

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **10462**]
June 20, 1991]

COMMUNITY REINVESTMENT ACT

REGULATION BB

**Final Rule Regarding the Public Disclosure of
CRA Performance Evaluations and CRA Ratings**

*To All State Member Banks in the Second
Federal Reserve District, and Others Concerned:*

Effective July 1, 1990, the Board of Governors of the Federal Reserve System, together with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, issued a temporary rule to implement changes in the Community Reinvestment Act that were contained in Title XII of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. (That temporary rule was sent to you with our Circular No. 10361, dated July 18, 1990.)

The Board of Governors has now issued, effective July 11, 1991, a final rule that amends its Regulation BB, "Community Reinvestment," and adopts, with only minor modifications, the requirements in the temporary rule concerning the manner in which State member banks must make their written CRA Performance Evaluation and CRA rating public. Following is the text of the statement issued by the Board of Governors in this regard:

The Federal Reserve Board has announced new procedures for State member banks to follow regarding the public's access to Community Reinvestment Act (CRA) Performance Evaluations and ratings. The Board established these new procedures by amending its Regulation BB (Community Reinvestment).

The new procedures become effective July 11, 1991.

Currently, State member banks are required to place their CRA Performance Evaluation, which contains the rating, in a public file within 30 business days of its receipt. The new procedures call for only minor modifications to this rule.

The evaluations must be made available for public inspection, and copies must be provided to interested parties for a fee not to exceed the cost of reproduction and mailing. The State member banks' CRA Public Notices must be amended to reflect the availability of the evaluation and rating.

The final rule clarifies the point that a State member bank may, at its option, prepare a response to the evaluation and make it available in the public comment file.

Enclosed is a copy of the text of the notice issued by the Board of Governors amending the interim rule. The notice has been reprinted from the *Federal Register* of June 12, 1991. Questions regarding this matter may be directed to our Compliance Examinations Department (Tel. No. 212-720-5919).

E. GERALD CORRIGAN,
President.

COMMUNITY REINVESTMENT

AMENDMENTS TO REGULATION BB

(Effective July 11, 1991)

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-0691]

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its regulation to implement changes in the Community Reinvestment Act of 1977 (CRA) contained in Title XII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This final rule establishes procedures applicable to state member banks governing public access to CRA Performance Evaluations and CRA ratings assigned by the Federal Reserve during the examination process.

This final rule requires state member banks to place their CRA Performance Evaluation and CRA rating in their public comment file (which they are already required to maintain under existing regulations) within 30 business days of receipt. State member banks must make the evaluation and rating available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks may charge a reasonable fee for reproduction of the evaluation and mailing costs, if applicable. State member banks must also amend their CRA Public Notices to reflect the public availability of the evaluation and rating.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Janice Scandella, Review Examiner, at (202) 452-3946; for the hearing impaired only, contact Dorothea Thompson,

Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the FIRREA, Public Law 101-73, 103 Stat. 183, 511 (1989) amended the CRA, Title VIII, Public Law 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. It also requires the financial supervisory agencies to use a four-tiered descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tiered numerical rating system in use prior to the amendment. FIRREA requires the public disclosure of both the written evaluation and CRA rating assigned for examinations commenced on or after July 1, 1990. In addition, it requires that each written evaluation contain findings and conclusions with respect to each of the assessment factors designed to measure CRA performance. Finally, the written evaluation must contain the institution's rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA stipulates that the financial supervisory agencies maintain as confidential information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. FIRREA also permits the

agencies to provide information solely to the examined institution when they determine that doing so will promote the objectives of the CRA.

On December 22, 1989, the Federal Financial Institutions Examination Council (FFIEC) published for public comment proposals to implement all aspects of these amendments (54 FR 52914). The FFIEC received 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of the Congress. Based on review of the comments received, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System". See 55 FR 18163 (May 1, 1990).

