of field strain *Brucella abortus* for 12 consecutive months, Wyoming should have been upgraded to the Class Free classification much earlier than September 2006.

In addition to satisfying the requirement for freedom in paragraph (b)(1) of the criteria for a Class Free State or area in § 78.1, the Animal and Plant Health Inspection Service (APHIS) must determine that a State or area meets all the other requirements in those criteria prior to classifying a State or area as Class Free. This process can take some time, but it would not be appropriate to classify a State or area as Class Free until the process is completed.

The commenter also referred to surveillance programs and risk mitigation measures that are in place to address the risk associated with reservoirs of brucellosis in wild animals in Sublette, Teton, Lincoln, Fremont, Hot Springs, and Park Counties in Wyoming. The commenter stated that APHIS required that this surveillance and risk mitigation be undertaken in order for Wyoming to be reclassified as a Class Free State. The commenter stated that the regulations and the Animal Health Protection Act (7 U.S.C. 8301–8317) do not give APHIS the authority to impose such requirements in order to achieve Class Free status.

The commenter inaccurately characterizes the origin of these surveillance programs and risk mitigation measures. APHIS' review of the Wyoming brucellosis program recommended that surveillance programs and risk mitigation measures be established to address the risk of infection transmitted from wild animals.

We also recommended that the State of Wyoming develop a memorandum of understanding with APHIS to implement these programs and measures. The State of Wyoming recognized the risk associated with the reservoirs of brucellosis that exist in wild animals in parts of that State and took action in cooperation with APHIS.

We based our decision to reclassify Wyoming as a Class Free State for brucellosis on the State's compliance with the requirements in the regulations regarding Class Free status.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 78—BRUCELLOSIS

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 78 and that was published at 71 FR 54402–54404 on September 15, 2006.

Done in Washington, DC, this 16th day of March 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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#### DEPARTMENT OF THE TREASURY

##### Office of Thrift Supervision

##### 12 CFR Part 563e

[No. 2007–03]

RIN 1550–AC08

##### Community Reinvestment Act— Interagency Uniformity

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, OTS is changing 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 making these revisions to its CRA rule to promote consistency and help facilitate objective evaluations of CRA performance across the banking and thrift industries. Consistent standards will allow the public to make more effective comparisons of bank and thrift CRA performance. Additionally, OTS is incorporating changes that reinforce CRA objectives consistent with the ongoing performance of savings associations in meeting the financial services needs of the communities they serve.

To advance these objectives OTS is aligning 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:** This rule is effective on July 1, 2007.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### A. 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 evaluating 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 (ANPR). 66 FR 37602 (July 19, 2001). In the ANPR, the agencies 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. The agencies also 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, 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 allowing savings associations to choose to be evaluated under weights that differed from the standard previously adopted by the agencies whereby approximately 50 percent weight was placed on lending, 25 percent weight on services, and 25 percent weight on 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.

The three agencies' final rule 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.

#### **B. OTS's November 2006 Proposal**

On November 24, 2006, OTS issued a new proposed rule. In the **SUPPLEMENTARY INFORMATION** to that rule, OTS stated its belief that its rule changes over the past three years had 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 also stated its belief that 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 proposed 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 the proposal, OTS noted 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. OTS observed that in its experience, 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.<sup>1</sup> OTS stated its belief that savings associations would continue to serve their markets, including low- and moderate-income communities, regardless of the applicable CRA rules.

OTS proposed changes to its CRA regulations in four areas. While the preamble addressed each area in turn, the **SUPPLEMENTARY INFORMATION** highlighted that the overriding question OTS posed to commenters with respect to each area was whether the benefits of greater regulatory uniformity and any other benefits outweigh any potential disadvantages. OTS also invited 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.

In its November 24, 2006 proposal, OTS proposed 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.

OTS noted that if the agency eliminated 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.

The **SUPPLEMENTARY INFORMATION** recounted how 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. This policy originated in the preamble to 1995 CRA rule. 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 indicates 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). The **SUPPLEMENTARY INFORMATION** explained that if OTS were to eliminate the alternative weight option, these principles would continue to apply.

The **SUPPLEMENTARY INFORMATION** also pointed out that 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).

### 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, called "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 proposed to adopt the intermediate small institution test. In the supplementary information to the November 24, 2006 proposal, OTS stated its belief 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 would 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 would assist the public in making a reasonable comparison of community development performance between banks and savings associations operating in the same market.

OTS explained that it anticipated that if it adopted this test, it would allow flexibility. This proposal did not prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, OTS explained that 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 would continue 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

<sup>1</sup> OTS calculated that as of June 30, 2006, savings association had 4.41% of their assets in multifamily loans whereas commercial banks had only 1.03% of their assets in multifamily loans.

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.

### 3. Indexing Asset Thresholds

The **SUPPLEMENTARY INFORMATION** to the November 24, 2006 proposal pointed out that OTS had 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 proposed 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. The threshold is adjusted annually to the CPI and rounded to the nearest multiple of \$1 million. 12 U.S.C. 2808.

### 4. Discriminatory or Other Illegal Credit Practices

The **SUPPLEMENTARY INFORMATION** to the November 24, 2006 proposal referred to the preamble to OTS's August 2004 final rule, which explained why OTS had withdrawn 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 in August 2004 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 proposed to amend its CRA rule to reflect this approach.

## C. The Comments

### 1. Overview of the Comments

OTS received 66 comments in total on the proposed rule from: One member of Congress in support; three trade associations, one in support (or at least not opposed) and two opposed; three savings associations opposed; 58 from individuals and organizations dedicated to consumer, affordable housing, and community development causes in support; and one national bank in support.

Fifty-four commenters supported all aspects of the proposal. Another six supported everything except indexing of asset thresholds. One trade association did not oppose the proposal and supported indexing of asset thresholds. Two other trade associations supported indexing of asset thresholds; one of these also supported the provision on discriminatory or other illegal credit practices.

In contrast, two trade associations and two large savings associations opposed eliminating alternative weights. Those trade associations and one intermediate small savings association (as defined by the final rule) opposed imposing the new community development test on intermediate small institutions.

Most who commented recommend that the changes take effect right away. In contrast, one trade association supported a two-year transition period for large and intermediate small savings associations. Another trade association requested a transition period of at least one examination cycle for intermediate small institutions if OTS changes its rule. One organization that advocates for community reinvestment said it did not object to OTS waiting six months to a year before conducting more exams for large or intermediate small savings associations.

### 2. Comments in Support of Proposal

Many of the commenters who supported the proposal raised similar

points. The member of Congress who supported all aspects of the proposal, explained that it would restore uniformity and eliminate temptation to flip charters based on different CRA standards. That letter urged OTS to adopt the proposed changes as soon as possible.

The industry trade association that supported (or at least did not oppose) the proposal explained that while it prefers OTS's approach on alternative weights and would have preferred that the other federal banking agencies had adopted OTS's rule, it realizes that the other federal banking agencies have not done so. It credited OTS with breaking the interagency logjam and allowing much needed progress on CRA. But it explained that given the position of the other agencies, it understood OTS's desire to make its rule uniform with the others. It added that uniformity would eliminate confusion for bankers and examiners and that consistency among the agencies would outweigh the benefits of only OTS offering alternative weights. This commenter supported indexing asset thresholds and did not oppose the provision on discriminatory or other illegal credit practices for uniformity. This commenter urged OTS, however, to provide a two-year transition period for large thrifts that relied on alternate weights and intermediate small thrifts that relied on the streamlined lending test to give them time to adjust their policies and procedures.