On June 28, 1990, the Board, the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, published for public comment a joint temporary rule implementing all aspects of the FIRREA amendments to CRA (55 FR 26624). The agencies issued the temporary rule to ensure that the changes became effective by the effective date mandated by the Act. Although the temporary rule took effect July 1, 1990, the agencies requested public comment prior to issuing a final rule. The comment period ended on August 27, 1990.

Purpose

This final rule adopts, with only minor modification, the requirements in the temporary rule concerning the manner in which state member banks must make their written CRA Performance Evaluation and CRA rating public. The Federal Reserve intends this final rule to

PRINTED IN NEW YORK, FROM *FEDERAL REGISTER*, VOL. 56, NO. 113, pp. 26901-02

For Regulation BB to be complete, retain:

- 1) Pamphlet effective November 6, 1987.
- 2) Amendments included in Joint Temporary Rule, effective July 1, 1990.
- 3) This slip sheet.

enhance the information available to the public regarding the CRA activities and performance of state member banks. Each state member bank must place its most recent CRA Performance Evaluation containing its rating in its CRA public comment file, already required by existing regulation, within 30 business days of receipt. Each state member bank must also make the CRA Performance Evaluation available, at a minimum, in the public comment file at the bank's head office and, if applicable, at a designated office located in each additional delineated community. Each state member bank must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each state member bank must make copies of the evaluation available upon request, and may charge a fee not exceeding the cost of reproduction and mailing (if applicable).

Discussion Of Comment Letters

The Board received eight comments in response to the temporary rule. Among the issues raised by the commenters was a concern that the language contained in the temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a \$.10 per page copying charge and \$2.00 mailing fee. After evaluating this alternative, the Board determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The Board's intent is to ensure that no state member bank charges unreasonable or exorbitant fees for providing copies of the evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, 12 CFR 228.4(f) has required that state member banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction." To the Board's knowledge this has not caused any problems of interpretation.

A commenter advocated wider

availability of the evaluations throughout the various communities an institution might serve. In the temporary rule the Board required that each state member bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The Board believes that this approach provides adequate availability. Each state member bank must keep a complete CRA public file at its head office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a state member bank's written CRA evaluation and CRA rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's head office file must contain materials relating to all local communities served by the bank.

Another commenter expressed concern that the regulation required the bank to place any prepared response to the CRA evaluation in the public file. This was not the intent of the temporary rule. The final rule has been modified to make clear that it does not require, but merely permits, the bank to respond to the CRA evaluation and place its response in the public file should it so desire. Paragraphs 228.5(a)(3) and 228.3(c)(3) of the rule have been revised to eliminate any possible ambiguity in the regulatory language. In responding to a request by the public for a copy of the CRA evaluation, the final rule also allows a bank to include its written response to the evaluation.

A commenter suggested that requiring the CRA Performance Evaluation to be placed in the public file within 30 business days of receipt failed to provide banks with sufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The Board believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the evaluation.

Finally, a commenter advocated exempting banks with less than \$150 million in total assets from making the evaluation available in a designated office in each local community as well as the head office. The CRA applies to state member banks regardless of their size. Therefore, the Board believes it is inappropriate to tailor the regulation along such lines.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board certifies that this final rule will have an insignificant economic impact on small entities. This final rule imposes only minimal costs on state member banks, regardless of size.

List of Subjects in 12 CFR Part 228

Community development; Consumer protection; Credit; Federal Reserve System; Investments; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 228 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

Accordingly, the interim rule amending 12 CFR part 228 which was published at 55 FR 26624-26628 on June 28, 1990, is adopted as a final rule with the following changes:

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

Authority: Community Reinvestment Act of 1977 [title VIII, Pub. L. 95-128, 91 Stat. 1147 [12 U.S.C. 2901 et seq.]]; 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842.

2. In § 228.5, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 228.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the head office and at an office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

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Board of Governors of the Federal Reserve System, June 4, 1991.

William W. Wiles,
Secretary of the Board.

[FR Doc. 91-13662 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F