One national organization that advocates for community reinvestment submitted a detailed letter and its comments were echoed by dozens of others dedicated to consumer protection, affordable housing, and community development causes. This organization supported all aspects of the proposal for several reasons including: (1) It would increase lending, investing, and services in low- and moderate-income communities; (2) establishing the same CRA standards are necessary for the public to be able to effectively compare performance; (3) weaker standards for thrifts make it difficult to hold thrifts accountable for responding to community needs; (4) different standards increase the possibility of some shirking their CRA obligations; (5) the large bank test has worked well; (6) the anti-predatory lending provision is necessary to penalize thrifts through lower CRA ratings if they engage in illegal, discriminatory, and abusive lending practices; (7) research demonstrates that OTS's different rule resulted in declines by thrifts in community development lending, investments, and the number of

branches in low- and moderate-income communities; and (8) there is more CRA exam rating grade inflation for thrifts under OTS's rule. (A few other comment letters referred to this research as well.) While most of this organization's supporters urged OTS to make the changes effective immediately, the organization said that it did not object to OTS waiting six months to a year before conducting any more exams for mid-size and large thrifts to let them adjust to the new exams and find and execute community development financing and service activities. It also suggested that OTS could use performance context to take into account that a thrift's community development activities might be on the low side for the period in which the thrift was covered by the different rules because of the rules that existed during that period.

One national organization that advocates for affordable housing lending supported all aspects of the proposal. It stated that consistency among regulators helps communities and institutions maximize the opportunities to make loans and sell services and that consistency among regulators avoids a regulatory "race to the bottom." Many other commenters echoed these sentiments.

OTS also received several letters from housing authorities supporting the proposal except for indexing asset thresholds. These commenters argued that over time, indexing would exempt more large thrifts from the large retail exam and more intermediate small thrifts from the new community development test.

### 3. Comments Opposed to Proposal

The industry trade associations that opposed eliminating alternative weights and imposing the new community development test for intermediate small thrifts made several arguments: (1) Uniformity is not necessary to ensure that savings associations meet the credit needs of their communities; (2) OTS's current rule significantly reduces burden, which outweighs potential benefits, if any, of uniformity; and (3) the extensive narratives in OTS's examination reports make savings associations' performance readily comparable to banks' even if the tests applied are different. These commenters advocated that the other federal banking agencies should adopt OTS's rule to create uniformity.

With specific regard to alternative weights, they commented that it is necessary and appropriate for large savings association to have a flexible test given differences between the thrift

charter and bank charters. This flexibility simply recognizes that thrifts have always been evaluated somewhat differently from banks under the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments.

One trade association specifically criticized the new CD test for creating an additional layer of regulatory complexity. Another urged OTS to provide a transition period of at least one examination cycle for those intermediate small institutions that had reallocated their CRA activities relying on the ability to comply with the streamlined lending test.

One trade association concluded, based on its analysis, that applying the small institution test to savings associations up to \$1 billion in assets had not resulted in a reduction of their commitments to their communities. Another indicated, however, that if OTS changed its rule to realign with the other federal banking agencies, the change would not have a negative effect on the way savings associations are already meeting the credit needs of their communities. These commenters both supported indexing asset thresholds; one also supported the provision on discriminatory or other illegal credit practices.

The thrifts that commented made similar arguments. One also expressed a specific concern about relying on the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments due to limits on savings associations' investment authority. This thrift suggested that unless the alternative weight option is retained in the rule, OTS might, at any time, discontinue the policy or begin requiring a savings association to make an individualized showing of how restrictions on investment authority have limited that particular thrift's investments.

### D. Today's Final Rule

The comments largely supported the proposal. Having carefully considered the comments, OTS is revising its rule for the same reasons it issued the proposal as discussed in part B of this **SUPPLEMENTARY INFORMATION**. OTS believes the revisions will promote consistency and help facilitate objective evaluations of CRA performance across the banking and thrift industries. Consistent standards will allow the public to make more effective comparisons of bank and thrift CRA

performance. Additionally, the revisions reinforce principal objectives of the CRA.

OTS would like to address some of the specific comments. While some commenters submitted information to support claims that alternative weights and the extension of the streamlined small institution test to institutions with assets of less than \$1 billion had a negative impact on community development, others submitted information to support claims that changes did not have a negative impact. OTS believes the experience with these innovations was too brief to be conclusive either way. However, the revisions reinforce CRA objectives consistent with long standing performance of savings associations in providing access to credit, making investments, and providing services that support the communities they serve.

Regarding the elimination of alternative weights, OTS wishes to reassure the commenter who expressed concern about relying on the OTS policy of granting savings associations with strong lending records at least a low satisfactory rating on the investment test even if they make few or no qualified investments due to limits on savings associations' investment authority. OTS notes—as discussed in detail in part B.1. of this **SUPPLEMENTARY INFORMATION**—that this policy is long-standing. Further, it is a direct outgrowth of section 563e.21(b) of the CRA rule, which addresses the performance context. As discussed in part B.2. of this **SUPPLEMENTARY INFORMATION**, OTS will apply a similar approach under the new community development test for intermediate small savings associations.

OTS highlights that in one small respect, today's final rule departs slightly from the proposal. That departure concerns indexing asset thresholds. As proposed, the regulation provides that OTS will publish annual adjustments to these dollar figures based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million. 12 CFR 563e.12(u)(2).

Since OTS's proposal, however, the OCC, Board, and FDIC updated their regulations to make this annual adjustment. 71 FR 78335 (December 29, 2006). The preamble to their joint rule noted that during the one-year period ending November 2006, the CPIW increased by 3.32 percent. As a result, they revised their rule to provide that beginning January 1, 2007, banks that,

as of December 31 of either of the prior two calendar years, had assets of less than \$1.033 billion are "small banks." Small banks with assets of at least \$258 million as of December 31 of both of the prior two calendar years and less than \$1.033 billion as of December 31 of either of the prior two calendar years are "intermediate small banks."

To enable OTS to adjust the asset thresholds applicable for savings associations consistently with the other federal banking agencies, the rule text provides that savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.033 billion are "small savings associations." Small savings associations with assets of at least \$258 million as of December 31 of both of the prior two calendar years and less than \$1.033 billion as of December 31 of either of the prior two calendar years are "intermediate small savings associations." These inflation-adjusted asset thresholds will take effect once today's final rule takes effect on July 1, 2007.<sup>2</sup>

#### E. Effective Date

Today's final rule takes effect July 1, 2007. The rule changes will apply to examinations that begin in the third quarter of 2007.

However, OTS recognizes that some savings associations may have adjusted their CRA-related programs in reliance on the availability of the alternative weight option under the large retail savings association test and on the availability of the streamlined small institution test for institutions with up to \$1 billion in assets (inflation adjusted). Rather than providing a long delay in effective date as a few commenters requested, OTS will provide relief in another way. OTS examiners will take the elimination of the alternative weight option under the large retail savings association test and the elimination of the streamlined small institution test for institutions with \$250 million to \$1 billion in assets (inflation adjusted) into consideration as part of the performance context when conducting examinations of savings associations affected, since these regulatory changes could have impacted their operations. Section 563e.21(b) of the CRA rule provides that OTS applies the CRA tests in the context of various factors including "(7) Any other information deemed relevant by the OTS." OTS deems these two changes to its CRA relevant for performance context purposes.

The period during which OTS's rules allow for alternative weights under the large retail savings association test started April 1, 2005 and ends July 1, 2007. Accordingly, for CRA examinations under the large retail savings associations test that encompass all or part of this period, OTS examiners will take into account in performance context that a reduction in investment or service performance during this period could be attributable in part to reliance on the alternative weight option.

The period during which OTS's rules applied the small savings association test to savings associations between \$250 million and \$1 billion in assets started October 1, 2004 and ends July 1, 2007. For CRA examinations of intermediate small savings associations under the new community development test that encompass all or part of this period, OTS examiners will take into account in performance context that a reduction in investment or service performance during this period could be attributable in part to reliance on the availability of the small savings association test.

OTS further notes that under section 563e.21(a)(3), savings associations that prefer to be evaluated under the large retail savings association test have that option, but only if they collect and report data required under section 563e.42. The large retail savings association test applied to savings associations with between \$250 million and \$1 billion in assets before October 1, 2004. Thus, evaluation under the large retail savings association test would be an option available to intermediate small savings associations if they collected and reported data for each year covered by the performance evaluation.

#### 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 final rule would not change the collection of information.

##### *Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that the final rule will not have a significant economic impact on a

substantial number of small entities. None of the provisions impose any additional paperwork or regulatory reporting requirements. Eliminating the option of alternative weights only affects savings associations with assets of \$1 billion or more. Imposing a community development test for intermediate small savings associations only affects savings associations with assets of \$250 million up to \$1 billion. Likewise, indexing the asset thresholds only affect savings associations with around \$250 million in assets 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 will 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.

<sup>2</sup> Until July 1, 2007, the small savings association asset threshold OTS applies remains at \$1 billion.

**Office of Thrift Supervision***12 CFR Chapter V*

■ For the reasons outlined in the preamble, the Office of Thrift Supervision amends 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 \$1.033 billion. *Intermediate small savings association* means a small savings association with assets of at least \$258 million as of December 31 of both of the prior two calendar years and less than \$1.033 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.

\* \* \* \* \*

**§ 563e.21 [Amended]**

■ 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.

■ 6. 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.

\* \* \* \* \*

Dated: March 16, 2007.

By the Office of Thrift Supervision.

**John M. Reich,**

*Director.*

[FR Doc. E7-5188 Filed 3-21-07; 8:45 am]

**BILLING CODE 6720-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE263; Special Conditions No. 23-203-SC]

#### **Special Conditions: Aviation Technology Group, Incorporated, Javelin Model No. 100; Firewalls for Fuselage Mounted Engines and Fire Extinguishing for Aft Fuselage Mounted Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Aviation Technology Group, Incorporated, Javelin Model No. 100 airplane. This airplane will have novel or unusual design features associated with aft mounted engine fire protection. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety

equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* March 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Leslie B. Taylor, Regulations & Policy Branch, ACE-111, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329-4134; facsimile (816) 329-4090, e-mail at [leslie.b.taylor@faa.gov](mailto:leslie.b.taylor@faa.gov).

**SUPPLEMENTARY INFORMATION:**

#### **Background**

On February 25, 2005, Aviation Technology Group, Incorporated applied for a type certificate for their new Javelin Model No. 100. The Javelin Model No. 100 is a two-place acrobatic airplane with two fuselage mounted turbofan engines.

Part 23 historically addressed fire protection on multiengine airplanes based on the assumption that the engines are sufficiently separated to essentially eliminate the possibility of an engine fire spreading to another engine. On traditional multiengine airplanes, this has been achieved by locating engines on the wings separated by the fuselage. This configuration ensures that an engine fire on one side does not migrate to the opposite engine. This configuration also protects the opposite engine from heat radiating from the engine fire. Prevention, identification, and containment are traditional means of fire protection. Prevention has been provided through minimizing the potential for ignition of flammable fluids and vapors. Identification has been provided by locating engines within the pilots' primary field of view and/or with the incorporation of fire detection systems. This has provided both rapid detection of a fire and confirmation when it was extinguished. Containment has been provided through the isolation of designated fire zones through flammable fluid shutoff valves and firewalls. This philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of an engine. However, containment has only been demonstrated for 15 minutes. If a fire occurs in traditional part 23 airplanes, the appropriate corrective action is to land as soon as possible. For a small, simple airplane originally envisioned by part 23, it is possible to descend and land within 15 minutes. Thus, the occupants can safely exit the airplane before the firewall is breached. These simple airplanes normally have the engine located away from critical flight control systems and primary structure.